

**To: Infrastructure, Land and Environment Policy Board**

**On: 20 March 2019**

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**Report by: Director of Communities, Housing and Planning Services**

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**Heading: CONSULTATION ON AMENDING ALLERGEN INFORMATION  
PROVISIONS CONTAINED WITHIN DOMESTIC FOOD INFORMATION  
LEGISLATION FOR FOOD PREPACKED FOR DIRECT SALE**

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## **1. SUMMARY**

- 1.1 Recent concerns over fatalities linked to allergic reactions from food have prompted a review of current legislative requirements. The current Regulations list 14 allergens that must be labelled or indicated when they are present in food. The Regulations seek to allow consumers to make informed choices about the food they eat, in particular to make things easier for people with allergies to eat out safely.
- 1.2 The Department for Environment, Food and Rural Affairs (DEFRA) and Food Standards Scotland (FSS) launched a consultation on 25 January 2019 into food labelling laws focusing on overhauling the labelling of pre-prepared foods such as sandwiches and salads which are made, packaged and sold in the same stores.
- 1.3 The consultation seeks views on four options that range from simply promoting best practice to full mandatory labelling. In addition, the consultation seeks views on mandatory reporting of allergy “near misses” to Local Authorities in order that these can be investigated to minimise further risk.
- 1.4 The final date for submissions to the consultation is 29 March 2019. A proposed response to the consultation is attached as Appendix 1 for the approval of the Infrastructure, Land & Environment Policy Board.
- 1.5 The proposed response welcomes this consultation and the efforts being made to ensure allergen information is provided on prepacked foods and foods for direct sale. It takes the view that mandatory labelling is the best approach to give consumers comfort that the foods they eat are free from allergies.

## **2. RECOMMENDATIONS**

2.1 It is recommended that the Infrastructure, Land and Environment Policy Board:

- (i) notes the DEFRA and Food Standards Scotland consultation on amending allergen information provisions contained within domestic food information legislation relating to food prepacked for direct sale; and
  - (ii) approves the Council's consultation response as detailed in Appendix 1 to this report.
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## **3. BACKGROUND**

3.1 Regulation (EU) No 1169/2011 on the provision of Food Information to Consumers sets out how consumers should be provided with food information to allow them to make informed choices and to make safe use of food. The Food Information (Scotland) Regulations 2014 (as amended) provide for the enforcement of the EU Regulation in Scotland. The Regulations also establish the enforcement measures for food information law.

3.2 Renfrewshire Council, Business Regulation Team are responsible for the enforcement of The Food Information (Scotland) Regulations 2014 (as amended). Officers are pro-active in advising businesses and consumers regarding allergen matters and also cover this area during every programmed food law inspection.

3.3 Annex II of the Regulation outlines the 14 allergens (and products thereof) that must be labelled or indicated as being present in foods and are:

- Cereals containing gluten, namely: wheat (such as spelt and khorasan wheat), rye, barley, oats
- Crustaceans for example prawns, crabs, lobster, crayfish
- Eggs
- Fish
- Peanuts
- Soybeans
- Milk (including lactose)
- Nuts; namely almonds, hazelnuts, walnuts, cashews, pecan nuts, Brazil nuts, pistachio nuts, macadamia (or Queensland) nuts
- Celery (including celeriac)
- Mustard
- Sesame
- Sulphur dioxide/sulphites, where added and at a level above 10mg/kg or 10mg/L in the finished product. This can be used as a preservative in dried fruit
- Lupin, which includes lupin seeds and flour and can be found in types of bread, pastries and pasta
- Molluscs like, mussels, whelks, oysters, snails and squid

- 3.4 It is estimated that there are around 2 million allergy sufferers in the UK. Fatalities and effects on public health have raised the issue of whether the current regulatory framework for the provision of allergen information for foods prepacked for direct sale is sufficient to give consumers the information they need to make safe food choices. In particular, the findings of the inquest in 2018 into the death of a 15 year-old girl who suffered a fatal reaction to sesame in a baguette she purchased, also criticised the current legislative requirements.
- 3.5 Consequently, the Department for Environment, Food and Rural Affairs (DEFRA) and Food Standards Scotland (FSS) have launched a consultation into food labelling laws focusing on overhauling the labelling of pre-prepared foods such as sandwiches and salads which are made, packaged and sold in the same stores.
- 3.6 Under current food regulations, non pre-packaged and prepacked foods for direct sale do not need to be individually labelled with allergen or ingredient information. Prepacked foods for direct sale' are foods that have been packed on the same premises from which they are being sold, for example a packaged sandwich or salad made by staff earlier in the day and placed on a shelf for purchase. These foods are not required to carry labels and information on allergens, as it is expected that the customer can speak with the person who made or packed the product for this information.
- 3.7 The consultation focusses on four possible options for labelling:
- **Option 1** - promoting best practice,
  - **Option 2** - mandate "ask the staff" labels on foods prepacked for direct sale, supplemented with written information for consumers,
  - **Option 3** - mandate the name of the food and allergen information on foods prepacked for direct sale,
  - **Option 4** - mandate name of the food and full ingredient list labelling, with allergens emphasised, on foods prepacked for direct sale.
- 3.8 In addition to the labelling of foods prepacked for direct sale, the consultation seeks views on the potential requirement to report near miss incidents also. 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 authorities. Consequently, non-compliant food businesses may not be reported to enforcement bodies and are able to continue to operate, posing a potential health risk to those with a food hypersensitivity.
- 3.9 The Council's proposed response attached as Appendix 1 recommends that Option 4 be adopted in relation to labelling. This would mandate the name of the food and full ingredient list labelling with allergens emphasised on prepacked for direct sale items. The response also suggests options for the reporting of near miss incidents that are based on current procedures that operate for other similar incidents.
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## **Implications of the Report**

1. **Financial** – None
2. **HR & Organisational Development** – None
3. **Community Planning** – None

**Renfrewshire is safe**– by improving the allergen information on prepacked foods, any person in Renfrewshire with an allergy will be able to make an informed decision about the food that they purchase.

4. **Legal** - None
5. **Property/Assets** - None
6. **Information Technology** - None
7. **Equality & Human Rights**

- (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website

8. **Health & Safety** – None
9. **Procurement** – None
10. **Risk** – None
11. **Privacy Impact** – None
12. **Cosla Policy Position** – None

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## **List of Background Papers**

None

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OR  
21 February 2019

**Author:** Oliver Reid, Head of Communities & Public Protection; **Email:** [oliver.reid@renfrewshire.gov.uk](mailto:oliver.reid@renfrewshire.gov.uk)

## Renfrewshire Council Response to Food Standards Scotland consultation

1. Would you like your response to remain confidential? No
2. What is your name? Renfrewshire Council
3. What is your email address?
4. Please tell us who you are responding as?
  - d. Public sector body – In an official capacity as a representative of a local government organisation

### Section 2 – Prepacked for Direct Sale (PPDS) definition

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.”

#### 15. Do you agree with this interpretation?

- a. Yes

#### 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?

- a. Yes

#### 17. What other types of food should government review?

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

**18. What is your preferred policy option and why?**

- d. Option 4 - mandate name of the food and full ingredient list labelling with allergens emphasised on prepacked for direct sale foods - should be implemented to provide confidence that the correct information is available at the point of sale.

**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.**

No

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

- a. Yes – with Option 4.

**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?**

- b. Full list of ingredients

**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?**

- a. Yes

**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.**

- a. No



**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

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

No – we think all businesses should be included in all policy options.

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

Less than 6 months.

## **Section 5 - Impact assessment**

We agree with all assumptions made as part of the impact assessment.

## **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 Food Business Operators 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.**

A reporting mechanism similar to that of communicable disease reporting could be used to inform LA's. Partnerships with NHS already exist in this regard.

The use of existing technology can be utilised as a reporting platform.

There could be a mechanism set up whereby food business operators would be required to report incidents, similar to that currently in operation for businesses when implementing withdrawals/recalls of food etc.

A reporting platform could be set up similar to that which operates for accidents under Health and Safety requirements.