

### Food allergens and intolerance

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**Note:** although the United Kingdom has left the European Union, certain pieces of legislation (formally known as 'retained EU law') will still apply until such time as they are replaced by new UK legislation; this means that you will still see references to EU regulations in our guidance.

#### **This guidance is for England and Wales**

This guidance relates to the provision of allergen information by caterers and restaurants, and suppliers of non-prepacked, prepacked and prepacked for direct sale (PPDS) food.

In the UK about ten people die every year from an allergic reaction to food, and many more end up in hospital. In most cases, the food that causes the reaction is from a restaurant or takeaway.

There is a list of 14 specific food allergens, the presence of which must always be brought to the attention of the consumer. Failure to do so is a criminal offence and, in the most extreme cases, could cause someone to die.

It is a general requirement of food law that unsafe food must not be placed on the market and any information provided by the business will be taken into consideration when deciding whether the food is unsafe. For people with food allergies, dishes containing the food they react to are 'unsafe' and, as such, you must ensure that you give full and accurate information about which allergens are in the food.

## Allergenic ingredients

You must declare if any of the following 14 allergens are present in the food:

- cereals containing gluten, such as wheat, rye, barley, oats, spelt, kamut and their hybridised strains
- peanuts (also called groundnuts)
- nuts, such as almonds, hazelnuts, walnuts, Brazil nuts, cashews, pecans, pistachios, macadamias and Queensland nuts
- fish
- crustaceans (includes crabs, lobsters, shrimps and prawns)
- molluscs (includes mussels, cockles, oysters, scallops, squid and octopus)
- sesame seeds
- eggs
- milk and milk products (including lactose)
- soy beans
- celery
- lupin
- mustard
- sulphur dioxide and sulphites at levels above 10 mg per kg or 10 mg per litre expressed as SO<sub>2</sub>

This requirement relates not only to the ingredients (and their components) that are used in the product but to anything that is still present in the final product, even in an altered form. This includes:

- additives present in the ingredients that are carried over into the final product - for example, sulphur dioxide, which is used as a preservative
- processing aids used to assist in the manufacturing process - for example, frying with peanut oil or using it to line trays and moulds
- solvents and media for additives or flavourings - for example, the liquids used to produce a suspension
- any other substances

## Allergen information: caterers, restaurants, food stalls / vans, etc

You must make allergen information available to your customers, either by giving them full allergen information or by making it clear how they can get the information (signposting).

### Full allergen information

Allergen information can be provided in writing on menus, chalkboards, notices, etc by simply listing the allergens present in the food. Alternatively, a single allergen notice specifying the allergens present in every dish is permitted, provided that it is visible to the customer prior to ordering.

If customers must place their order at a single point (by queuing at the counter, for example) the information only needs to be visible from that point; however, if customers can order from multiple points (bar, table, etc) then the information should be presented at each point (on the menu, for example).

The most reliable way of providing the allergen information is in writing; this should be considered best practice.

## **Signposting: on the premises**

'Signposting' is an instruction to the customer explaining how they can get the information. You can place a notice on display that instructs customers to speak to a member of staff if they require allergen information (to be provided verbally) - for example, 'Allergies and intolerance: please speak to a member of staff if you require information about our ingredients'.

The notice should be visible to customers where they place their order and, as above, if they can place their order from multiple locations the signposting should be displayed at each one.

If a customer asks about allergens you must give them complete and accurate information; this is best achieved using an allergens file.

An allergens file contains a breakdown of all the allergens that are present in every food item that you sell. You will need to check all the ingredients that are used in each item of food and list the allergens. Also check ingredient packaging / specifications as it will not always be obvious from the name of the ingredient that it contains allergens (for example, soy sauce contains wheat, Worcestershire sauce contains fish, etc) and remember to account for anything such as peanut oil used in preparing the food.

The Food Standards Agency (FSA) has produced an allergen chart for this purpose, which can be downloaded from the FSA website.

The file should always be kept in the same place and all staff should be trained on how to use it. If asked about allergens, staff should never answer from memory or guess, they should check the file every time. Allow the customer to see the relevant page in the file if they would like to do so and let them make the decision as to whether it is safe for them to eat the food.

If a member of staff does not have access to allergen information and is asked whether it is safe for an allergen sufferer to eat a dish, the answer must always be no; they should always tell the customer that their safety cannot be guaranteed if they were to eat the dish.

If a recipe changes you will have to check the new ingredients and make any necessary changes to the file as soon as the change is made; any delay means that customers are being given incorrect information, which may result in them becoming ill or even dying.

## **Signposting: distance sales**

A distance sale is any sale where there is no face-to-face interaction between the customer and the business, such as over the internet and by telephone (types of distance communication).

Allergen information must be available for distance sales.

When ordering over a website, specific allergen information for the dish can be provided alongside its description or by signposting through a link to the full menu or an allergens breakdown.

When ordering by telephone, the member of staff can either invite the customer to ask about allergenic ingredients (by reading out the in-store allergen statement, for example) or by telling the customer that the information is available on the website.

If a customer asks for allergen information you should follow the advice above in relation to an allergens file.

You must provide allergen information when the food is delivered to the customer; this may be verbally through signposting but best practice is to provide the information in writing. This can be done by providing an allergen breakdown, giving a menu that lists the allergens, or using stickers that specify what allergens are present (widely available from wholesalers).

Always make sure that delivered foods containing allergens are kept separate from other foods to avoid cross-contamination.

If you rely on delivery staff to provide allergen information then you are relying on them to protect your customer from harm or death. You must consider whether the person is reliable, capable of doing the job correctly, and whether they have been given the necessary training to do so.

## **Allergen-free requests**

You must provide accurate allergen information but you have no legal obligation to provide allergen-free food. If a customer requests that a dish be made without allergens you can say no.

If you agree to produce the meal you have to ensure that the meal is free of the allergenic ingredient AND ensure that the food is not contaminated with the allergen in question. This means that knives, ladles, bowls, chopping blocks, work surfaces, staff clothing, hands, etc all have to be thoroughly cleaned so that they cannot transfer traces of the allergen to the food.

If powdered allergenic ingredients are being used it may not be possible to prevent contamination as traces of the allergen can become suspended in the air and settle on food, clothing, utensils, etc.

If you are not completely confident that you can produce an allergen-free meal, you should refuse the request. If your customer were to suffer an allergic reaction after eating a meal you claimed was free of the allergen in question, you will be liable for criminal offences and potential civil action; in the most extreme cases, the customer could die.

## **Preventing contamination**

There are certain practical steps you can take to avoid accidental contamination with allergens, which include:

- having separate kitchen areas, chopping blocks, utensils, pans, etc for the preparation of foods containing allergens
- thoroughly washing chopping blocks, utensils, pans, etc after they have been used to prepare meals containing allergens
- storing ingredients and prepared foods separately in closed containers
- keeping ingredients that contain allergens separate from other ingredients

While these precautions are relatively simple it can often be impractical to follow them, especially for small businesses where space, time and resources are limited. Where this is the case it is permissible to use a precautionary allergen statement.

## Precautionary allergen statements

If, due to the nature of the business and the food that is being prepared, it is not possible to guarantee that there will be no allergen cross-contamination, you may place a notice on display to this effect - for example, 'Allergen advice: due to the way our food is prepared it is not possible to guarantee the absence of allergens in our products'.

The precautionary statement must be used in addition to the allergen information covered above and does not replace the duty to inform consumers about the presence of allergens.

The statement should be displayed at each place the consumer can place their order, in the same way as the allergen information.

## Allergen information: non-prepacked

This section relates to food that is:

- sold loose (no packaging at all)
- packaged at the request of the consumer (sold loose but placed in some form of packaging after being purchased)

See 'Labelling of non-prepacked foods' for more general information.

You must inform the customer of any allergens that are present in the food and there are various ways you can do this:

- a notice in close proximity to the goods - for example, prominently displayed on the cabinet in which the goods are displayed
- a shelf edge label
- a label attached to the product

The information should be presented in the form 'Contains:' followed by a list of the allergens present in the food.

If the specific allergen appears in the list above then you should list it by name - for example, 'Contains: Wheat, Milk, Eggs'.

If the name of the allergen does not appear in the list above (prawns, for example) you must specify the category of allergen - for example, 'Contains: Crustaceans'.

This is not necessary if the name of the product makes a clear reference to the allergen (milk, peanut butter, etc).

Many businesses selling non-prepacked foods will have difficulties (similar to those experienced by restaurants, cafes, etc) preventing cross contamination with other allergens. Where this is the case you may use a precautionary statement in the same way as above. The statement should be prominently displayed at the point that the products are made available to the customer.

Allergen information may instead be given by verbal signposting; please refer to the information on signposting in the '**Allergen information: caterers, restaurants, food stalls / vans, etc**' section above.

## Allergen information: prepacked / prepacked for direct sale

'Prepacked' means a single item of 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.

'Prepacked for direct sale' (PPDS) means food that is placed into packaging (prepacked) before being offered for sale and sold / offered for sale or supply from the premises on which it was packed by that business, or from a mobile stall or vehicle used by that business - for example, sandwiches that are packaged in the shop from which they will be sold.

Prepacked and PPDS foods must have an ingredients list that lists all the ingredients in the product. Ingredients that are themselves made up of more than one ingredient (referred to as compound ingredients) and make up more than 2% of the finished product must be broken down into their components in the ingredients list.

Allergenic ingredients must be emphasised in some way every time they appear in the ingredients list. This is usually achieved through the use of bold text, capital letters or colour; you should choose whichever method you prefer. An example using bold text would be: 'Ingredients: Water, **Mustard** Flour (21%), Sugar, Salt, **Wheat** Flour, Turmeric, Acid (Citric Acid).'

If the same allergen appears in the ingredients list multiple times it must be emphasised each time it appears.

If the name of the allergen appears in the ingredients list then you only need to emphasise the allergenic part of the ingredient - for example: 'Ingredients: **Peanut** Butter (Roasted **Peanuts**, Rapeseed Oil, Sugar, Palm Oil, Salt).'

If the allergen does not appear in the name of the ingredient you must specify the category of allergen in brackets immediately after the ingredient appears in the ingredients list; the category of allergen should be emphasised. To use a beef and ale pie as an example, the list should state 'Ingredients: Beef (35%), Beer (**Barley**)'.

There is an exception to this. Cheese, butter, cream and milk are understood by the public to be a clear reference to milk; as such, the words cheese, butter, etc need to be emphasised but there is no need to add the category of allergen (milk) in brackets - for example, 'Ingredients: **Cheese**'.

Where a named variety is specified (Wensleydale, Mozzarella, etc) you will need to add the category of allergen - for example, 'Ingredients: Mozzarella (**Milk**)'.

For more information on prepacked and PPDS foods, see 'Labelling of prepacked foods: general' and 'Labelling of prepacked-for-direct-sale foods'.

## Prepacked and PPDS foods that do not have an ingredients list

Certain foods (such as alcoholic drinks with an ABV greater than 1.2% or single-ingredient foods) are not required to have an ingredients list; however, you are still required to label the product with the allergens that are present.

The information should be presented in the form 'Contains:' followed by a list of the allergens present in

the food.

If the specific allergen appears in the list above then you should list it by name - for example, 'Contains: Wheat, Milk, Eggs'.

If the name of the allergen does not appear in the list above (prawns, for example) you must specify the category of allergen - for example, 'Contains: Crustaceans'.

This is not necessary if the name of the food makes a clear reference to the allergen (milk, peanut butter, etc).

## Allergen advice statement

It is good practice (but not a requirement) to include a statement on the packaging explaining to customers how allergenic ingredients have been emphasised - for example, 'For allergens see ingredients in **bold**'.

The statement can appear anywhere on the packaging but will have the most impact if it appears close to the ingredients list.

## Voluntary precautionary allergen statements

Statements such as 'May contain nuts' and 'Produced in a factory that handles nuts' are voluntary precautionary allergen statements; they warn consumers about the possible presence of allergens that have not been included in the food as an ingredient.

Voluntary precautionary allergen statements are not illegal but their use is discouraged and they should not be used as a blanket disclaimer on all products; they should only be used if you have conducted a documented risk assessment that shows there is a significant risk of allergen cross-contamination and, as such, failure to warn consumers about the possible presence of allergens may put them at risk.

## Gluten-free claims

The only claims that may be made in relation to gluten are:

- 'Gluten free' - max 20 mg per kg of gluten
- 'Very low gluten' - max 100 mg per kg of gluten

Statements such as 'No gluten-containing ingredients' are not permitted.

In order to make a gluten-free claim you must be able to guarantee that your product contains less than the maximum permitted levels of gluten. As such, you will need procedures in place to prevent contamination with gluten and you will need to conduct regular testing to prove that your products contain less than 20 mg per kg of gluten.

Describing any ingredient as gluten free (gluten-free oats, for example) or any other statement that suggests the product is gluten free is not permitted unless you can guarantee that the product contains less than 20 mg per kg of gluten.

## Further information

Various resources for allergen information, including a training module aimed at businesses can be found on the FSA website.

Further information on allergy information for caterers, and the results of a FSA study on how people with allergies make choices in eating establishments, is also available on the FSA website, entitled *Understanding the Food Choice Reasoning of Nut Allergic Consumers*.

The law on allergen labelling changed in October 2021 (informally known as 'Natasha's law'), and the FSA has produced guidance on the new requirements.

## Trading standards

For more information on the work of trading standards services - and the possible consequences of not abiding by the law - please see 'Trading standards: powers, enforcement and penalties'.

## Key legislation

Food Safety Act 1990

Regulation (EC) No 178/2002 *laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety*

Regulation (EU) No 1169/2011 *on the provision of food information to consumers*

Food Information Regulations 2014

Food Information (Wales) Regulations 2014

Regulation (EU) No 828/2014 *on the provision of information to consumers on the absence or reduced presence of gluten in food*

Last reviewed / updated: October 2021

## In this update

New requirements added for food that is prepacked for direct sale

## Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links may only show the original version of the legislation, although some amending legislation is linked to separately where it is directly related to the content of a guide. Information on amendments to legislation can be found on each link's 'More Resources' tab.



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