

## **Food Allergen Information for Non-Prepacked Foods in Ireland**

**Health (Provision of Food Allergen Information to  
Consumers in Respect of Non-Prepacked Food)  
Regulations, 2014 (S.I. No. 489 of 2014)**



# **Guidance Note No. 28**

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**Health (Provision of Food Allergen Information to Consumers in Respect  
of Non-Prepacked Food) Regulations, 2014 (S.I. No. 489 of 2014)**

Published by:  
Food Safety Authority of Ireland  
Abbey Court  
Lower Abbey Street  
Dublin 1

Tel: +353 1 817 1300 Fax: +353 1 817 1301  
Email: [info@fsai.ie](mailto:info@fsai.ie) Website: [www.fsai.ie](http://www.fsai.ie)

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ISBN 1-904465-98-6

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## **I. INTRODUCTION**

The Food Information for Consumers (FIC) Regulation (EU) No 1169/2011 comes into force from December 13<sup>th</sup>, 2014. One of the changes introduced by this legislation is the requirement to identify 14 specified food allergens when they are used in the production or preparation of non-prepacked food. Member States may adopt national measures setting out the means by which this allergen information is to be provided. In the absence of national measures, the labelling requirements set out in the FIC Regulation apply automatically.

The Food Safety Authority of Ireland (FSAI) facilitated an online consultation in 2013 on behalf of the Department of Health to determine the views of consumers and the food industry on how to declare the use of the 14 specified food allergens in the production and preparation of non-prepacked foods. The results of that consultation were used by the Department of Health to inform the development of this Statutory Instrument (S.I.).

Statutory Instrument No. 489 of 2014 was signed by the Minister for Health in October, 2014 and stipulates that food businesses in Ireland must provide information on food allergens in non-prepacked foods they sell or supply. The minimum requirement is that the food allergens are identified in written format at least once before a purchase is concluded, though verbal and written information can be made available at other opportunities also. There may be exceptional circumstances where written information will need to be supplemented with verbal communication such as for people with visual impairment or other difficulties.

## **2. AIM OF THIS GUIDANCE**

The information provided in this document is intended as guidance on some of the ways various types of food businesses supplying non-prepacked foods can comply with the requirements set out in S.I. No. 489 of 2014. The examples provided are neither exclusive nor exhaustive and should be viewed in the context of the particular food business.

### 3. FOOD ALLERGENS

The term allergen is defined in S.I. No. 489 of 2014.

*Regulation 2 “...any ingredient or processing aid listed in Annex II of Regulation (EU) No 1169/2011 of the European Parliament and Council of 25 October 2011, as amended by Commission Delegated Regulation (EU) No 78/2014 of 22 November 2013, or derived from a substance or product listed in the said Annex, causing allergies or intolerances, used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form”*

Many food ingredients can cause a hypersensitive reaction in susceptible consumers. However, the declaration of only 14 food allergens is legally required in the EU when they are used in the production or preparation of a food. The 14 specific food allergens (with exceptions) are listed in the Annex of this document.

### 4. INGREDIENT OR CONTAMINANT

The term ingredient is defined in the FIC Regulation.

*Article 2.1(f) “...any substance or product, including flavourings, food additives and food enzymes and any constituent of a compound ingredient, used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form...”.*

Therefore, the term ‘ingredient’ in food law refers to a food or food ingredient that is used in the production or preparation of a food product. Sometimes it is difficult to ascertain whether the low level presence of a food allergen in a finished food product is the result of the undeclared use of an ingredient, a contaminated ingredient or inadvertent cross-contamination during handling or storage. Such instances are dealt with by regulatory authorities on a case-by-case basis, taking into account the food business operator’s food safety management controls, the levels of the food allergen detected in the final product, the perceived risk to vulnerable consumers and allergen declarations, including voluntary claims such as “Free from...” and “May contain...”.

## 5. NON-PREPACKED FOODS

S.I. No. 489 of 2014 clarifies that the term ‘non-prepacked’ food applies to food sold directly to consumers or mass caterers, or food provided free of charge such as that provided by charitable organisations or as samples in food stores:

### **PART I**

#### **PRELIMINARY**

##### *Scope*

3. *These Regulations apply to all food which is not prepacked food and is offered for sale or supply, including supply free of charge, to the final consumer or to a mass caterer, including—*
- (a) food packed at a food business operator’s premises at the consumer’s request, and*
  - (b) food packed for direct sale or supply.*

## 6. FOOD BUSINESSES AFFECTED

Food businesses supplying non-prepacked food or beverages will need to become familiar with any of the 14 specific food allergens that they handle. Those food businesses will also need to adapt their processes so that they can readily identify and trace the specified food allergens from the point of entry to their business to the point of supply or sale so that consumers can be accurately informed. The food businesses impacted by the new legislation can be broadly categorised as follows:

- (a) Food businesses providing non-prepacked food or beverages purchased on-site and consumed on-site or off-site. Such businesses include, but are not limited to the following: stand-alone restaurants and takeaways, pubs, accommodation such as hotels and B&Bs, food stalls (stationary or mobile), healthcare facilities, e.g. hospitals, care homes, childcare facilities, educational institutions, e.g. crèches, schools, third level institutions, modes of transport, e.g. planes and ferries, detention centres, general contract caterers and charitable organisations providing food at specific locations or delivered to the final consumer
- (b) General or specialist retailers (food or beverages provided through deli counters, bread stations, meat counters, juice bars or other non-prepacked food), butchers, bakery outlets, juice bars and other specialty retailers, farmers’ markets and other stationary, transient or temporary food stalls
- (c) Licensed premises selling alcoholic or non-alcoholic beverages including non-bottled (draught) beer and cider, wine by the glass, cocktails, smoothies or juices

- (d) Food businesses engaged in distance selling where the food purchase is concluded remotely such as by internet, phone or other means of communication. Such food businesses generally advertise their goods in the media or online and often through dissemination of printed material within communities. They include retailers that provide a home delivery service as well as restaurants and takeaways that facilitate remote orders and provide food for consumption off the premises

## 7. WHEN TO DECLARE FOOD ALLERGENS

S.I. No. 489 of 2014 specifies that as a minimum requirement, written information must be provided either at the point of presentation, the point of sale or the point of supply. Where the non-prepacked food is for supply to mass caterers, information on food allergens must be available on labels or documents associated with the food or food ingredient.

### PART 2

#### FOOD ALLERGEN INFORMATION

*Prohibition in respect of presentation, sale and supply*

4. A food business operator shall not present or make available food for sale or supply, or sell or supply food, unless written particulars of any allergen in the food are indicated at:

- (a) the point of presentation,
- (b) the point of sale, or
- (c) the point of supply,

## 8. WHEN THERE IS NO NEED TO DECLARE FOOD ALLERGENS

Declaration of food allergens is not required for the sale of foods in automatic vending machines or in automated sales premises. In addition, where the name of the food clearly refers to the specific food allergen, e.g. soya flour, there is no need to separately provide particulars. However, care must be taken with multi-ingredient foods. For example, egg mayonnaise contains egg and therefore there is no need to mention that separately. But the mayonnaise can contain other food allergens such as mustard and that must be declared. As a general rule, if a composite food contains a food allergen, the name of which is not explicit in the food name, it should be declared.



## 9. TYPE OF FOOD ALLERGEN INFORMATION REQUIRED

The food allergen information required on non-prepacked foods is the same as that required on prepacked foods. Where a list of ingredients is not used (as is generally the case for non-prepacked food), food allergen information must include the word “contains” followed by the particular allergen, e.g. contains wheat, barley, soya and egg.

## 10. PRECAUTIONARY FOOD ALLERGEN DECLARATIONS

Precautionary declarations such as “may contain...” or “prepared in a kitchen that uses...” are voluntary declarations but do not satisfy the requirements of food allergen information stipulated in S.I. No. 489 of 2014 for non-prepacked foods.

## 11. HOW TO DECLARE FOOD ALLERGENS

Food businesses must declare food allergen information in written format at an easily identified (conspicuous) and accessible location (or locations) on the premises. If a single location is chosen, it must be easily identified by consumers and the information provided must be clear in identifying the food allergens contained in particular food items.

### **PART 2**

#### **FOOD ALLERGEN INFORMATION**

*Manner in which allergen information is to be provided*

5. (1) Subject to paragraphs (2) and (3), a food business operator shall provide written particulars of any allergen in food presented or made available for sale or supply such that the information is —
- (a) freely and easily accessible before the sale or supply of the food,
  - (b) at least in the English or in the Irish language and in the English language,
  - (c) in a conspicuous place, such that it is easily visible and available to the final consumer or mass caterer,
  - (d) in clear legible script, and
  - (e) presented in a manner such that there is no possibility of confusion as to which food the information relates.

Non-exhaustive examples of how this information can be provided in different food businesses settings are provided below:

**(a) Food businesses providing food purchased on-site and consumed on- or off-site**

Many of the food businesses in this category are listed in 6(a) (page 3). These premises must make available food allergen information as it relates to individual menu items, sauces and other minor components including condiments. As a minimum requirement, the information must be provided in written format in an easily identified area (or areas) on the premises such that consumers can locate and access the information. The written information can be provided in hard copy or electronically, either in general view or permanently available at one or a number of locations on the premises. Menu items advertised separately, e.g. chalk boards with daily specials, must include information on food allergens if they are not provided elsewhere in written format.

**(b) Distance selling**

S.I. No 489 of 2014 stipulates that food businesses utilising distance selling must provide food allergen information before the purchase is concluded and at the moment of delivery. However, the written food allergen information needs to be provided either before the purchase is concluded and/or at the moment of delivery. Examples of food businesses that operate distance selling are listed in 6(d) above. These food businesses facilitate the purchase of food and beverages remotely through supporting material available online, through various media outlets or by dissemination of leaflets and catalogues throughout communities.

Where the written allergen information is provided prior to delivery, the information required at the point of delivery can be provide verbally or in written format.

## **PART 2**

### **FOOD ALLERGEN INFORMATION**

*5. (2) Subject to paragraph (3), in the case of food presented or made available for sale or supply by means of distance selling, the food business operator shall provide particulars of any allergen in such food—*

*(a) before the purchase is concluded, on the material supporting the distance selling or through other appropriate means clearly identified by the food business operator which do not involve charging consumers supplementary costs, and*

*(b) at the moment of delivery,*

*and such particulars shall be provided in writing in at least one of the stages referred to in subparagraphs (a) and (b).*

Supporting material, e.g. leaflet or catalogue, is considered to be that which consumers can use to contact a food business to place an order for particular food items. It does not relate to general advertising or promotional material relating to the food business which is not used for ordering or purchasing purposes. Written information about food allergens should be at least in the English language and should be legible and clearly highlight which food or food items that contain food allergens. Food allergen information for minor components such as sauces and condiments must also be provided.

#### **(c) Licensed premises**

The written food allergen information already provided for prepacked beverages (bottled, canned etc.) must also be provided for the non-prepacked form which includes draught beer and cider, wine provided by the glass and cocktails, smoothies and juices. Allergen declarations for non-prepacked beverages could be provided in a number of ways. Wine lists could include allergen information while for other beverages, the allergen information could be provided adjacent to or as an addition to the price list at a conspicuous location(s) on the premises. The precise allergen information required must be in the form of “Contains.....”.

## **12. SPECIALIST FACILITIES/INSTITUTIONS**

Some food businesses or their activities do not fall under the profile of general food businesses, but they must still provide the food allergen information in written format. The manner in which this could be achieved in some specialised settings is addressed here.

### **(a) Childcare facilities**

Many parents avail of childcare facilities on a routine basis and meals are provided as part of the service. However, young children are not likely to be in a position to make an informed choice when it comes to the consumption of food allergens. Therefore, written information on food allergens should be provided to parents or guardians so that they can make an informed food choice on behalf of the child.

### **(b) Healthcare facilities**

Healthcare facilities include hospitals where physical, psychiatric or psychological resident needs are met, as well as care homes for elderly or disabled individuals. While many of these facilities have functioning restaurants or cafeterias that provide food to residents and visitors, some residents may be incapacitated and thus receive their food at a separate location, such as in a room or a ward. Written information on food allergens must be provided for incapacitated residents so that they can make an informed choice on the food they consume. The written information may need to be supplemented with verbal communication where it is established that an individual cannot avail of the written information. Where an incapacitated resident is not in a position to utilise or process written or verbal food allergen information, then it must be provided to a designated family member, guardian or carer who can act on the resident's behalf in making food choices.

### **(c) Charitable institutions**

Charitable institutions providing food at a physical location or as a delivered service in the community are included in the list under 6(a) and must provide written information about food allergens in non-prepacked food. As such food is not purchased *per se*, the requirement to provide written information on food allergens for off-site consumption would apply at the point of presentation or supply. The provision of written information on food allergens may need to be supplemented with verbal communication where it is established that an individual cannot avail of the written information.

**(d) Detention facilities**

Detention facilities that provide food to individuals or groups of individuals outside of regular catering areas must provide written information on food allergens prior to presentation or supply of that food particularly where new or altered menu items become available. The provision of written information on food allergens may need to be supplemented with verbal communication where it is established that an individual cannot avail of the written information.

**The information in this document is provided as guidance and is not legally binding. Over time, and as experience with implementing the legislative requirement is gained, this document will be updated if necessary.**

## ANNEX I: SUBSTANCES OR PRODUCTS CAUSING ALLERGIES OR INTOLERANCES AS LISTED IN ANNEX II OF REGULATION (EU) NO 1169/2011

1. Cereals containing gluten, namely: wheat (such as spelt and khorasan wheat), rye, barley, oats or their hybridised strains, and products thereof, except:
  - (a) wheat based glucose syrups including dextrose <sup>(1)</sup>;
  - (b) wheat based maltodextrins <sup>(1)</sup>;
  - (c) glucose syrups based on barley;
  - (d) cereals used for making alcoholic distillates including ethyl alcohol of agricultural origin;
2. Crustaceans and products thereof;
3. Eggs and products thereof;
4. Fish and products thereof, except:
  - (a) fish gelatine used as carrier for vitamin or carotenoid preparations;
  - (b) fish gelatine or Isinglass used as fining agent in beer and wine;
5. Peanuts and products thereof;
6. Soybeans and products thereof, except:
  - (a) fully refined soybean oil and fat <sup>(1)</sup>;
  - (b) natural mixed tocopherols (E306), natural D-alpha tocopherol, natural D- alpha tocopherol acetate, and natural D-alpha tocopherol succinate from soybean sources;
  - (c) vegetable oils derived phytosterols and phytosterol esters from soybean sources;
  - (d) plant stanol ester produced from vegetable oil sterols from soybean sources;
7. Milk and products thereof (including lactose), except:
  - (a) whey used for making alcoholic distillates including ethyl alcohol of agricultural origin;
  - (b) lactitol;
8. Nuts, namely: almonds (*Amygdalus communis L.*), hazelnuts (*Corylus avellana*), walnuts (*Juglans regia*), cashews (*Anacardium occidentale*), pecan nuts (*Carya illinoensis (Wangenh.) K. Koch*), Brazil nuts (*Bertholletia excelsa*), pistachio nuts (*Pistacia vera*), macadamia or Queensland nuts (*Macadamia ternifolia*), and products thereof, except for nuts used for making alcoholic distillates including ethyl alcohol of agricultural origin;
9. Celery and products thereof;
10. Mustard and products thereof;
11. Sesame seeds and products thereof;
12. Sulphur dioxide and sulphites at concentrations of more than 10mg/kg or 10mg/litre in terms of the total SO<sub>2</sub> which are to be calculated for products as proposed ready for consumption or as reconstituted according to the instructions of the manufacturers;
13. Lupin and products thereof;
14. Molluscs and products thereof.

<sup>(1)</sup> And the products thereof, in so far as the process that they have undergone is not likely to increase the level of allergenicity assessed by the European Food Safety Authority for the relevant product from which they originated.





**Food Safety Authority of Ireland**  
Abbey Court, Lower Abbey Street,  
Dublin 1

**Údarás Sábháilteachta Bia na hÉireann**  
Cúirt na Mainistreach, Sráid na Mainistreach Íocht.,  
Baile Átha Cliath 1

**Tel: +353 1 817 1300**

**Fax: +353 1 817 1301**

**Email: [info@fsai.ie](mailto:info@fsai.ie)**

**Website: [www.fsai.ie](http://www.fsai.ie)**

**ISBN 1-904465-98-6**