

POLICY NOTE

THE FOOD INFORMATION (SCOTLAND) AMENDMENT REGULATIONS 2021

SSI 2021 No. 70

1. Description

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 16(1)(a) and (e), 26(1), and 48(1) of, the Food Safety Act 1990 and all other powers enabling them to do so. This instrument is subject to the negative procedure.

2. Policy Objective

The main purpose of The Food Information (Scotland) Amendment Regulations 2021 is to create a legal requirement for businesses, who sell food prepacked for direct sale (PPDS), to provide the name of the food and ingredient and allergen information either on a label attached to the food packaging or printed directly on the food packaging.

3. Policy Background

In 2014, Regulation (EU) 1169/2011 on the provision of food information to consumers (FIC) introduced new rules for Food Business Operators (FBOs) relating to the labelling and provision of allergen information, notably extending the need for allergen information to include non-prepacked foods. FBOs are under a duty to ensure that all mandatory food allergen information must be accurate, available and easily accessible to the consumer. In line with the FIC, Scotland along with the rest of the UK introduced national measures as to how information is to be made available for non-prepacked foods. The Food Information (Scotland) Regulations 2014 (as amended) and equivalent regulations in Wales, England and Northern Ireland, are the domestic regulations that establish the enforcement measures for FIC in the UK and take up national flexibilities permitted under the EU rules. Since 11 pm on 31 December 2020, the FIC rules have been converted into what is known as 'retained EU legislation' to make them workable as part of domestic law following the UK's departure from the EU.

The national measures set out in the domestic regulations include giving food businesses the flexibility in how they provide the allergen information for non-prepacked foods, such as PPDS food. Currently, the allergen information can be made available by any means the food business chooses, including orally by a member of staff. Where the FBO chooses not to provide written information on food there must be some form of signposting to where consumers may obtain allergen information such as an indication to speak to a member of staff either on a label attached to the food itself or on a notice, ticket or label that is readily discernible to the customer at the point of ordering.

Following the death of the teenager Natasha Ednan-Laperouse, from eating a baguette which contained sesame and was not labelled with allergen information, the Coroner raised a concern about the lack of labelling information for food sold prepacked for direct sale. In response, the Department for the Environment, Food and Rural Affairs (Defra), Food Standards Scotland (FSS) and the Food Standards Agency held a review of possible improvements to the way in which allergen information should be provided for foods sold prepacked for direct sale. After

this review, in 2019, FSS along with the Defra and other devolved administrations held a joint UK-wide consultation on options to improve allergen information for PPDS foods. The four policy options in that consultation were as follows:

- Option 1 – Promote best practice
- Option 2 – Mandate the use of ‘ask the staff’ labels on all PPDS foods.
- Option 3 – Mandate the name of the food and 14 allergens listed in the FIC Regulation on labels of all PPDS.
- Option 4 – Mandate the name of the food and full ingredient listing on labels of all PPDS foods

The 2019 consultation also focused on the provision of allergen information in relation to intentional ingredients in PPDS foods and circumstances where there are opportunities for consumers to ask the food business about allergen information before making a purchasing decision.

Feedback from consumers strongly supported Option and it was the most favoured consultation option overall, particularly for those consumers who are allergic or intolerant to foods which are not included in the list of 14 in the FIC. Business stakeholders offered mixed views on this option with notable support from some larger businesses with greater technical capacity to introduce full ingredient listing. However, smaller businesses were particularly concerned about the practical challenges and risks of moving towards mandatory full ingredients labelling for PPDS food. Amongst Non-Governmental Organisations and Public Sector Bodies there was an equal level of support for this option.

Having reviewed and assessed responses to the consultation FSS recommended to Scottish Ministers that Option 4 offered the best level of protection for consumers, and that further work should be undertaken to assess the benefits and risks, for all sectors as part of a stage. Scottish Ministers supported Option 4 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.

In late 2019 and early 2020, FSS carried out further informal engagement on implementation options and 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. Following on from the informal engagement FSS went out to formally consult stakeholders on the proposals.

4. Consultation

A nine week public consultation was carried out in Scotland on the draft national legislation from 2nd October 2020 to 4th December. This intended to build on the informal stakeholder engagement and further develop information on the benefits, costs and risks of the proposals for prepacked for direct sale food, for each sector. A total of thirty-one responses were received from two hundred and seventy eight stakeholders who received the consultation. Alongside this consultation, FSS held additional discussions with various industry stakeholders. In these discussions FSS spoke with a selection of businesses to gain a greater understanding of their thoughts on the proposals, including any risks they envisaged, the impact it may have on them financial or otherwise and also how prepared they felt to implement the changes.

Consumer feedback remains supportive of the proposals and one group wanted to see consistent rules across the UK. There was recognition that businesses will take time to prepare for changes and Coeliac UK highlighted the cost of food waste due to incorrect labelling. 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. It was also felt that, for people with allergies, it would be good to know exactly what is in foods before they purchase them. There was also some concern expressed by consumers who responded to the consultation, relating to staff understanding of allergies and intolerances. They felt that training in these areas would be of benefit and may help mitigate some of the risks involved in labelling of PPDS food.

Businesses were less positive about the potential changes. There was general agreement that accurate labelling would offer the benefit of increased consumer confidence and safety. They advised that estimated familiarisation time costs will vary depending on the size and scale of the business. In line with this, estimated costs for labelling equipment and associated software varied widely depending on the nature of the business. However, having the labelling might not generate additional sales or the cost of labelling would outweigh the benefit of any extra business. Concerns were raised around having enough time to prepare for the changes and business readiness along with the challenge in adapting, particularly for smaller businesses. It was felt that the introduction of mandatory training, a consistent enforcement approach and industry guidance would help.

Local Authorities generally agreed that the proposal would benefit consumers. They noted that the impact the changes will have on businesses, would vary depending on the size of the business, with the larger ones being better able to adapt than smaller businesses. They also highlighted that some businesses would switch to selling foods loose to avoid the need for labelling. They 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. 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). They also felt that requests for support from businesses, current demands due to allergen work and prioritising inspections under the Local Authority recovery plan would be factors which would draw on officers' time. The requirement for resources and guidance for businesses, including updating the FSS online allergen training tool, was also raised.

At their meeting in January 2021, the FSS Board carefully considered the consultation responses and felt that the approach still offers the best protection for consumers with a food hypersensitivity by providing on pack information on both the allergens specifically listed in food information legislation and other ingredients which can trigger reactions. Therefore, members agreed that, with the exception of meat content indications for products containing meat, the proposals should go ahead. i.e. from 1 October 2021, food sold prepacked for direct sale should be labelled with:

- a. the name of the food and;
- b. a list of ingredients, including allergen information.

5. Other Administrations

These Regulations apply in relation to Scotland only. Corresponding Regulations have been introduced in the other UK countries and come into force on 1 October 2021.

6. Guidance

Guidance notes for the new Regulations and on line training material will be further developed with stakeholder feedback.

7. Impact Assessment

A final Regulatory Impact Assessment has been prepared following the public consultation and it accompanies this note.

8. Regulating small businesses

This Regulation will apply to all businesses who provide food that is prepacked for direct sale.

9. Monitoring

Food Standards Scotland will work with Enforcement Authorities where problems or suspected infringements of the legislation arise. The effectiveness of this instrument will be monitored via general feedback from industry, Enforcement Authorities and consumers.

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