

## Improving allergen information for food sold prepacked for direct sale

### 1 Purpose of the paper

#### 1.1 Discussion and decision

1.2 This paper provides an update following the recent consultation on how to implement the name of the food and full ingredients information (including allergen information) for food sold prepacked for direct sale (PPDS).

#### 1.3 The Board is asked to:

- **note** the outcome of the consultation
- **discuss and provide a view** on the risks, particularly relating to smaller businesses, and whether a revised approach to implementation is appropriate based on consultation responses
- **agree** to maintain the existing flexibility for businesses in providing indications of meat content for food sold PPDS
- **agree** a recommendation to Scottish Ministers that subject to any revisions considered appropriate, the legislation should be introduced as planned

### 2 Strategic Aims

#### 2.1 This work supports FSS Strategic Outcome 1 – Food is safe.

### 3 Background

3.1 In [May 2019](#), the Board considered the outcome of a UK-wide consultation carried out earlier that year on options to improve allergen information for food sold PPDS.

3.2. Having reviewed and assessed responses to the consultation, FSS recommended to Scottish Ministers that mandating the name of the food and full ingredient listing on labels of all PPDS foods (Option 4) offered the best level of protection for consumers. In recommending this option, it was agreed that further work should be undertaken to assess the benefits and risks, for all sectors as part of a staged implementation. Scottish Ministers agreed and asked FSS to assess with stakeholders how full ingredients listing can be achieved accurately and in ways that will provide greater certainty sought by consumers, as part of a staged implementation approach.

3.3 In late 2019 and early 2020, FSS carried out further informal engagement on implementation options and the associated impacts with stakeholders, representing food manufacturers, retailers, caterers and enforcement authorities. The scope and definition of PPDS foods that will be subject to the new requirements was a key feature of discussions with stakeholders.

## 4 Discussion

4.1 Following a delay due to pressures from Covid-19 work, FSS carried out a formal consultation based on Option 4 from 2nd October to 4<sup>th</sup> December 2020. This aimed to build on the information obtained through previous informal stakeholder engagement focusing on the costs, benefits and risks with moving towards full ingredient information for PPDS food and how to mitigate those risks. Stakeholders were also invited to comment on draft guidance on providing allergen information. In addition, the consultation asked if consumers agreed that they have a responsibility to inform food businesses if they have specific requirements due to a food intolerance or allergy. Thirty-one responses were received from the 278 stakeholders and interested parties who were sent the consultation. Alongside this consultation, FSS held discussions with stakeholders representing the butchery and retail sectors, individual business operators and Local Authority enforcement officers. In addition, FSS posted the consultation on the Citizen space web platform and during the consultation period issued a series of messages on social media to generate interest amongst consumers.

### Consultation feedback (further detail is given in Annex A)

#### *Costs*

4.2 Local Authorities felt that the familiarisation costs for officers would be much higher than the estimates in the partial Business and Regulatory Impact Assessment (BRIA). Requests for support from businesses, current demands due to allergen work and prioritising inspections under the Local Authority recovery plan were also factors drawing on officers' time.

4.3 Businesses advised that estimated familiarisation time costs will vary depending on the size and scale of the business. While one stakeholder considered the estimates reasonable, other businesses felt they were too low and would require additional staff to be employed to cope with the new requirements and maintain systems. Estimated costs for labelling equipment and associated software varied widely depending on the nature of the business.

4.4 Consumers recognised that businesses will take time to prepare for changes. Coeliac UK highlighted the cost of food waste due to incorrect labelling.

#### Benefits

4.5 Local Authorities generally agreed that the proposal would benefit consumers, although some businesses would switch to selling foods loose to avoid the need for labelling.

4.6 Businesses generally agreed that accurate labelling would offer the benefit of increased consumer confidence and safety. However, having the labelling might not generate additional sales or the cost of labelling would outweigh the benefit of any extra business. Some operators may switch to selling food loose but this would slow down trade.

4.7 Consumer feedback remains supportive of the proposals and one group wanted to see consistent rules across the UK.

### Risks

4.8 In addition to the risks mentioned in the partial BRIA, consultation responses also raised concerns about labelling errors e.g. ingredient changes and non-compliance and also a possible increased risk of cross contamination in making food to order.

4.9 Businesses felt that the risks are likely to occur. Time to prepare and business readiness along with the challenge in adapting, particularly for smaller businesses were concerns. The introduction of mandatory training, a consistent enforcement approach and industry guidance would help.

4.10 Local Authorities also felt the risks mentioned in the consultation are likely to occur and that operating different allergen practices may confuse businesses and operators changing ingredients based on price would make labelling difficult. They asked if an exemption for micro businesses could be considered.

4.11 Some consumers agreed that the risks were likely to occur with others unsure. Other views included that businesses should already be well prepared due to existing allergen information requirements and in the case of incorrect labelling, businesses should be fined.

### *Guidance*

4.12 Most Local Authorities felt the technical guidance on allergen information is helpful. Making the PPDS section stand out more along with including more examples of PPDS food and having guidance in different languages were mentioned.

4.13 Most businesses also felt that the guidance is helpful. Including case studies and having training available to support the guidance were highlighted.

4.14 Consumer views included those who felt the guidance is helpful while others were unsure. More information on cross contamination along with training and awareness raising campaigns were mentioned.

### *Responsibilities regarding allergen information*

4.15 The consultation also asked 'Do you agree that as a consumer with a food allergy or intolerance, or if buying food on behalf of others with a food allergy or intolerance, you have a responsibility to inform businesses of these dietary requirements?'

4.16 Most Local Authority representatives agreed with the statement. However, they recognised that some consumers are reluctant to ask businesses and a label could act as a barrier to conversations taking place.

4.17 Businesses agreed with the statement and especially for consumers with allergies or intolerances to foods which are not on the list of 14 allergens.

4.18 A slight majority of consumers agreed with the statement. Informed choice and judging if a food will be safe were reasons for a conversation. Others disagreed and mentioned having a lack of trust in staff, staff having poor levels of understanding regarding allergens and that they feel awkward at holding up a queue when asking for staff for allergen information.

## 5 Identification of risks and issues

5.1 The time needed to change and adapt current systems along with the costs of doing so were concerns raised by both businesses and Local Authorities. Other factors include:

- Covid-19 has affected all businesses and even some larger businesses have struggled to keep trading or had to reduce the size of their operations.
- Smaller businesses currently accustomed to the flexibility of providing allergen labelling verbally or operating basic printers, face a considerable challenge in expanding the level of information to consumers.
- Overall, the impact of the proposals on small and micro businesses was felt to be hardest.

### Managing information

5.2 All food businesses are required to provide allergen information to consumers and need a system to support this. In moving from providing information verbally to a labelling system, recipes need to be standardised and ongoing checks carried out to ensure ingredient changes are identified. In turn, updates to labelling need to be carried out promptly to maintain accurate information for consumers. The risks can be controlled through having good systems in place which need time and resources to establish and maintain the accuracy of the information held. FSS can provide support through the free to use MenuCal system which helps businesses develop standard recipes. For those businesses opting to use a labelling service, they will need to carry out a similar process. However, the operators of convenience stores who met with FSS were very positive about their experience of labelling food and felt it is commercially worthwhile for them.

### Change of operation

5.3 Businesses could opt to stop producing PPDS food and switch to selling food loose or packed at the consumer's request. This unintended consequence means that consumers would not get the benefit of the proposed changes.

5.4 FSS would encourage as many businesses as possible to provide ingredients information, including allergens for PPDS food. Micro businesses might currently be able to provide name and allergen information using handwritten labels but full ingredients lists would be very challenging to produce in this way. Again, having good systems in place will be essential to ensure accurate labelling. As mentioned by stakeholders, selling food on a PPDS basis speeds up sales and also helps mitigate cross contamination risks because different types of food can be prepared and wrapped separately in advance of sale.

## Scottish Statutory Instrument

5.5 A draft Scottish Statutory Instrument has been prepared based on the consultation proposals and, subject to final clearance, can be presented for Ministerial approval in early February. Before proceeding with the proposals we recommend that the proposal on meat content indications does not go ahead. We also wish to give the Board an opportunity to reflect on the consultation feedback

### Meat content indications

5.6 In considering the name of the food and ingredient information needed, the consultation asked for views on applying the requirement for a meat content indication to the labelling of products containing meat sold PPDS. However, this potentially widens the number of businesses affected. To avoid confusion, it is recommended that we retain the current situation which includes flexibility to provide this information on label or a notice at the point where a customer chooses the food. The rest of the UK did not propose making changes in this area.

### Reflection on the consultation responses

5.7 Following consideration of the consultation responses and whilst acknowledging the feedback and views provided, the best option from a consumer perspective is to carry on as planned. This is because any delay or exemption would not be in the best interests of consumers living with a food hypersensitivity and would create a divergent approach from that taken in the rest of the UK.

5.8 The approach to implementation taken in Scotland has enabled us to engage in detail with stakeholders and businesses about the practicalities of delivering the name of the food and full ingredients information, including allergens for PPDS food. In light of the stakeholder feedback and because of the impact of Covid-19 on this sector, it would be helpful to have a view from the Board on the risks, particularly relating to smaller businesses, and whether a revised approach to implementation may be appropriate. For example, allowing businesses more time beyond 1 October 2021 to prepare for changes and whether some flexibility for smaller businesses should be considered.

5.9 Developing guidance to cover both the general labelling and allergen requirements will help support businesses to prepare for change and training. FSS is working with stakeholders on guidance and to explore scope for a pilot project to help inform the support needed to successfully introduce labelling of PPDS food.

5.10 In the rest of the UK, the changes to labelling requirements for PPDS food have been made. They apply to all businesses selling PPDS food and come into force on 1 October 2021. There is also an expectation from consumers and allergy support organisations that Scotland will introduce similar changes. Therefore, any potential deviation from what was agreed previously may pose a reputational risk for both FSS and Scottish Ministers. FSS intends to work with the FSA on raising awareness of the changes.

## 6. European Union considerations

6.1 PPDS food is sold on a local basis and therefore does not raise any issues regarding EU Exit. Following the end of the Implementing Period, the rules on food labelling in the Food Information to Consumers Regulation have been converted into retained EU law in Great Britain. This process has not affected the technical requirements such as definitions and mandatory food information, because only the changes necessary to make the rules workable in GB have been made.

## 7. Conclusion/Recommendations

7.1 Some businesses are already labelling foods sold PPDS with allergen information but this will not always include full ingredients information. Many businesses will either need to adapt or replace labelling equipment to meet the proposed changes. For the small and micro sectors, but also for some larger businesses, food labelling, especially the complexity of providing full ingredients information, will be a new challenge for them. To successfully implement the proposals, getting accurate record keeping in place will be key. While stakeholder engagement and consultation activity has taken place, the Covid-19 pandemic has had, and continues to have, a significant impact on food businesses' ability to implement the changes at a time when many are struggling. FSS will work with stakeholders to develop guidance and resources to help businesses establish the necessary systems. FSS can also explore scope to provide support with training such as seminars and updating on-line modules.

7.2 The Board is asked to:

- **note** the outcome of the consultation
- **discuss and provide a view** on the risks particularly relating to smaller businesses and whether a revised approach to implementation is appropriate based on consultation responses.
- **agree** to maintain the existing flexibility for businesses in providing indications of meat content for food sold PPDS
- **agree** a recommendation to Scottish Ministers that subject to any revisions considered appropriate, the legislation should be introduced as planned

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## ANNEX A - Feedback from stakeholders

**1. Costs**

Local Authorities felt that the familiarisation costs would be higher than the estimates in the partial Business and Regulatory Impact Assessment (BRIA). One Authority suggested 8-10 hours might be needed to cover initial training for an officer and the follow-up dissemination and discussion work with colleagues in their Local Authority area. Requests for support from businesses would also impact on the time available for inspection work and that allergen work currently takes up a disproportionately large part of food safety inspections. Local Authority comments also included a request that FSS take this into account regarding priorities for inspections and as part of the resource calculation under the LA recovery plan. With regard to business costs, the Local Authorities highlighted that many businesses have spent money on Covid-19 control measures or had to adapt the way they operate in order to continue trading.

Businesses advised that estimated familiarisation time costs will vary depending on the size and scale of the business. One stakeholder felt the estimates were reasonable whereas a business with multiple outlets considered 12 hours training time more appropriate. Others anticipated having to employ staff on a full or part time basis to ensure accurate labelling. Discussions with businesses also gave more insight to the cost of equipment and producing labels, although across all businesses costs vary widely. Depending on the nature of the business, a system of specialist scales can cost around £3000 to £10,000 and this would need to be supported by bespoke software at an additional £20,000 to £30,000 as part of a long term investment. Other businesses mentioned using web-based systems which involve a monthly subscription for access plus costs to print labels. Estimates for the purchase of laptops and suitable printers ranged from £1000 to £2,500. In addition, businesses not already labelling food would need to set aside time to establish a system and carry out regular checks and updates thereafter.

Consumers commented that they accept that businesses will take time to prepare for these changes. Coeliac UK mentioned that the cost of food waste due to incorrect labelling is another element to consider.

## Cost examples

## (i) Familiarisation time – one off cost

## Medium and Larger business

Feedback from stakeholders suggested that more than 2 hours is needed for businesses to become familiar with the new requirements. One business operator with multiple outlets felt 12 hours for training would be appropriate. The time needed will vary according to the way individual businesses are structured. If we were to increase this time to 12 hours, the cost across the sector (265 businesses) would be around £92,000

### Smaller businesses

Feedback from stakeholders suggested more time is needed for businesses to become familiar with the new requirements. Based on 2 hours for this, the cost across the sector (10,965 businesses) would be around £278,000.

### Local Authorities

Feedback from the Local Authorities suggested that 3 hours is insufficient time to enable an Environmental Health Officer from each Local Authority to read, familiarise themselves with the new regulations and disseminate the information to other officers in their area. Increasing this to 8 hours and allowing a further hour for other officers to listen to the information brings the total cost to around £11,000.

#### (ii.) Labelling costs

For businesses already labelling *prepacked* food, the cost to make a minor change to labels ranges from around £11 per item for small and micro businesses to £1900 for medium and large businesses. A minor change is considered to be changing the text on a single face of a label and where no packaging redesign to accommodate the change is involved. Labels for food sold PPDS will not have to carry as much information compared with food sold prepacked. However, time for the initial design will be needed and also for subsequent updates.

Depending on the nature of the business a scale system such as those used by butchers and bakers can cost around £5000 per machine with £20,000 to £30,000 for the bespoke software. Stakeholders advised that installing such a system would be a major investment over a 10 year period. However, some existing systems may need to be replaced to accommodate new labelling requirements.

Other businesses mentioned paying a monthly subscription to use online systems for labelling and producing labels via a standard laptop and printer. If starting from scratch, buying a suitable laptop and printer could cost around £1000 to £2,500 plus £180 to £250 annual subscription along with the cost of labels.

#### (iii.) Time to check and maintain ingredient information

At present, all food businesses selling food PPDS need to check ingredient information to extract details of allergens present and record this in some way to support the provision of information to consumers. Moving to full ingredient listing will require more record keeping and therefore time to track the additional information. This will affect staff costs and some businesses felt that they may need to employ additional staff on a full or part time basis to cope. One business suggested £20,000 for a full time employee.

## 2. Benefits

Local Authorities generally agreed that the proposal would benefit consumers although due to a lack of skills and knowledge as well as time pressures some businesses would switch to selling foods loose to avoid the need for labelling.

Businesses generally understood why the changes are being proposed and that accurate labelling would offer the benefit of increased consumer confidence and safety. Some sectors have seen an increased demand for wrapped foods due to the Covid-19 pandemic but feel that labelling wouldn't generate additional sales or the cost of labelling would negate the benefit of any additional business. Businesses also mentioned that some operators might switch to selling foods loose, although preparing and wrapping food on demand would slow down the business affecting sales and profits.

Consumers mentioned that for food allergic consumers it is good to know exactly what is in food. Coeliac UK added that they would not like to see divergence from the timetable across the UK because this would create inconsistent labelling requirements across the UK and be detrimental to consumer interests.

### 3. Risks

The partial BRIA highlighted that businesses would need to ensure that their systems to support accurate labelling of allergens and ingredients are supervised and sufficiently robust to deal with ingredient substitutions. Consultation responses also raised concerns about potential errors in labelling which may be due to ingredient changes, or a lack of understanding of the information required or not complying with a requirement to provide information. In addition, businesses may opt to stop selling PPDS food in favour of making food to order which could raise the risk of cross contamination.

Businesses felt that the risks are likely to occur. Mandatory allergen training and a consistent approach by Local Authorities along with industry guidance would help. One business felt that the system for getting information about potential contamination in pre-mixed ingredients could be more robust. Discussions with businesses and stakeholders mentioned that smaller businesses with limited resources would find it hardest to adapt, including modifying current labelling to incorporate changes. Concerns about business readiness and time to prepare for changes were raised. The convenience store sector felt that at least 6 months lead in time would be needed. The butchery sector believe that around 200 of their 300 members have equipment capable of providing the proposed labelling and views from the bakery sector are that more than half the businesses would find it hard to adapt current labelling systems.

Local Authorities also felt the risks mentioned in the consultation are likely to occur. They highlighted the greater risk cross contamination if businesses switch to selling food loose and preparing different products at the same time and that businesses would need to check that online systems are using up to date information. Having to operate two separate allergen practices may be confusing for businesses. Some businesses will change ingredients depending on price which will make having a consistent list of ingredients difficult. Local Authorities felt that the smaller businesses would be particularly affected and asked if an exemption for micro businesses, similar to the criteria for the exemption from nutrition labelling, could be considered.

Consumer views included that businesses should be well prepared because they are already required to provide allergen information, just not on a label. Some

consumers felt that the risks were likely to occur with others unsure. They also mentioned that businesses who do not label correctly should be fined and particularly in cases where this happens repeatedly.

#### **4. Guidance**

The majority of Local Authorities felt the technical guidance on allergen information is helpful although would like to see more of a pointer to the PPDS section to help businesses avoid having to go through the whole document. Including more examples and a list of what products fall under PPDS along with example labels would also help businesses. Clarifying when quantitative indications are needed and the requirements for distance sales would further develop the guidance. In addition having guidance available in different languages similar to CookSafe would support those for whom English is not their first language.

Most businesses felt that the guidance is helpful. The butchery sector emphasised the importance of having guidance for business. More generally, the inclusion of case studies with information provided in simple and graphic form would be of most benefit. Supporting the guidance with training is also seen as important.

Consumer views included those who felt the guidance is helpful while others were unsure. Some consumers would like to see cross contamination better highlighted. Similar to the comments from businesses, consumers thought that it would be useful to link the guidance with training. Sharing best practice between Local Authorities and businesses would also be useful. Coeliac UK raised the need for continued investment in awareness raising campaigns.

#### **5. Responsibilities regarding allergen information**

The consultation also asked 'Do you agree that as a consumer with a food allergy or intolerance, or if buying food on behalf of others with a food allergy or intolerance, you have a responsibility to inform businesses of these dietary requirements?'

Most Local Authority representatives agreed that consumers should notify businesses if they have an allergy or intolerance. Businesses have responsibility to provide the information but consumers have a responsibility to ask for it. Labelling food and having a sign to prompt consumers could help. Having conversations with consumers allows businesses to operate best practice regarding cross contamination or provide advice on other allergens handled on the premises. Local Authorities also recognise some individuals are reluctant to do so for various reasons. There can also be issues around language barriers. There is however concern that too much reliance on a label may discourage consumers from having the conversation with the person who made the product.

Businesses agreed with the statement and especially for consumers with allergies or intolerances to foods which are not on the list of 14 allergens.

Consumer views were mixed with a slight majority in agreement with the statement. Those who agree feel that having a conversation with a business helps them make informed choices, particularly if trying something new. It also allows them to judge if a food will cause them to have a reaction and whether it is safe to eat.

Those consumers who did not agree with the statement mentioned not trusting staff to be certain about what is in their products. There were examples of consumers becoming ill after receiving incorrect information. Some feel that they hold up the queue, or feel awkward asking for allergen information in busy shops. Other comments included checking the products sold by a business before going in store and that businesses should clearly and accurately state what is in their products. Many respondents expressed that they found allergen understanding of staff and businesses to be lacking.