

Consultation on updates to Food Standards Scotland's Technical Guidance on food allergen labelling and information requirements
Consultation Summary Page

Date consultation launched:	Closing date for responses:
19 June 2023	08 September 2023

Who will this consultation be of most interest to?

Food businesses who package and label food as well as those who supply food directly to the consumer. This consultation will also be of interest to enforcement authorities, consumers, particularly those with a food hypersensitivity or buying food on behalf of someone with a food hypersensitivity, health professionals and others with an interest in food hypersensitivity.

What is the subject of this consultation?

This consultation concerns updates to Food Standards Scotland's Technical Guidance on food allergen labelling and information requirements. The two key updates focus on standards for applying precautionary allergen labelling (PAL) and best practice guidance that No Gluten Containing Ingredients (NGCI) statements should not be used.

What is the purpose of this consultation?

To seek the views of food businesses, enforcement authorities, consumers and other stakeholders on the proposed updates to the technical guidance on food allergen labelling and information requirements.

Responses to this consultation should be sent to:

Name Calum Yule Labelling, Standards & Regulated Products Food Standards Scotland Calum.Yule@fss.scot	Postal address: Food Standards Scotland Fourth Floor Pilgrim House Old Ford Road Aberdeen AB11 5RL
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Is a Business & Regulatory Impact Assessment (BRIA) included with this consultation?

Yes ☐

No ☒

If you would prefer to receive future FSS consultations by e-mail, or if you no longer wish to receive information on this subject please notify the named person in this consultation.

DETAIL OF CONSULTATION

Food Standards Scotland (FSS) would welcome your comments on proposals detailed in this letter

Introduction

We are consulting on:

- a) Proposed updates to Technical Guidance on food allergen labelling and information requirements, with specific focus on standards for applying precautionary allergen labelling (PAL) and best practice guidance that No Gluten Containing Ingredients (NGCI) statements should not be used.

Background

Individuals with food hypersensitivity can adversely react when eating certain foods. Food hypersensitivity encompasses both food allergies and non-allergic food hypersensitivity (food intolerance). In the UK, it is estimated that 1-2% of adults and 5-8% of children have a food allergy. This equates to around 2 million people living in the UK with a food allergy, but this figure does not include those with food intolerances. In addition, it is estimated that 1 in 100 people have coeliac disease, an auto-immune condition which causes damage to the gut lining when gluten is present in food.

An allergic reaction can be produced by a tiny amount of a food ingredient that a person is sensitive to, for example a teaspoon of milk powder, a fragment of peanut or just one or two sesame seeds. Symptoms of an allergic reaction can range from mild symptoms such as itching around the mouth and rashes; and can progress to more severe symptoms such as vomiting, diarrhoea, wheezing and on occasion anaphylaxis (shock). Around ten people in the UK die from allergic reactions to food every year.

There is no cure for food allergies and intolerances. The only way to manage the condition is to avoid food that makes the person ill. Therefore, it is very important that consumers are provided with accurate information about allergenic ingredients in products to allow them to make safe food choices.

One of the ways food businesses can communicate allergen information to consumers is through the use of PAL. PAL is a voluntary statement, allowed under Regulation 1169/2011 on the provision of food information to consumers (FIC), that food businesses can choose to apply to food products where there is an unavoidable risk of allergen cross-contact. It is commonly seen as “may contain allergen x” or “not suitable for someone with x allergy” on food products. Having such a statement accompany their product allows food businesses to communicate this risk to the consumer.

Alongside PAL statements, NGCI statements have also been used on menus to signal foods that are made from no gluten containing ingredients, for example: “this menu has been designed for a no gluten diet”. However only the terms “gluten free” or “very low gluten” can be used to describe the absence or the reduced presence of gluten.

Proposed Updates to Guidance

Precautionary Allergen Labelling Statements

Although the use of PAL statements is voluntary, if a food business operator (FBO) chooses to use such a statement, in line with Article 36 of FIC, they must ensure they are accurate and not misleading to the consumer. In line with this, the proposed updates to the best practice guidance aim to support FBOs to provide accurate information on the risk of allergen cross-contact, whilst also ensuring that their customers are safe and are able to make informed decisions about the food they choose to purchase.

The proposed Best Practices are as follows:

- PAL statements should only be used following a thorough risk assessment
- PAL statements should specify which of the 14 regulated allergens they refer to. For example: apply the statement “May contain peanuts and tree nuts” rather than the generic statement “May contain nuts”.
- PAL should not be used in conjunction with a free-from statement for the same allergen. For example: “May contain milk” should not be used in combination with “dairy free”.
- FBOs should provide a straightforward means for consumers to contact them about their allergen cross-contact risk assessment that informs PAL. This is of particular importance for consumers with multiple/severe allergies who are concerned about a labelling change.
- If an FBO uses an ingredient within a product, and that ingredient is supplied with any voluntary manufacturer information, such as a ‘may contain’ statement, this information can be included on final product labelling.

No Gluten Containing Ingredients (NGCI) Statements

NGCI statements have been used in menus to signal foods that are made from no gluten containing ingredients, for example: “this menu has been designed for a no gluten diet”. Only the terms “gluten free” or “very low gluten” can be used to describe the absence or the reduced presence of gluten. As such NGCI statements can mislead consumers, hence, they should be avoided.

Consultation process

This consultation will last for 12 weeks to provide interested parties in Scotland with the opportunity to comment on the proposed approach. Any responses received as part of this consultation will be given careful consideration and a summary of the responses received will be published on the FSS website following the end of the consultation period.

Groups affected

The proposals are relevant to consumers, especially those with a food hypersensitivity, to all food businesses in Scotland supplying food, Local Authority enforcement officers and other stakeholders with an interest in food hypersensitivities.

Summary of questions asked in this consultation

Questions asked in this consultation:

Q1. Are you in favour of the proposed updates to the Allergen Labelling Technical Guidance relating to the use of Precautionary Allergen Labelling (PAL) statements? (Yes/No)

Yes. IFST agree that it is important that guidance is given regarding standards for applying precautionary allergen labelling (PAL) and best practice guidance that No Gluten Containing Ingredients (NGCI) statements should not be used.

Q2. Are you in favour of the proposed updates to the Allergen Labelling Technical Guidance relating to the use of No Gluten Containing Ingredients (NGCI) statements? (Yes/No)

Yes (as above)

Please give reasons for your view.

Q3. Please use this space for any further comments regarding any other aspects of the guidance document.

In relation to PAL proposed best practices (2nd bullet), IFST would recommend additional clarification to the statement relating to the 14 regulated allergens. IFST would recommend that rather than specifying 'tree nut(s)', this should be expanded to recommend listing of specific tree nuts eg 'May contain hazelnuts and almonds'.

In relation to PAL proposed best practices (final bullet), IFST would recommend a change of wording from 'this information can be included on final product labelling' to 'this information should be included on final product labelling'.

In relation to No Gluten Containing Ingredients (NGCI), IFST would recommend that a statement is also added to preclude the use of the term 'suitable for coeliacs'.

Other relevant documents

N/A

Responses

This is a twelve-week consultation and therefore responses are required by close **08 September 2023**

Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents). If you are replying by post, then please note our updated address details below.

We will summarise all comments received and the official response to each will be published on the FSS website following the end of the consultation period.

Thank you on behalf of Food Standards Scotland for participating in this public consultation.

Yours sincerely,

Calum Yule
Labelling, Standards and Regulated Products
Food Standards Scotland

Enclosed

Annex A: Standard Consultation Information

Annex B: Technical Guidance Document on Food allergen labelling and information requirements

Annex C: List of interested parties

Queries

1. If you have any queries relating to this consultation please contact the person named on page 1, who will be able to respond to your questions.

GDPR, Publication of personal data and confidentiality of responses

2. The European General Data Protection Regulation (GDPR) replaces the Data Protection Directive 95/46/EC and was developed to harmonise data privacy laws across Europe. The Data Protection Act (the DPA) 2018 applies GDPR standards and transposes the EU Data Protection Directive 2016/680 (Law Enforcement Directive) into domestic UK law. In accordance with the GDPR, we are required to provide a privacy notice in relation to this public consultation. Food Standards Scotland will be known as the “Controller” of the personal data provided to us. We need to collect this information to allow us to effectively carry out our official duties of policy development and for the purposes of record keeping. In responding to this consultation, you have consented to provide this information to us but are able to withdraw your consent at any time by getting in touch with us.
3. Personal information is stored on servers within the European Union and cloud based services have been procured and assessed against the national cyber security centre cloud security principles. Personal information will not be used for any purpose other than in relation to consultations. Personal information will be stored for as long as necessary to carry out the above functions and for five years from receipt in accordance with our retention policy. No third parties have access to your personal data unless the law allows them to do so.
4. You have a right to see the information we hold on you by making a request in writing to the email address below. If at any point you believe the information we process on you is incorrect you can request to have it corrected. If you wish to raise a complaint on how we have handled your personal data, you can contact our Data Protection Officer who will investigate the matter. If you are not satisfied with our response or believe we are processing your personal data not in accordance with the law you can complain to the Information Commissioner’s Office (ICO). Our Data Protection Officer in the FSS is the Head of Corporate Services who can be contacted at the following email address: dataprotection@fss.scot
5. In accordance with the principle of openness, our office in Pilgrim House in Aberdeen will hold a copy of the completed consultation as per our retention policy. FSS will not publish anything without your consent. If you have any queries please email: dataprotection@fss.scot or return by post to the address given on page 1.
6. In accordance with the provisions of Freedom of Information Act (Scotland) 2002/Environmental Information (Scotland) Regulations 2004, all information contained in your response may be subject to publication or disclosure. If you consider that some of the information provided in your response should not be disclosed, you should indicate the information concerned, request that it is not disclosed and explain what harm you consider would result from disclosure. The final decision on whether the information should be withheld rests with FSS. However, we will take into account your views when making this decision.
7. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

8. A detailed Privacy Policy is available on our website that explains how FSS will safeguard and process any personal identifiable information that we collect from you in relation to this consultation.

Further information

9. A list of interested parties to whom this letter is being sent appears in Annex C. Please feel free to pass this document to any other interested parties, or send us their full contact details and we will arrange for a copy to be sent to them direct.
10. Please contact us for alternative versions of the consultation documents in Braille or other languages.
11. Please let us know if you need paper copies of the consultation documents or of anything specified under 'Other relevant documents'.
12. This consultation has been prepared taking account of the Consultation Criteria.
13. The Consultation Criteria from that Code should be included in each consultation and they are listed below:

The Seven Consultation Criteria

Criterion 1 — When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 — Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 — Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 — Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 — The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 — Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 — Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

14. The Code of Practice states that an Impact Assessment should normally be published alongside a formal consultation. However, this consultation is concerned with updates to domestic guidance with costs expected to be minimal in respect of familiarisation. FSS does not propose producing a Business and Regulatory Impact Assessment at present but will revisit, depending on stakeholder feedback to this consultation.

Comments on the consultation process itself

15. We are interested in what you thought of this consultation and would therefore welcome your general feedback on both the consultation package and overall consultation process. If you would like to help us improve the quality of future consultations, please feel free to share your thoughts with us by sending an email to openness@fss.scot or return by post to the address given on page 1.