

ABERDEEN CITY COUNCIL

COMMITTEE	Public Protection Committee
DATE	20 February 2019
REPORT TITLE	Enforcement of Food Law Requirements in Relation to Allergens
REPORT NUMBER	OPE/19/186
DIRECTOR	Rob Polkinghorne, Chief Operating Officer
CHIEF OFFICER	Mark Reilly
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TERMS OF REFERENCE	3.1 Seek assurance from the Council's performance in relation to Trading Standards, Environmental Health (including the Public Mortuary) and Scientific Service

1. PURPOSE OF REPORT

To provide an update on food allergies and the approach being used within the City.

2. RECOMMENDATIONS

That the Committee:

- a. Notes the work of the Environmental Health team within Protective Services in ensuring appropriate and effective controls are implemented by food businesses to control the risks to consumers regarding food allergens.
- b. Notes the consultation on amending allergen information provisions contained within domestic food information legislation for food prepacked for direct sale.

3. BACKGROUND

3.1 A food allergy is when the body's immune system reacts unusually to specific foods. As a result, a number of chemicals are released by the body. It's these chemicals that cause the symptoms of an allergic reaction. Although allergic reactions are often mild, they can be very serious. Symptoms of a food allergy can affect different areas of the body at the same time. Some common symptoms include:

- an itchy sensation inside the mouth, throat or ears
- a raised itchy red rash
- swelling of the face, around the eyes, lips, tongue and roof of the mouth
- vomiting
- anaphylaxis (anaphylactic shock) - which can be life threatening. Symptoms include feeling light-headed or faint, breathing difficulties, wheezing, a fast heartbeat, clammy skin, confusion and anxiety, collapsing or losing consciousness.

3.2 The only way that a person with food allergies can deal with them is to avoid the foods that make them ill. In order to avoid these foods, it is essential that people with allergies can access accurate information regarding what ingredients are contained within foods in order to make an informed choice.

3.3 Almost any food can cause food allergies, but there are some that are more prevalent. Within Europe, legislation provides for specific controls to be implemented in relation to 14 major allergens:

- | | | |
|----------------------------------|--------------------------------|---------------|
| • Celery | • Cereals containing
Gluten | • Crustaceans |
| • Eggs | • Fish | • Lupin |
| • Milk | • Molluscs | • Mustard |
| • Peanuts | • Sesame | • Soya |
| • Sulphur Dioxide
& Sulphites | • Tree nuts | |

4. Legislation and Penalties

4.1 Specific food law requirements relating to allergens and relevant enforcement powers are contained across a range of European and domestic legislation including:

- EC Regulation 178/2002 laying down the general principles and requirements of food law ... and laying down procedures in matters of food safety
- EC Regulation 852/2004 on the Hygiene of Foodstuffs
- EC Regulation 1169/2011 on the Provision of Food Information to Consumers
- Food Safety Act 1990
- Food Hygiene (Scotland) Regulations 2006
- Food Information (Scotland) Regulations 2014

4.2 Prosecution under food law can result in penalties of up to £5000 per offence and/or up to 2 years in prison. Where an allergy issue results in a fatality other criminal charges such as Culpable Homicide or Corporate Homicide can be levied which can result in greater penalties.

5. Allergen Management

5.1 All food businesses are required to manage the risks to consumers from the food they produce, distribute or sell. The cornerstone of the food safety controls is a documented procedure – a 'Food Safety Management System' (FSMS) based on the principles of 'Hazard Analysis and Critical Control Points' (HACCP). Put simply, food businesses must identify anything in their operation that could cause harm to consumers and ensure that there are appropriate measures in place to prevent this harm happening.

5.2 The documentation required depends upon the scale and complexity of the operations being undertaken, but the expected outcome – safe food - is required of all food businesses.

5.3 Allergens can be incorporated in foods through three routes:

- The deliberate inclusion as an ingredient of a food or as part of a complex ingredient;
- Accidental presence in a food through the unintended incorporation of an allergen within the food or mislabelling of a food; or
- Accidental contamination of a food with an allergen.

5.4 Food businesses are required to ensure that they are fully aware of what allergens are present in food they produce or serve and are required to implement procedures to ensure this. For large manufacturers with a limited product range and quality control teams, this can be a relatively straight forward process. It can be much more complicated for small catering operations, where menus may change frequently, where ingredients may change based on fluctuating prices and suppliers may change the formulation of compound ingredients.

- 5.5 The presence of even minute quantities of an allergenic ingredient can prove fatal and therefore the accidental contamination of foods is a very real prospect that requires to be managed very carefully. Food businesses are not compelled to guarantee that a meal is free of a particular allergen, but where they do, the appropriate precautions must be undertaken.
- 5.6 Allergens are not destroyed on cooking and therefore when preparing food for someone with an allergy the potential allergen has to be thoroughly cleaned off hands, preparation surfaces, utensils and equipment to avoid contamination. Such cleaning of equipment would need to utilise fresh, very hot water, wearing rubber gloves, and detergent, and the use of fresh cloths. If scourers or wire wool have to be used to remove stubborn residues from woks use a fresh soapy cloth to remove residual contamination, which effectively provides a double wash. The rougher the surface, the harder it is to remove an allergen. Hands would need to be thoroughly washed with soap and hot water and then dried with clean paper towel. Hand sanitisers do not remove allergens. Work surfaces must be cleaned thoroughly using hot water and detergent and dried with paper towel. They must then be cleaned again using a sanitiser or disinfectant. Aprons and cloths must be freshly laundered.

6. Current Allergen Labelling Requirements of Food Law

- 6.1 The allergen requirements can be summarised as:
- requiring the relevant information to be provided to the customer in order to permit them to make an informed choice; and
 - to implement appropriate precautions to prevent unintended contamination of foods with allergens.
- 6.2 The requirement to inform the consumer is implemented slightly differently depending on the circumstances surrounding the manufacture and supply of the foods, i.e. there are different requirements for a manufacturer of packaged foods and a takeaway restaurant, but the outcome is the same – the consumer must receive the relevant information.
- 6.3 The different scenarios are:
- 6.4 **Pre-packed Foods** - foods which have been put into packaging before sale to the final consumer or caterers, where there is no opportunity for direct communication between the producer and the customer, and the contents cannot be altered without opening or changing the packaging. For example, most pre-packed foods sold in supermarkets will fall under this definition, such as tinned food, ready-made meals or frozen food products.

- 6.4.1 There are strict rules regarding the labelling of 'Pre-packed Foods'. Allergens must be emphasised within the ingredients list using the defined terms within the regulations. It is up to the manufacturer to determine how to emphasise the ingredients, but most commonly this is the use of a **bold** font. Statements such as 'contains nuts' are no longer permitted. Where a manufacturer believes that, despite having taken all reasonable precautions, that there is a realistic possibility of a food being contaminated by an unintended allergen then this can be declared using voluntary statements such as 'may contain...'.
- 6.5 **Foods Pre-packed for Direct Sale** - Generally means those foods that have been packed on the same premises as they are being sold. In these situations, it is thought that the customer would be able to speak to the person who made/packed the foods to ask about ingredients and so these foods do not generally have to be labelled with ingredients by law. Foods which could fall under this category are pies and sandwiches made and sold prepacked or not pre-packed from the premises in which they were made.
- 6.5.1 Foods '**Pre-packed for Direct Sale**' do not have to be labelled with ingredient lists and therefore do not require to be labelled with allergen information. Businesses may voluntarily choose to label these foods as per 'Pre-packed Foods', but otherwise will require to comply with the same requirements as for 'Non Pre-packed Foods'.
- 6.5.2 It is understood that these requirements were introduced to reduce the impact on small businesses such as sandwich shops that may have a very large number of product lines which meant that full labelling could be an onerous requirement when other means could provide the requisite information. There have been concerns regarding the level of protection provided in this scenario, particularly where it may not be clear to the consumer that the products were produced at the establishment and are not actually 'Prepacked'.
- 6.6 **Non Pre-packed Foods** (Open or loose foods). Foods which are non-prepacked can be often described as foods sold loose. In a retail environment this would apply to any foods which are sold loose from a delicatessen counter (for example, cold meats, cheeses, quiches, pies and dips), fresh pizza, fish, salad bars, bread sold in bakery shops etc. In a catering environment this would apply to foods ready for consumption such as meals served in a restaurant, café or purchased from a takeaway.
- 6.6.1 For both 'Non Pre-packed Foods' and Foods Pre-packed for Direct Sale, the appropriate information must be provided to the consumer by other means:
- written up front (for example on a menu or menu board) without the customer having to ask for information
 - sign-posted to where written information can be found or obtained
 - sign-posted to say that oral information can be obtained from a member of staff
 - if information on allergenic ingredients is provided orally, this must be consistent and verifiable (i.e. a business must have processes in place to capture information from recipes and ingredients lists from products bought in and make this available to staff).

- 6.7 It is vital that appropriate information is available to customers at point of ordering and therefore websites, including those of 3rd party partners e.g. Just Eat must contain, or direct consumers to where they can access, relevant information on allergens.
- 6.8 Consumers should also be able to confirm the absence of a relevant allergen according to their specific request at the point of delivery. This is in order to ensure that errors cannot occur at this stage. Therefore, it is important that information is passed on to delivery drivers/agents e.g. by labelling a meal to confirm the absence of an allergen.

7. Training of Staff within Food Businesses

- 7.1 As the appropriate control of allergens and the communication of allergen related issues is critical to food safety, it is important that all staff have received sufficient information to control the risk, implement the appropriate control measures and communicate these with customers effectively. This training can be informal, delivered by the food business, or can be undertaken on line or via face to face certificated training.

8. Enforcement Activity

- 8.1 There are approximately 2400 food businesses within Aberdeen, and appropriate allergen management is a critical requirement for almost all of them (the exceptions being suppliers of a single non-allergenic product – e.g. water cooler providers).
- 8.2 There are currently 14 officers who undertake food enforcement activities as part of their duties including inspections and investigations of complaints. In 2018/19 943 inspections of food businesses were undertaken. Ensuring appropriate allergen controls are in place and are communicated effectively to consumers forms a core part of these inspections. In addition, 458 revisits were undertaken to follow up issues of non-compliance and a significant proportion of these would include allergen issues. All complaints received regarding allergen concerns are investigated thoroughly to ensure that effective controls are implemented.
- 8.3 Over the past 5 years a total of 24 allergen related complaints have been investigated. These have included a number of severe allergic reactions resulting from undeclared ingredients, a mix up in delivery of a takeaway meal, inadequate information and inadvertent contamination.

- 8.4 Where non-compliance with appropriate controls are identified, a range of enforcement measures are utilised to deliver the necessary improvements. We utilise a hierarchy of enforcement including: informal advice and education; written warnings; hygiene improvement notices or improvement notices requiring specified measures to be taken to achieve compliance; Remedial Action Notices, Hygiene Prohibition Notices or Prohibition Notices to require processes to stop, or areas/premises to be closed; detention, seizure and condemnation of foods; and reporting matters to the Procurator Fiscal (PF). A number of hygiene improvement notices have been served relating to inadequate management controls for allergens. Unfortunately, it is not possible to quantify the number as the link to allergens is not recorded separately within the log. One business was reported to the PF for inadequate labelling including allergen labelling.
- 8.5 Where a pre-packed food is found to pose a food safety risk due to the potential undeclared presence of an allergen, it must be withdrawn from the market and recalled from consumers. These recalls relate to a number of failures including inadequate labelling on the packaging, applying the wrong label to the food, and the inadvertent inclusion of an allergen within the product. To assist with raising awareness of recalls, Food Standards Scotland issue 'Allergy Alerts' to publicise the issued to consumers with allergies and Local Authority Environmental Health teams. In 2018 a total of 75 separate 'Allergy Alerts' were issued in Scotland, some of which included multiple product lines.

9. Aberdeen Scientific Services

- 9.1 Another enforcement tool that is utilised to monitor the risks associated with allergens is the programme of sampling and analysis. Samples are procured by officers from Environmental Health and passed to the Aberdeen Scientific Services (ASSL) for analysis. ASSL is a team within Protective Services which undertakes chemical analysis, and microbiological examination of foods for Aberdeen City, Aberdeenshire and Moray Councils as well as for a number of private clients. Since 2014/15, Aberdeen City have taken and analysed a total of 199 samples for the presence of allergens, with a failure rate of 18%. The majority of the failures relate to the presence of gluten in non-prepacked sausages.

Samples taken in the City of Aberdeen and analysed by ASSL for specific allergens.						
Allergen	Financial Year					Failure Rate (%)
	2014-15	2015-16	2016-17	2017-18	2018-19*	
Peanut	33 (0)	25 (0)	0 (0)	5 (0)	17 (2)	2
Sesame	0 (0)	0 (0)	0 (0)	2 (0)	0 (0)	0
Gluten	0 (0)	27 (0)	51 (26)	12 (0)	10 (0)	26
Milk	0 (0)	0 (0)	0 (0)	12 (1)	5 (1)	12
Total	33 (0)	52 (0)	51 (26)	31 (1)	32 (3)	
Failure Rate (%)	0	0	51	3	9	18

*To 25th January 2019

10. Recent Allergen Incidents in the UK

- 10.1 There have been a couple fatalities in 2016 due to allergen issues that have recently highlighted the issues:
- 10.2 **Natasha Ednan-Laperouse.** Natasha died in 2016 after going in to cardiac arrest on a flight after consuming a baguette purchased from a Pret a Manger outlet at Heathrow Airport. An inquest into Natasha's death began last week and heard the artichoke, olive and tapenade baguette the teenager ate contained sesame - to which she was allergic. The coroner found that Natasha had been 'reassured by the lack of specific allergen information on the packaging. As the baguette had been made on site, it was considered to be **'Prepacked for Direct Sale'** and therefore did not require allergen labelling. Instead, there was signage advising customers to enquire with staff about allergens. The Prime Minister has called for a review of food labelling laws in the wake of Natasha's death.
- 10.3 **Megan Lee.** Megan, 15, suffered irreversible brain damage after an allergic reaction to a takeaway meal from the Royal Spice in Oswaldtwistle, Lancashire in 2016. She died 2 days later. Despite having highlighted her allergies when she placed her order, the teenager's meal, which included an onion bhaji, a seekh kebab and a peshwari naan, was found to have the "widespread presence" of peanut protein. The judge identified that the business had no systems or processes to manage allergen control and sentenced the owner of the takeaway and the manager to two years in prison.

11. Consultation on amending allergen information for food prepacked for direct sale.

- 11.1 Food Standards Scotland, the Food Standards Agency and DEFRA published a consultation on consulting in 2019 on amending allergen information provisions contained within domestic food information legislation for food **prepacked for direct sale** in response to the Pret A Manger incident. This consultation is being dealt with under delegated powers as an operational consultation. The consultation will require detailed consideration as all of the proposed options have the potential for significant positives and negatives. A Service Update will be provided to Committee once a position has been formulated.
- 11.2 The four proposed options are:
- Promote Best Practice
 - Mandate 'ask the staff' labels on packaging of food pre-packed for direct sale with supporting information for consumers in writing.
 - Mandate name of food and allergen labelling on packaging of food pre-packed for direct sale.
 - Mandate name of the food and full ingredient list labelling, with allergens emphasised, on packaging of food **pre-packed for direct sale**.

- 11.2.1 Promote Best Practice. This option would not require a legislative change, but to effect change would entail additional activity to promote best practice within the current framework to encourage businesses and consumers to review their knowledge, skills and actions to ensure a safer environment for consumers.

The main benefits of this option are that it has the potential to be designed and implemented in a shorter timescale than that required for a legislative change and can be adapted to continue to be fit for purpose. It retains maximum flexibility for businesses to make allergen information available in a way that best suits their business model.

As this is a non-regulatory measure, there is no guarantee that businesses will change their practices.

- 11.2.2 Mandate 'ask the staff' labels on packaging of food **pre-packed for direct sale** with supporting information for consumers in writing. A label/sticker on the packaging of food prepacked for direct sale would advise consumers to 'ask the staff' about allergens. Staff would have to provide supporting information in writing upon request, before the food was purchased. This information would comprise of either:

- a list of any of the 14 allergens contained within the specific product; or
- a full ingredient list with allergens emphasised.

This option is the least costly regulatory option for businesses to implement. It would ensure that consumers are consistently prompted to be proactive in talking to staff about allergens. However, risks associated with this option include failure to provide sufficient information for those consumers who are not sufficiently confident to engage with staff and the availability of appropriately trained staff. The other regulatory options, this option does not carry the risk of mislabelling on the product packaging, but there is still a risk that the written information provided upon request may be incorrect. This risk applies to all options that put allergen information in writing.

- 11.2.3 **Mandate name of food and allergen labelling on packaging of food pre-packed for direct sale.** A label required on the packaging to tell the consumer the name of the food and which of the specified 14 allergenic ingredients the product intentionally contains.

This option is less difficult for businesses to implement than full ingredient labelling, but more costly than other options. It gives consumers clear, product specific information on the food packaging, enabling food allergic consumers to make informed choices when purchasing food products.. This option also allows businesses to make some non-allergenic ingredient substitutions without having to change the label on the packaging.

It may be challenging to implement correctly, particularly for small and micro businesses, incurring additional administrative, equipment and training costs. For instance, it will increase costs to business as generic packaging would necessarily disappear or need to be supplemented with another label.

As mislabelling is the most common source of product recall for prepacked goods, adding a label could introduce the risk of mislabelling incidents. As consumers trust labels, this could cause more incidents as consumers may eat wrongly labelled packaged food and may potentially discourage dialogue with staff. This option may also lead to businesses removing certain foods from their menu or limit changes to menus (e.g. one-off specials), thus reducing consumer choice in general. It may require new labelling processes to be instituted on business premises and would require substantial training of staff, to equip them with the knowledge and skills to implement allergen labelling procedures accurately.

11.2.4 **Mandate name of the food and full ingredient list labelling, with allergens emphasised, on packaging of food pre-packed for direct sale.**

A label naming the food and listing the full ingredients with allergens emphasised on the packaging. Labelling will need to include:

- the name of the food;
- the full list of ingredients; and
- any specified allergenic ingredient used in the preparation of a food would be emphasised to stand out from the other ingredients in the list.

This option introduces a consistent approach to labelling of ingredients for food that is prepacked and prepacked for direct sale. It may give food allergic consumers more trust in the food they are eating and help consumers with food allergies and intolerances beyond those specified in EC law. It doesn't rely on staff having to provide accurate information on allergens directly to consumers, but a labelling process will be required on the premises, and staff will need to be sufficiently trained to implement labelling procedures accurately. Full ingredient labelling would increase costs to business as generic packaging would necessarily disappear or need to be supplemented with additional labelling. Adding a label may introduce the risk of mislabelling incidents, and this option carries the greatest mislabelling risk. As consumers trust labels, this could cause more incidents as consumers may eat wrongly labelled packaged food. This option may lead to businesses removing certain foods from their menu or limit changes to menus (e.g. one-off specials), to avoid the costs of extra labelling, potentially reducing consumer choice in general. Additionally, the cost of full labelling may potentially stifle innovation and new product development and may constrain supply chain purchases and availability.

12 **The Scottish Food Enforcement Liaison Committee (SFELC)**

- 12.1 SFELC co-ordinates food law enforcement, sampling and surveillance activities of Scottish local authorities. The Scottish Food Enforcement Liaison Committee supports the work of FSS by providing information and expert advice in relation to food and feed law enforcement. SFELC contributes to the development and implementation of FSS strategies and policies for fulfilling its core functions in respect of food and feed safety and consumer protection. The committee provides a forum for the discussion of relevant topics and to share best practice guidance and may initiate surveys or projects or co-ordinate specific investigations. The Protective Services Manager is a member of the SFELC Executive and Chairs the Food Safety Sub Committee to ensure that we influence enforcement related policy decisions effectively.

- 12.2 SFELC is currently producing Food Standards guidance documents for Caterers, Butchers, Bakers and Craft Brewers & Distillers. These documents contain comprehensive advice regarding allergen management and labelling

12. Resources to Support Businesses

- 12.1 The Environmental Health team provides free advice and support to food businesses trading in Aberdeen to enable them to produce and supply safe food, including effectively controlling and communicating the risks associated with allergens.
- 12.2 A model food safety management system (Cooksafe) has been created for catering establishments. This includes practical advice and tools to assist catering establishments manage and communicate the risks associated with allergens. Hard copies have previously been provided free of charge to caterers, but this resource has now been fully exploited. The document can either be purchased from The Stationary Office, or can be downloaded for free from the FSS website.
- 12.3 A digital tool 'MenuCal' has been licenced by FSS and is available free of charge to Scottish food businesses. The tool is designed to allow food businesses to calculate the calorie content of meals they produce, but can also manage the allergen risks related to deliberately included ingredients. It requires caterers to log details of their ingredients and then use this list to create their recipes. Any allergens included within the final dish are clearly identified.
- 12.4 Free on-line training is available to food businesses via the Food Standards Agency website. Other resources include guidance, posters etc.

13. FINANCIAL IMPLICATIONS

As this report is for noting only, there are no financial implications from this report.

14. LEGAL IMPLICATIONS

As this report is for noting only, there are no direct legal implications arising from this report

15. MANAGEMENT OF RISK

	Risk	Low (L), Medium (M), High (H)	Mitigation
Financial	N/A	M	
Legal	N/A	L	
Employee	N/A	L	
Customer	N/A	L	
Environment	N/A	L	
Technology	N/A	L	
Reputational	N/A	L	

16. OUTCOMES

Local Outcome Improvement Plan Themes	
	Impact of Report
Prosperous People	The work of Environmental Health in relation to allergens, helps to protect the health of the population of and visitors to Aberdeen.
Prosperous Economy	The work of Environmental Health in relation to allergens, helps to ensure that businesses can trade locally, nationally and internationally, and can effectively control the risks associated with allergens.

Design Principles of Target Operating Model	
	Impact of Report
This Report is to Inform Committee of the current situation and does not introduce any new impacts.	

17. IMPACT ASSESSMENTS

Assessment	Outcome
Equality & Human Rights Impact Assessment	EHRIA not required
Data Protection Impact Assessment	Not Required
Duty of Due Regard / Fairer Scotland Duty	Not Applicable

18. BACKGROUND PAPERS

Consultation <https://consult.defra.gov.uk/agri-food-chain-directorate/consultation-on-amending-allergen-information/>

Cooksafe <https://www.foodstandards.gov.scot/publications-and-research/publications/cooksafe-manual>

MenuCal <https://menucal.fss.scot/Account/LogOn?ReturnUrl=%2f>

Training <http://allergytraining.food.gov.uk/english/>

Other Resources <https://www.foodstandards.gov.scot/business-and-industry/safety-and-regulation/food-allergies-1>

19. REPORT AUTHOR CONTACT DETAILS

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