

PRIMARY AUTHORITY ASSURED ADVICE

Note: this advice does not become binding until October 2021 when the previous version will be retracted. The advice contained within this document can however be used in advance of that date.

CCC/830242/L

Labelling of food supplied by wholesalers to mass caterers.

If you require further information and the full version of this advice and guidance, please contact the Primary Authority via the Primary Authority Register. Alternatively email deniserion@bfff.co.uk or hollyjones@bfff.co.uk

Notes:

1. This document includes best practice advice and a brief summary of the requirements of the [Primary Authority Statutory Guidance](#). It should be read alongside the Primary Authority Statutory Guidance.
2. Primary Authority Advice is assured. This means that when a business is following the advice the primary authority can direct against any proposed enforcement action which is inconsistent with the advice

Introduction

This Primary Authority Advice has been produced by Cambridgeshire County Council in partnership with British Frozen Food Federation for use by members of British Frozen Food Federation to help your business comply with the law. If you follow this advice correctly your local trading standards officer should respect this and not ask you to comply with the law in a different way.

The Cambridgeshire County Council contact;

Trading Standards Administration Team
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Primary Authority Advice

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| Relevant Legislation: | <p>REGULATION (EU) No 1169/2011 on the provision of food information to consumers (FIC)</p> <p>Note 1: European Regulation on the provision of food information to consumers (EU) No. 1169/2011 (the EU FIC) will continue to apply in the UK as “retained EU law” after EU Exit. The Food Information Regulations 2014 (FIR) as amended, and equivalent regulations in Wales, Northern Ireland and Scotland provide for the execution and enforcement of the EU FIC in the UK.</p> <p>Note 2: Legislation to amend the FIR and equivalent legislation in Wales and Northern Ireland has been introduced to improve the provision of information to consumers purchasing pre-packed for direct sale (PPDS) foods specifically in relation to allergens. The FIR and equivalent legislation in Wales and Northern Ireland will be amended by The Food Information (Amendment) (England) Regulations 2019 , The Food Information (Wales) (Amendment) (No. 2) Regulations 2020 , The Food Information (Amendment No. 2) Regulations (Northern Ireland) 2020 and The Food Information (Scotland) Amendment Regulations 2021</p> <p>These Regulations will come into effect on the 1st October 2021.</p> |
| Geographic Applicability: | This has the status of Primary Authority Advice in England. |



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| Scope: | This advice is addressed to businesses in the regulated group which are food business operators responsible for labelling of prepacked food. |
| Details of request: | FAQ: What labelling is required for food supplied by wholesalers to mass caterers when supplying pre-packed and loose foods? |
| Advice provided: | <p>Summary</p> <p>Regulation EU No 1169/2011 (FIC) on the provision of food information to consumers applies to all food businesses along the food supply chain which are involved in the production and supply of food that will ultimately be supplied to the consumer; including any food that is supplied to the consumer through retailing or a mass caterer and food that is supplied to mass caterers.</p> <p>Primarily the Regulation concerns the presentation of mandatory information on prepacked food supplied to the consumer through the retail supply chain; however the Regulation does give food business operators responsibilities for providing information on loose food and in business to business transactions and also to businesses who supply mass caterers.</p> <p>This document seeks to provide guidance on the information that wholesale businesses must provide to caterers when supplying pre-packed and loose foods. The guidance is intended to cover the detail of what information must be provided and how (the format in which) the information must be provided; including when the sale is concluded by means of distance selling.</p> <p>Details of Issue</p> <p>Wholesale business can supply both prepacked and non-prepacked food to caterers. Caterers may take the food supplied by their wholesale suppliers and divide it or use it to prepare other food for supply to consumers; alternatively, they can supply it to consumers in an unchanged form as supplied.</p> <p>The FIC Regulation in each of these situations applies different requirements for the provision of mandatory information. It is important to understand which of the provisions within a number of articles within the Regulation apply in each situation.</p> <p>Many wholesale businesses operate their sales through distance selling techniques over the internet or through telesales. The Regulation provides rules for sales to the consumer made in this way but does not give absolute clarity on the responsibilities further back in the supply chain as it applies for business to business transactions.</p> |



Wholesale businesses use a wide range of literature, such as price lists and promotional brochures to communicate with their customers, it is necessary to clarify the Regulatory status of descriptions used to identify products in such documents.

Definitions and Key Regulatory References:

Prepacked Food (PP)

Article 2(2) (e)

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; 'prepacked food' does not cover foods packed on the sales premises at the consumer's request or prepacked for direct sale.

Non-Prepacked Food (NPP)

Food sold loose or in unsealed packaging where the contents can be altered without opening or changing the packaging. It **also includes foods packed at the consumer's request**, that is, put into packaging after the sale is agreed

Food Prepacked for Direct Sale (PPDS)

Prepacked for direct sale food is in packaging which meets all the following criteria:

- the food must be fully or partly enclosed by packaging; and
- the food cannot be altered without opening or changing the packaging in some way; and
- the food must be ready for final sale to the consumer.

Note - See BFFF advice for more specific detail on these definitions.

Relevant articles from FIC:

Article 1

3. This Regulation shall apply to food business operators at all stages of the food chain, where their activities concern the provision of food information to consumers. It shall apply to all foods intended for the final consumer, including foods delivered by mass caterers, and foods intended for supply to mass caterers.



Article 2(2)

(u) 'means of distance communication' means any means which, without the simultaneous physical presence of the **supplier and the consumer**, may be used for the conclusion of a contract between those parties.

Article 6

Any food intended for supply to the final consumer or to mass caterers shall be accompanied by food information in accordance with this regulation.

Article 8

6. Food business operators, within the businesses under their control, shall ensure that information relating to **non-prepacked food intended for the final consumer or for supply to mass caterers** shall be transmitted to the food business operator receiving the food in order to enable, when required, the provision of mandatory food information to the final consumer.

7. In the following cases, food business operators, within the businesses under their control, shall ensure that the mandatory particulars required under Articles 9 and 10 shall appear on the pre-packaging or on a label attached thereto, or on the commercial documents referring to the foods where it can be guaranteed that such documents either accompany the food to which they refer or were sent before or at the same time as delivery:

(a) where pre-packed food is intended for the final consumer but marketed at a stage prior to sale to the final consumer and where sale to a mass caterer is not involved at that stage;

(b) where pre-packed food is intended for supply to mass caterers for preparation, processing, splitting, or cutting up.

Notwithstanding the first subparagraph, food business operators shall ensure that the particulars referred to in points (a), (f), (g) and (h) of Article 9(1) also appear on the external packaging in which the pre-packed foods are presented for marketing.

Article 14

1. Without prejudice to the information requirements laid down in Article 9, in the case of pre-packed foods offered for sale (from business to final consumer) by means of distance communication:

(a) mandatory food information, except the particulars provided in point (f) of article 9 (1), shall be available before the purchase is concluded and shall appear on the material supporting the distance selling or be provided through other appropriate means clearly



identified by the food business operator. When other appropriate means are used, the mandatory food information shall be provided without the food business operator charging consumers supplementary costs;

(b) all mandatory particulars shall be available at the moment of delivery.

2. In the case of non-prepacked foods offered for sale by means of distance communication, the particulars required under article 44 shall be made available in accordance with paragraph 1 of this article.

3. Point (a) of paragraph 1 shall not apply to foods offered for sales by means of automated vending machines or automated commercial premises.

Article 9 Mandatory Particulars

For *Pre-packed Foods:

- a) The Name of the Food (legally required descriptive name)
- b) List of Ingredients
- c) Indication of Allergens (as listed in Annex II)
- d) Quantitative Ingredients Declaration (QUID)
- e) Net Quantity
- f) The Best Before date or Use By date- and possibly a Lot Code
- g) Any special storage conditions or conditions of use
- h) The Name and Address of the food business operator (responsible for packing the food)
- i) Country of origin or place of provenance where required by article 26.
- j) Instructions for use – this is only required if it would be difficult otherwise to prepare the food including safe preparation.
- k) Nutrition Declaration

• A Date of Freezing for Meat, Meat Preparations and Unprocessed Fish

*refer to the FIC regulation and associated annexes for the detailed requirements

Labelling required for food supplied by wholesaler to mass caterer

Scenario 1. Food is supplied by wholesaler non-prepacked; food will be supplied to the consumer by caterer non-prepacked or prepacked on the premises ready for consumption

Advice

Food is supplied loose (non-prepacked) by the Wholesaler to the caterer and is intended for supply to the consumer either in the same format (i.e., loose) or prepared and/ or prepackaged for supply



to the consumer as prepacked for direct sale. Article 8 (6) of FIC applies.

The information which must be supplied by the wholesaler to the caterer is reduced. The wholesaler will not be able to determine if the product is only to be sold NPP or if it may be sold PPDS either by itself or incorporated into another food. Therefore, the information must include, in addition to any marketing designation, a legal descriptive name, a list of ingredients with ingredients or substances causing allergies or intolerances are emphasised if they are included in Annex II of the FIC.

National provisions (FIR) also require NPP and PPDS food state the **name of the food** and, for products containing meat, the **QUID for meat** and an indication of **Irradiated food or ingredients** (FIR Regulation 8).

According to Article 44, EU Member States can regulate locally to require other information to be provided on a mandatory basis; this should be established as part of export arrangements. In the UK the Food Information Regulations require that for loose foods the "Name of the food" and QUID for products containing meat are also provided for NPP and PPDS foods.

Allergen information is "mandatory food information" that the caterer must have available to advise the consumer. The information that must be provided by the wholesaler to satisfy the regulatory requirement of FIC and FIR relates to substances or products or their derivatives causing allergies or intolerances listed in Annex II that occur in ingredients or processing aids in the food. ([Annex II](#))

Precautionary Allergen Labelling

Providing information on allergens that may be present in the food due to unintended cross contamination is not a requirement of the regulations. However, if there is a significant risk of contamination it is recommended this is communicated so that this may be included in communications with consumers who require information due to allergy or intolerance.

The following best practice advice is taken from *Food allergen labelling and information requirements Technical Guidance* (FSA)
Published: June 2020



Best Practice

FBOs may voluntarily use labelling such as 'produced in a kitchen which uses...' or 'may contain' or 'not suitable for...' to communicate the risk of the unintentional presence of an allergen (e.g. milk, egg, peanuts, almonds) in a food product due to the allergen entering the product accidentally, or through cross contamination. These statements should only be used after a meaningful risk assessment has been performed and there is considered to be a significant and real risk to the food allergic or food intolerant consumer and should not be used as a substitute for good hygiene and safety practices.

Food Drink Europe (FDE) has produced best practice guidance on voluntary application of precautionary allergen labelling:

https://www.fooddrinkeurope.eu/wp-content/uploads/2021/06/Guidance-on-Food-Allergen-Management_FINAL_MARCH-2014.pdf

There is no prescribed format in which wholesale businesses must provide the allergen, name, or QUID information for NPP foods. The BFFF recommendation that the regulatory requirement can most efficiently and accurately be met through product labelling is endorsed as best practice; although other methods such as spreadsheets, specifications or commercial documents could be used. Such information provided on commercial documentation must clearly refer to those foods supplied, and the documents must either accompany the food or be sent before or at the same time as delivery. Any information made available online may not be the only means by which the information is provided: it must be provided to the customer in documents either in physical form or electronic documentation. The wholesaler must have systems in place to ensure that the information is accurate and situations when products are updated or substituted are managed to ensure that the caterer has the correct information at all times.

Scenario 2. Food is supplied prepacked by the wholesaler to the caterer and is intended for preparation, processing, splitting or cutting up before supplying to the consumer as loose food or packed directly for sale. As the food supplied to the caterer is prepacked food, all mandatory particulars relevant to the food must be provided and Article 8(7)(b) applies.

Advice



The Wholesaler must ensure all mandatory particulars required under Articles 9 and 10 appear on the outer case or on a label attached thereto.

The outer case may contain multiple packages of the same product. They need not be labelled. However, best practice advice is to ensure that inner packs carry sufficient information to enable them to be linked to the full outer labelling, including date codes traceability ingredient information etc.

If it is possible that a multipack case will be divided and the individually prepacked units inside will be supplied separately to caterers (or to final consumers), each of the individual packages should be labelled with full mandatory particulars.

Alternatively, some information can also be provided on commercial documents referring to the foods where it can be guaranteed that such documents either accompany the food to which they refer or were sent before or at the same time as delivery. The information should be provided in the language of the country in which the product is to be marketed to the consumer.

Commercial documents can include product specifications, data sheets or delivery notes. If these are relied upon to satisfy the mandatory requirement under FIC then systems must be in place to ensure that the information is up to date at all times.

If pre-packed food is supplied to a mass caterer in this scenario and full mandatory information is not provided on the outer packaging i.e., it is provided through commercial documentation, **the outer case as a minimum must be labelled with the following mandatory information:**

- The name of the food –The legal name may of course be accompanied by the Brand marketing name/designation.
- The date of minimum durability – Best Before or Best Before End date
- Any special storage conditions and or conditions for use – e.g., keep frozen
- The name and the address of the food business which is responsible for the information – if the product is own label this is the wholesaler otherwise it is normally the brand owner.

BFFF consider that it is good practice to meet the regulatory requirement by providing full mandatory information through labelling of the pre-packaging or outer case.

Best Practice advice:



Experience has shown that in most cases where branded (not the wholesaler's own label) product is involved; the maintenance of accurate and current information that has been separated from the product (i.e., through commercial documents) is extremely difficult and impractical.

Recognising the difficulty in implementing systems that can guarantee the mandatory information is completely up to date at all times, particularly during product redesigns when more than one variant may be in the supply chain or in situations when product is substituted to fulfil orders, we would suggest the use of a statement on order confirmation to the nature of:

'The information provided is correct at the time of issue, to ensure that you have the most up to date information please check the product label on delivery.'

Provision of full mandatory information through labelling of the outer packaging is a practical mechanism to satisfy the Regulatory requirement.

Scenario 3. Food is prepacked, supplied by the wholesaler to the caterer in a multipack format for the caterer to supply to the consumer as individual packs in unchanged form.

In this scenario the caterer is receiving food from the wholesaler in the same format in which it will be supplied to the consumer; examples include chocolate confectionery, canned drinks, or packs of biscuits. Since the caterer does nothing to this, such products are treated as "prepacked food" as defined in Article 2(2)(e) and Article 12(2) applies: **In the case of prepacked food mandatory food information shall appear directly on the package or on a label attached thereto.** Therefore, each of the individual packages must be labelled with the applicable mandatory particulars.

For the purposes of outer case labelling Art 8.7(b) applies; as the case of individual packs will be 'split' before being supplied to the consumer. As in scenario 2 full mandatory particulars can be provided on the outer case label or through commercial documentation. As minimum however, four minimum pieces of information must be indicated on the external packaging / outer case:

- a) the name of the food;
- b) the 'use by' or 'best before' date;
- c) the storage conditions and/or conditions of use, such as 'keep frozen' and



d) the name and address of the responsible food business operator.

BFFF Good Practice Recommendation:

To facilitate the accessibility of information through the foodservice supply chain would be to repeat full mandatory information on the outer case. This means that the mandatory information can be verified as part of any due diligence sampling through the supply chain without damaging the integrity of the case and also that any associated commercial document or specification does not have to be relied upon for the most up to date mandatory information.

Responsibility for providing the mandatory information on the individual sales units is dependent on whether the food is branded or own label: essentially the responsibility rests with the business whose name and address is on the package.

For own label products the Wholesaler is responsible for the provision of all mandatory information which is appropriate to the food as required in Articles 9 and 10.

For branded products Article 8 (3) applies and the wholesaler retains limited responsibility: they “shall not supply food which they know or presume, on the basis of the information in their possession as professionals, to be non-compliant”. Examples that would be obvious are gross labelling non-compliances such as lacking English labelling, formatted for the USA market with Nutrition Facts, significant obvious omissions of labelling including allergen information. Other non-compliances may come to light from the ongoing commercial activities, customer feedback or complaints. Note it is the expertise as a food business operator that is the standard here.

Distance Selling

Distance Selling refers to food sold to the consumer when the consumer is remote from the vendor, for example when the sale takes place via a website, electronic communication or through telesales

When selling direct to a consumer all mandatory Information that is appropriate to the food referred to in articles 9 and 10 must be available before the purchase is concluded; with the exception of the date of minimum durability, lot code & date of freezing (required for frozen meat, frozen meat preparations and frozen unprocessed fishery products only).

When asked the European Commission has concluded that the point of purchase, when all information must be available, is when the order is agreed, for example when an order is placed on the website.



The required mandatory information can be provided through a web link, catalogue or Freephone telephone number as this information must be available at no additional cost to the purchaser. The full mandatory food information shall also be provided on delivery, which will be labelled on the prepack.

Distance selling requirements refer to sales direct to final consumers. Where supply by wholesalers is limited to other food businesses such transactions are business to business transactions and fall outside of the FIC Regulatory requirement.

Wholesale businesses, however, with an element of supply to consumers must provide all mandatory information before the sale is concluded and article 14 applies. Where sale to a consumer is not a possibility article 14 does not apply.

For sales to mass caterers the flexibility that is allowed both through Art 8.7 and through the 'other appropriate means...' in Art 14 1 (a) allows this information to be provided through a variety of channels including specifications, on-line databases, or brochures.

In materials supporting distance selling and promotion by wholesalers to other food businesses, such as printed catalogues, price lists etc., the name given is often a marketing name rather than the true (legal) name complying with Article 17 of FIC, however effort should be made to ensure that it is still not misleading.

Marketing Materials

Where article 14 does not apply (because sale to a consumer is not a possibility) there is no requirement to provide the legal name (as specified in article 17) in marketing materials. In this instance a marketing name may be used as long as the legal name has been made available through other suitable means, for example on the label or through other documentation as discussed above.

Since the mandatory information will be supplied as required by Article 8, the mass caterer will have all of the information necessary to comply with his obligations. Where marketing names are used in catalogues and price lists it would be good practice to indicate that the marketing name should not be used in sales to consumers and that the true name, provided on labelling or commercial documents, should be used as the basis for descriptions given to consumers.

Mass caterers and similar businesses may use that marketing name to erroneously justify a menu description. For example, the commercial designation "Breaded Scampi" would not be appropriate as a menu description when the product contains white fish and processed scampi pieces.



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| Document references: | https://www.food.gov.uk/document/food-allergen-labelling-and-information-technical-guidance This guidance was previously issued under code CCC/31965/2 |
| Communication with businesses | This advice will be published in electronic format and located in the Technical Guidance area of the BFFF website: http://bfff.co.uk/technical/guidance/ . |
| Communication with enforcing authorities: | <p>An enforcing authority, proposing to take enforcement action against a business, is only required to notify the primary authority, where they are aware that the business is a member of a regulated group. While guidance states that the enforcing authority should ask you whether you are relying on Primary Authority advice, we recommend that you ensure you communicate this as soon as possible, and do not wait to be asked; (para 21.5 of the Statutory Guidance refers). The scheme does not allow for a business to make a notification to the primary authority where an enforcing authority has already taken action in respect of which it [the enforcing authority] failed to make the required notification to the primary authority (para 21.20 of the Statutory Guidance refers).</p> <p>Additionally, the rules allow for you (or the Co-ordinator) to notify the primary authority (para 21.19 of the Statutory Guidance refers).</p> <p>Once a primary authority receives notification, statutory time limits apply (usually 5 days) in which time they must respond to the notification. (Paras 21.9 & 21.10 of the Statutory Guidance refer).</p> |
| Issued by: | Paul Maylunn, Senior Trading Standards Officer |



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