



The Impact of "Natasha's Law" on Food Information and Labelling Requirements

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Your Trainer



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The Legal Position – Regulatory Framework

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- Criminal Liability/ Regulations:
 - “Natasha’s Law”
 - Food Information for Consumers Regulation (EU FIC): Regulation (EU) No 1169/2011 (“EU FIC”)
 - Food Safety Act 1990
 - Food Safety and Hygiene Regulations 2013
 - EU General Food Law Regulation (EC) No. 178/2002
- Potential Civil Liability for Negligence/ Breach of Duty of Care
- Case Law – Provide indication of how courts will interpret legislation.
- Guidance Notes, Codes of Practice and Recommendations – Explain how relevant agency or enforcement body will apply legislation in practice.



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The Legal Position – Making Information Available (Non-Prepacked/PPDS Currently)

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- Allergen information for non-prepacked food may be made available **by any means the operator chooses, including verbally.**
- **BUT** where information will be provided verbally, operator must indicate by means of:
 - Label attached to the food; or
 - On a notice, menu, ticket or label that is (1) readily discernible by (2) an intending purchaser (3) at the place where the intending purchaser chooses that food that allergen information can be obtained by asking a member of staff.
- Note these requirements also apply to foods which are packed on the sales premises at the consumer’s request (e.g. deli counter),
- They will also apply to foods that are prepacked for direct sale (e.g. sandwiches made and packed on the same premises) **until 1 October 2021**

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Natasha's Law Prepacked for Direct Sale: From 1 October 2021

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- Food Information (Amendment)(England) Regulations 2019, making changes to Food Information Regulations 2014: PPDS foods must include:
 - **A list of ingredients**, which must be given directly on the package or a label attached to it; must comply with requirements for ingredients lists for prepacked foods; must be in minimum font size; must be conspicuous, visible and legible and, where appropriate, indelible; and the particulars must not be hidden, obscured or interrupted in any way by any other written or pictorial matter.
 - **Any relevant ingredient /processing aid causing allergies or intolerances** used in the manufacture or preparation of a food and still present in the finished product, in accordance with the requirements for prepacked foods; and
 - The legal name of the food.
- Remember all allergen information laws run alongside (existing) food safety laws in any event which apply to both prepacked and non-prepacked foods

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The Legal Position – Prepacked vs Prepacked for direct sale vs Non-Prepacked

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- **Food Information Regulations 2014:** “prepacked for direct sale” has the same meaning as in Article 2(2)(e) [of the EU FIC];
- **Article 2(2)(e) of EU FIC:**
“‘Prepacked food’ means any single item for presentation as such to the final consumer and to mass caterers, consisting of a food and the packaging into which it was put before being offered for sale, whether such packaging encloses the food completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging; pre-packed food does not cover foods packed on the sales premises at the consumer’s request or prepacked for direct sale”
- **NB: “Non- Prepacked”** - no definition in legislation – essentially anything which is not within the definition of pre-packed.

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FSA Technical Guidance – Meaning of Prepacked for Direct Sale



Prepacked for direct sale – means food that is packed before being offered for sale by the same food business to the final consumer:

- i) on the same premises;
- (ii) on the same site; or
- iii) on other premises if the food is offered for sale from a moveable and/or temporary premises


[NB: Previous version of FSA Technical Guidance from 2014, defined PPDS as foods that have been packed on the same premises from which they are being sold. It also said: *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; and/ or 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.*]

The Consultation and a Summary of Responses (Closed 6 March 2020)



- Consultation sought views on proposed updates to Technical Guidance
- **Summary of concerns:**
 - Legal status of the guidance and enforcement
 - Confusion for consumers remains
 - The scope of PPDS food
 - Whether the QUID rules for prepacked food apply for PPDS food
 - The definition of 'same site/premises'
- **FSA's response:**
 - Technical Guidance is guidance only
 - Having well-informed staff is still an expectation – additional to requirements
 - Scope of PDDS food – 'watch this space'
 - No requirement for QUID labelling for PPDS food
 - 'Same site' accommodates transfers of packaged food within the same food businesses on the same premises/site

What is PPDS food? FSA Technical Guidance



For a food to be PPDS, it must meet all of the following three criteria:

(1) Is the food presented to the consumer in packaging?

↓ Yes No → this is non-prepacked food

The food is "**packed**"

(2) Is it packaged before the consumer selects or orders it?

↓ Yes No → this is non-prepacked food

The food is "**pre-packed**"

(3) Is it packaged at the same place it is sold?**

↓ Yes No → this is prepacked food

The food is "**pre-packed for direct sale**"

If the answers to all three questions above are "Yes", the food is PPDS.


Notes

* A single item (the food and its packaging) presented to the consumer. The food is completely or partially enclosed and cannot be altered without opening or changing the packaging. Foods in such packaging sold to other businesses are Prepacked food and already require allergen labelling. (See Article 2(2)(e) of the FIC)

** Food (a) packaged by the same food business on the same site from which it is sold or (b) sold from temporary or moveable premises (such as a food truck or market stall) by the same food business that packaged it.

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FSA Amended Technical Guidance on Allergen Information (Consultation closed 6 March)



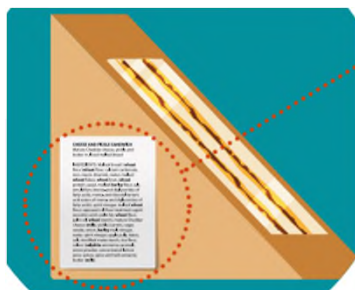
- Hot food such as rotisserie chicken, displayed on counter in packaging.
- **PPDS**
- Boxed salad on delicatessen counter
- **PPDS**
- A butcher who buys wholesale cuts of meat to make burgers or sausages which are prepacked to be sold on the same premises.
- **PPDS**
- A burger or boxed fried chicken wrapped when ordered
- **Not PPDS – not packed before being offered for sale**
- A wrapped burger or boxed fried chicken placed under a hot lamp
- **PPDS**
- A pork pie packed by business "A" and sold by business "B" at a farmer's market
- **Not PPDS – this is prepacked food when offered for sale**
- A hot dog served on a cardboard tray
- **Not PPDS – the food can be altered without opening or changing the packaging**

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What needs to be on the label? FSA Guidance

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- Name of the food
- Ingredients list with 14 specified allergens
- In a minimum font size
- Conspicuous, visible and legible



CHEESE AND PICKLE SANDWICH

Mature Cheddar cheese, pickle and butter in sliced malted bread

INGREDIENTS: Malted bread (**wheat** flour (**wheat** flour, calcium carbonate, iron, niacin, thiamin), water, malted **wheat** flakes, **wheat** bran, **wheat** protein, yeast, malted **barley** flour, salt, emulsifiers (mono- and diglycerides of fatty acids, mono- and diacetyl tartaric acid esters of mono- and diglycerides of fatty acids), spirit vinegar, malted **wheat** flour, rapeseed oil, flour treatment agent (ascorbic acid), palm fat, **wheat** flour, palm oil, **wheat** starch), mature Cheddar cheese (**milk**), pickle (carrots, sugar, swede, onion, **barley** malt vinegar, water, spirit vinegar, apple pulp, dates, salt, modified maize starch, rice flour, colour (**sulphite** ammonia caramel), onion powder, concentrated lemon juice, spices, spice and herb extracts), butter (**milk**).

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The Legal Position – Specified Allergens under EU FIC

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- **Cereals** containing Gluten - wheat, rye, barley, oats, spelt, kamut or their hybridised strains (and derivatives)
- **Crustaceans** (and derivatives)
- **Eggs** (and derivatives)
- **Fish** (and derivatives)
- **Peanuts** (and derivatives)
- **Soybeans** (and derivatives)
- **Milk** (and derivatives) except...they used for making alcoholic distillates including ethyl alcohol of agricultural origin
- **Nuts** - almonds, hazelnuts, walnuts, cashews, pecan nuts, Brazil nuts, pistachio nuts, macadamia or Queensland nuts
- **Celery** (and derivatives)
- **Mustard Seeds** (and derivatives)
- **Sesame Seeds** (and derivatives)
- **Sulphur Dioxide and Sulphites** (concentrations more than more than 10 mg/kg or 10 mg/litre)
- **Lupin** (and derivatives)
- **Molluscs** (and derivatives)

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Natasha's Law - UK Nations

- Food standards are devolved in the UK
- Wales
 - The Food Information (Wales) Amendment (No.2) Regulations 2020
 - Equivalent to Natasha's Law
 - Ingredient and allergen labelling for foods PPDS will be mandatory from 1 October 2021
- Northern Ireland
 - The Food Information (Amendment No.2) Regulations (Northern Ireland) 2020
 - Equivalent to Natasha's Law
 - Ingredient and allergen labelling for foods PPDS will be mandatory from 1 October 2021
- Scotland
 - FSS carried out its own consultation
 - Food Information (Scotland) Amendment Regulations 2021
 - Ingredient and allergen labelling for PPDS will be mandatory from 1 October 2021

Natasha's Law – Potential Impact on Suppliers

- Changes to orders - Customer may re-assess product range
- Packaging – Customer may re-assess means of display/ ordering
- Greater focus on ingredient information provided by suppliers:
 - Specifications
 - Substitutions
 - Changes in recipe
- Possible changes in standard contractual terms
- On the horizon: similar changes for foods packed on request/ non-prepacked foods?
- Requests for further information on cross-contamination risks

'May Contain' Labelling

- No specific requirement for precautionary 'may contain' labelling under legislation.
- FSA Guidance:
 - If there is a significant risk of a food product being affected by allergen cross-contamination, the label should include one of the following statements:
 - **may contain X**
 - **not suitable for someone with X allergy**
 - Precautionary allergen labelling should only be used after a thorough risk assessment. It should only be used if the risk of allergen cross-contamination is real and cannot be removed.
- Other Detailed guidance available:
 - **Food Drink Europe (FDE) guidance on food allergen management for manufacturers:**
www.fooddrink europe.eu/uploads/pressreleases_documents/temp_file_FINAL_Allergen_A4_web1.pdf
 - **FDf and BRC guidance on "Free-From" claims:**
https://www.fdf.org.uk/corporate_pubs/brc-free-from-guidance.pdf

The Legal Position – Food Safety Offences

- Food Safety Act 1990:
 - Any person who sells food not of nature, substance or quality intended, is guilty of an offence.
- Food Safety and Hygiene Regulations 2013:
 - Any person who fails to comply with 'specified EU provisions' commits an offence.
- EU General Food Law Regulation 2002 (Retained EU Law)
 - Number of 'specified provisions', including:
 - Placing unsafe food on the market
 - Labelling, advertising and presentation of food must not mislead
 - Requirement to recall and / or withdraw food from market
 - Article 14 – food is unsafe if: injurious to health (or unfit for human consumption)
 - Regard shall be had to:
 - information provided to the consumer; and
 - the particular health sensitivities of a specific category of consumers where the food is intended for that category of consumers
- Manslaughter by gross negligence
- Health and Safety at Work etc. Act 1974

Offences and Penalties

- Some Bad News:
 - Strict Liability
 - Penalty: Fine / Imprisonment
 - Officer Liability
 - Maximum fine limits removed
 - Sentencing Guidelines

Due Diligence Defence

- Some Good News:
- Defence of Due Diligence (Food Safety Act 1990 s.21 and FSH Regs 2013 s.12)
 - General: It shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.
 - The FSA Guide on the Food Safety Act 1990 (published 2009) confirms:
 - the burden of proof lies with the person accused (as with any due diligence defence);
 - that person need only persuade the court that they exercised due diligence on the balance of probabilities;
 - 'reasonable care' will take account of all the facts in the case and a small business might not be required to undertake the same precautions which would be expected of one of the major retailers.

Examples of Mis-Labeling

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ALLERGY ALERT

23 April 2021

Dunnes Stores recalls My Family Favourites Sliced Beetroot in Malt Vinegar because of undeclared barley.

Dunnes Stores is recalling My Family Favourites Sliced Beetroot in Malt Vinegar as it contains barley, which is not mentioned on the label. This means the product is a possible health risk to anyone with an allergy or intolerance to barley.

ALLERGY ALERT

7 April 2021

Yekta Foods recalls Kambiz Iranian Sauce because of undeclared milk

Yekta Foods is recalling Kambiz Iranian Sauce because the label does not mention that the ingredient dried whey is a product derived from milk.

ALLERGY ALERT

14 April 2021

Hotel Chocolat recalls Ugly But Good Bag Lychee & Rose because of undeclared nuts

Hotel Chocolat is recalling its Ugly But Good Bag containing Lychee & Rose chocolates because they may contain a chocolate made with a macadamia praline filling.

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What to Ask and When?

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- Ingredients/ Residues:
 - Main Components
 - Food additives
 - Processing aids
 - Substitution risks
- Potential Cross-contamination:
 - Harvesting
 - Manufacturing
 - Transportation/ Storage / Packaging
- New Suppliers
- Existing Suppliers
- New/ Replacement Products / Recipe Changes
- How will Information be provided and updated?

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Ongoing Checks

- Reporting/ tracking errors on delivery
- Investigate near misses
- Random sampling
- Horizon scanning
- Checking ingredient lists
- Third party checks

How to plan for 1 October 2021

- Suppliers of PPDS food to Food Business Operators
 - Communicate with your customers
 - Check procedures to ensure the food information is compliant
 - Clear instructions to your customers on how to make the products
 - Clear systems in place to deal with stock deliveries
 - Warnings to customers
 - Flag possibility of allergen cross-contamination
- Food Business Operators:
 - Communicate with suppliers
 - Ensure you have systems in place to provide accurate allergen and ingredient information
 - Ensure that staff have sufficient information and equipment
 - Ensure staff are well-trained
 - Review your complaints procedure



Questions & Answers



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