

Part 3: Guidance for businesses providing food prepacked for direct sale

86. Whether a food is prepacked for direct sale (PPDS) depends on whether, where and when it is packed in relation to the point at which it is offered for sale.

87. The specific requirements are based on the following articles:

- Article 8 on responsibilities
- Article 9 on mandatory particulars (see p 10-11 for list of 14 allergens)
- Articles 12 and 13 on availability and presentation of mandatory particulars
- Article 21 on labelling of certain substances or products causing allergies or intolerances
- Article 14 on distance selling

88. The information below provides guidance and best practice examples on the provision of allergen information for PPDS food. The new rules for prepacked for direct sale food come into effect on 1 October 2021.

Best Practice

Food businesses should consider the foods they package before the process of a sale begins, in order to check if these requirements apply.

89. PPDS food is food that is packed before being offered for sale by the same food business to the final consumer:

- i) on the same premises; or
- ii) on the same site⁸; or
- iii) on other premises if the food is offered for sale from a moveable and/or temporary premises (such as marquees, market stalls, mobile sales vehicles) and the food is offered for sale by the same food business who packed it.

90. Prepacked is defined in Article 2(2)(e) of the FIC as '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

⁸ In this instance 'site' refers to a building complex such as a shopping centre or airport terminal in which the same food business operates from more than one unit within the building complex.

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'

Figure 3 - What is prepacked for direct sale (PPDS) food?

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*?

No → this is non-prepacked food

↓ **Yes**

The food is "packed" 

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

No → this is non-prepacked food

↓ **Yes**

The food is "pre-packed" 

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

No → this is prepacked food

↓ **Yes**

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.

Example

PPDS food includes:

- Sandwiches placed into packaging by the food business and sold from the same premises.
- A café giving away packaged samples of a new range of cakes they have made on the same premises.
- Foods packaged and then taken by the same operator to their market stall to sell.
- A butcher who makes burgers or sausages which are prepacked to be sold on the same premises.
- Foods packed by a food business to be sold in its retail units located within the same building complex as the premises where the food was packed such as a train station, hospital, university or holiday park.

In a retail environment such as a supermarket, the following examples would also be considered to be prepacked for direct sale food, **provided they are packed on the premises from which they are being sold before they are offered for sale:**

- Fresh pizzas from the deli counter e.g. on a cardboard tray and wrapped in plastic;
- Boxed salads;
- Hot foods such as rotisserie chicken; and
- Foods that are pre-weighed and packed such as cheese or meats from a delicatessen counter or baked goods from an in-store bakery

91. Food is considered prepacked when it is put into packaging before being offered for sale and:

- is either fully or partly enclosed by the packaging; and
- cannot be altered without opening or changing the packaging; and
- is ready for sale to the final consumer.

92. Any food that is packed on the premises by the same food business in anticipation of an order, before being offered for sale, would be considered to be PPDS food. This can include food the consumer self selects from a chiller cabinet or has to obtain from a member of staff.

Example

Some fast food may be prepacked for direct sale if it has been packed by the same business before being offered for sale in anticipation of an order, for example, a wrapped burger or boxed fried chicken placed under a hot lamp and the contents cannot be altered without opening the packaging.

93. Food placed into packaging after a consumer orders it (for example a freshly prepared sandwich or burger that is made and wrapped after taking an order) is not PPDS food. Although these items are packed, they are not packed before being offered for sale and therefore cannot be prepacked for direct sale. The same rules apply to these foods as apply to other forms of non-prepacked foods such as meals served in a restaurant.

94. PPDS food does not cover food which does not have packaging, or it is packaged in a way that the food can be altered without opening or changing the packaging (for example a hot dog served on a cardboard tray.)

95. PPDS food does not cover food packed by one business and supplied to another business for sale (for example a pork pie packed by business “A” and sold by business “B” at a farmer’s market.) This is prepacked food.

List of mandatory particulars for PPDS food

96. All PPDS food must have on the package⁹ or on a label attached to the package:

- the name of the food and;
- an ingredients list¹⁰ including allergenic ingredients. The allergenic ingredients within the food must be emphasised every time they appear in the ingredients list.

⁹ See Article 16(2) of Regulation (EU) No. 1169/2011 for the requirements applicable to packaging or containers with a surface area less than 10 cm², so far as it relates to the particulars required by Article 9(1)(b).

¹⁰ See FIR for more rules on the required format of the ingredients list. See Article 19 of Regulation (EU) No. 1169/2011 for foods which are not required to bear a list of ingredients.

For example, the allergens in the food can be listed in bold, in capital letters, in contrasting colours or underlined.

97. Detailed guidance on how each allergenic ingredient captured in Annex II of the FIC must be emphasised and named in the ingredients list on PPDS food has been outlined in this guidance in paragraphs 29 to 66.

Distance selling (Article 14)

98. FBOs selling PPDS food through distance means (e.g. such as food businesses which offer purchase through telephone/ internet) will need to ensure that mandatory allergen information is available to the consumer (for free) before they buy the product and also is available at the moment of delivery.

99. The requirement for a list of ingredients does not apply to PPDS food sold online, via telephone or provided to the consumer by mail order only. This is because the national rules applicable to the provision of food information for non-prepacked food including PPDS do not apply to food sold via distance means. The applicable rules for all food sold through distance means are therefore those contained within Article 14 of the FIC. However, prepacked for direct sale food sold in this way, must continue to have allergen information available for free to the customer before they buy the product and also available at the moment of delivery. Whatever the chosen method of presentation, the FBO must always ensure that the allergen information is current and accurate.

Enforcement of the measures

Local authority responsibilities

100. In the UK, authorised food officers at Local Authorities have responsibility for official controls relating to allergen rules.

101. In England, where there is a dual enforcement responsibility in some areas, the first tier (County Councils) are under a duty to enforce (Regulation 9(1) of the FIR and second tier councils have the power to enforce (Regulation 9(2) of the FIR). Although there is no need for arrangements to be made to give powers to food hygiene enforcement officers in second tier councils, authorised food officers are encouraged to discuss and reach an understanding on how to enforce allergen requirements at a local level.

Penalties and offences

102. Failure to comply with the requirements of the provisions of the FIC set out in Regulation 10(2) of the FIR as amended by [The Food Information \(Amendment\) \(England\) Regulations 2019](#) or corresponding Regulations in Wales, and Northern Ireland on the labelling of allergenic ingredients is a criminal offence and may result in a criminal prosecution being brought against a FBO. This position is the same in relation to a failure to comply with Regulation 5(5) or Regulation 5A(1)(a) of the FIR relating to the provision of allergen information for non-prepacked foods and PPDS etc. in a manner other than one provided for in the FIC.

103. A person convicted of an allergens offence under the FIR 2014 will be liable to an unlimited fine. The amount of the fine would be up to the Magistrates to decide on a case by case basis.

Glossary of terms used

Coeliac Disease: This is an autoimmune disease caused by an adverse reaction to eating gluten, a protein in cereals namely wheat, rye, oats, spelt, kamut or their hybridised strains. Adherence to the gluten free diet is the complete medical treatment and having coeliac disease therefore requires significant dietary modification.

Distance selling: This refers to the selling and buying of goods or services (for purposes of these guidance notes prepacked, and non-prepacked foods) without the simultaneous physical presence of the consumer and supplier to complete the contract for sale; for example selling food by internet (internet shopping, online takeaway aggregators etc.), mail order, telephone or television.

Final consumer: This is defined in Article 3 (18) of Regulation (EC) No.178/2002 as ‘the ultimate consumer of a foodstuff who will not use the food as part of any business operation or activity’. The final consumer will generally be the individual who will be eating or drinking the food or drink provided by the food business.

Food Allergen: This is the substance in a food that can cause an allergic reaction. Allergens are normally proteins and in some people, the immune system thinks allergens are foreign or dangerous. The immune response to these allergenic proteins is what leads to allergic reactions. Legislation focuses on 14 specific foods of public health importance (most potent and prevalent food allergens in Europe) which are listed in Annex II to the FIC.

Food Allergy: An adverse reaction to a food that involves the immune system and can be a potentially life-threatening condition. Symptoms can appear within minutes, or up to several hours after a person has eaten a food they are allergic to. There is no cure for food allergy. An allergic individual must avoid the food which makes them ill.

Food business operator (FBO): This is defined in Regulation (EC) No. 178/2002 (Article 3(3)) (General Food Law) as ‘the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control’.

Food business: This is defined in Regulation (EC) 178/2002 (Article 3(2)) (General Food Law) as ‘any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food’.

Food intolerance: Most food intolerances do not involve the immune system and are generally not life-threatening. However, they can make someone feel very ill or affect their long-term health. Examples of food intolerance include lactose and gluten intolerance

Mass caterer: This is defined in Article 2(2)(d) of FIC as ‘any establishment (including a vehicle or a fixed or mobile stall), such as restaurants, canteens, schools, hospitals and

catering enterprises in which, in the course of a business, food is prepared to be ready for consumption by the final consumer’.

Non-prepacked food: Any food presented to the final consumer or mass caterer that does not fall within the definition of ‘prepacked food’ for any reason including food not within any packaging, or food packaged at the consumers request and PPDS food.

- In a physical retail environment this is likely to apply to foods which are sold loose from a delicatessen counter (e.g. cold meats, cheeses, quiches, pies and dips), fresh pizza, salad bars, bread or pastries sold without wrapping in bakery shops or via bakery counters, meat from butchers, etc.
- In a catering environment this is likely to apply to foods which are not sold prepacked, for example food from a takeaway, or meals served in a canteen or a restaurant.

Prepacked food: This is defined in Regulation (EU) No. 1169/2011 (Article 2(2)(e)) as ‘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.’

Food is considered prepacked when it is put into packaging prior to before being offered for sale and:

- is either fully or partly enclosed by the packaging; and
- cannot be altered without opening or changing the packaging; and
- is ready for sale to the final consumer or to a mass caterer

Prepacked for direct sale (PPDS) food: Food that is packed before being offered for sale by the same food business to the final consumer:

- i) on the same premises; or
- ii) on the same site¹¹; or

¹¹ In this instance ‘site’ refers to a building complex such as a shopping centre or airport terminal in which the same food business operates from more than one unit within the building complex.

- iii) on other premises if the food is offered for sale from a moveable and/or temporary premises (such as marquees, market stalls, mobile sales vehicles) if the food is offered for sale by the same food business who packed it.

PPDS food does not include food packed at a consumer's request, food not in packaging or food in packaging that can be altered without opening or changing the packaging.