
STATUTORY INSTRUMENTS

2021 No. 1368

FOOD, ENGLAND
PUBLIC HEALTH, ENGLAND

The Food (Promotion and Placement)
(England) Regulations 2021

Made - - - - *2nd December 2021*

Coming into force - - *1st October 2022*

The Secretary of State, in exercise of the powers conferred by sections 6(4), 16(1)(e) and (f), 26(3) and 48(1) of the Food Safety Act 1990⁽¹⁾ (“the 1990 Act”) and by sections 36, 39, 52, 54, 55, 62(2), 63 and 65 of, and Schedule 7 to, the Regulatory Enforcement and Sanctions Act 2008⁽²⁾ (“the 2008 Act”), makes the following Regulations.

The Secretary of State has consulted in accordance with sections 48(4) of the 1990 Act and section 60(1) of the 2008 Act.

The Secretary of State is satisfied in accordance with section 66 of the 2008 Act that food authorities⁽³⁾ (who are the regulators for the purpose of these Regulations) will act in accordance with the principles referred to in section 5(2) of that Act in exercising a power conferred by these Regulations.

A draft of these Regulations was laid before Parliament in accordance with section 62(3) of the 2008 Act, and approved by a resolution of each House of Parliament.

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Food (Promotion and Placement) (England) Regulations 2021 and come into force on 1st October 2022.

(2) These Regulations—

(a) extend to England and Wales, and

(1) 1990 c. 16. Section 6(4) was amended by paragraph 6 of Schedule 9 to the Deregulation and Contracting Out Act 1994 (c. 40); paragraph 10(3)(a) and (b) of Schedule 5 to the Food Standards Act 1999 (c. 28); and paragraph 1 of Schedule 2 to S.I. 2002/794. Sections 16(1) and 48(1) and (4) were amended by paragraph 8 of Schedule 5 to the Food Standards Act 1999. Section 48(4) was further amended S.I. 2004/2990. There are other amendments to sections 6, 16 and 48 not relevant to this instrument.

(2) 2008 c. 13. Section 39(4) was amended by S.I. 2015/664.

(3) “Food authorities” in England are defined in section 5(1) of the Food Safety Act 1990, to which there amendments which are not relevant.

- (b) apply in relation to England, but not in relation to the territorial waters adjacent to England.

Interpretation

2.—(1) In these Regulations—

- “consumer” has the meaning given in section 2(3) of the Consumer Rights Act 2015⁽⁴⁾;
- “online marketplace” means any software (including a website, part of a website, or an application) that is used to offer the qualifying business’s products for sale to consumers;
- “prepacked food item” means an item referred to in Article 2(2)(e) of [Regulation \(EU\) No 1169/2011](#) of the European Parliament and of the Council on the provision of food information to consumers⁽⁵⁾;
- “qualifying business” has the meaning given in regulation 4;
- “qualifying person” means a person acting in the course of carrying on a qualifying business;
- “relevant special offer” means an offer of a discounted price for multiple items promoted as intended to be consumed together as, or as part of, a single meal by one person or by two or more people together (as, for example, in “meal deal” or “dine in for two” offers);
- “Schedule 1 food” means food⁽⁶⁾ falling within a Schedule 1 category;
- “specified food” has the meaning given in regulation 3;
- “the Nutrient Profiling Technical Guidance” means the guidelines published by the Secretary of State on 14th January 2011 about the application of the 2004-2005 Nutrient Profiling Model⁽⁷⁾.

(2) For the purposes of these Regulations, a qualifying person offers a qualifying business’s products for sale on an online marketplace if they determine (whether on behalf of the qualifying business or on behalf of another business) that the product is to be offered for sale and its price, irrespective of who undertakes on behalf of the qualifying business—

- (a) to obtain payment from the purchaser, or
- (b) to otherwise operate the online marketplace.

Specified food

3.—(1) For the purposes of these Regulations, “specified food” is food contained in a prepacked food item which—

- (a) is Schedule 1 food,
- (b) is less healthy (as defined in paragraph (4)), and
- (c) is not food to which paragraph (5) (charity food sales) applies.

(2) Where a prepacked food item contains more than one type of food, all of the food contained in the item is to be treated for the purposes of paragraph (1)(a) as Schedule 1 food where one (or more) of the types of food contained in the item would, on its own, be Schedule 1 food.

(3) Where a product contains multiple items of which one (or more) is a prepacked food item containing specified food, the entire product is to be treated as specified food.

(4) [2015 c. 15](#). Section 2(3) defines “consumer” as an individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession.

(5) [EUR 1169/2011](#), which was incorporated into domestic law, with effect from 11.00 p.m. on 31st December 2020, by section 3 of the European Union (Withdrawal) Act 2018.

(6) The definition of “food” in section 1(1) of the Food Safety Act 1990 refers to Regulation [\(EC\) No. 178/2002](#) of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

(7) An electronic copy can be found at <https://www.gov.uk/government/publications/the-nutrient-profiling-model>. Hard copies can be obtained by request to Obesity Team, Department of Health and Social Care, 39 Victoria Street, London, SW1H 0EU.

- (4) For the purposes of this regulation—
 - (a) food that is not a drink is less healthy if it scores 4 or more points in accordance with the Nutrient Profiling Technical Guidance;
 - (b) a drink is less healthy if it scores 1 or more points in accordance with the Nutrient Profiling Technical Guidance.
- (5) This paragraph applies to food which is—
 - (a) provided by a charity, in the course of its charitable activities, free or for a price which is less than the cost of providing that food, or
 - (b) offered for sale by or on behalf of a charity to raise funds for its charitable activities at a single event.
- (6) For the purposes of paragraph (5)—
 - (a) “charity” has the meaning given by section 1 of the Charities Act 2011⁽⁸⁾;
 - (b) “charitable activity” means an activity carried out for a charitable purpose, other than primarily for the purpose of raising funds;
 - (c) “charitable purpose” has the meaning given by section 2(1) of the Charities Act 2011.

Qualifying businesses

- 4.—**(1) For the purposes of regulations 5 (price promotion restriction), 7 (placement restriction) and 8 (online promotion restriction) a business is a “qualifying business” if—
- (a) a person offers, in the course of carrying on the business, any prepacked food item for sale (whether in store or on an online marketplace) to consumers,
 - (b) on the first day of the financial year during which any such sale took place, the business had 50 or more employees, and
 - (c) the business is not—
 - (i) a care home;
 - (ii) an educational institution;
 - (iii) a restaurant.
- (2) For the purposes of regulation 6 (drink refill promotion restriction) a business is a “qualifying business” if—
- (a) a person offers, in the course of carrying on the business, any drink to which regulation 6 applies for sale (in store) to consumers,
 - (b) on the first day of the financial year during which any such sale took place, the business had 50 or more employees, and
 - (c) the business is not—
 - (i) a care home;
 - (ii) an educational institution.
- (3) For the purposes of determining how many employees a business has, a business that is carried on pursuant to a franchise agreement is to be treated as part of the business of the franchisor and not as a separate business carried on by the franchisee.
- (4) For the purposes of paragraph (3), a “franchise agreement” exists where one undertaking (“the franchisee”) and another undertaking (“the franchisor”) agree that the franchisee carries on

⁽⁸⁾ 2011 c. 25.

a business activity which includes the sale or distribution of food (“the franchise business”), and paragraph (5) applies to the franchise business.

- (5) This paragraph applies if—
- (a) the food provided in the franchise business;
 - (b) the internal or external appearance of the premises where the franchise business is carried on; and
 - (c) the business model used for the operation of the franchise business, is agreed by the franchisor, and is similar to that of other undertakings in respect of which the franchisor has entered into comparable contractual arrangements.
- (6) For the purposes of this regulation—
- (a) the employees of a business are the persons who are employed for the purposes of the business;
 - (b) a “care home” is a care home within the meaning of section 3 of the Care Standards Act 2000⁽⁹⁾ which only provides food to residents of that care home and charges for that service as part of the cost of the accommodation;
 - (c) “contract of employment” means a contract of service, whether express or implied, and (if it is express) whether oral or in writing;
 - (d) “educational institution” means an institution providing education only to pupils below the age of 18;
 - (e) “employee” means an individual who has entered into, or works under, a contract of employment, whether that contract is for full-time or part-time employment;
 - (f) “financial year” means the 12-month period ending on 31st March;
 - (g) “restaurant” means a business whose premises are used mainly for the preparation or sale of food intended for immediate consumption, whether on or off the premises (including a café, coffee shop, fast food or takeaway business).

Restriction on the price promotion of specified food

5.—(1) Subject to paragraph (5), a qualifying person must not offer specified food for sale as part of a volume price promotion (whether in store or on an online marketplace).

- (2) “Volume price promotion” means—
- (a) a multibuy promotion, being the express offer of a financial incentive for buying multiple items compared with buying each item separately (including “3 for the price of 2”, “3 for £10”, or “buy 6 and save 25%”);
 - (b) a promotion that indicates that an item, or any part of an item, is free (including “50% extra free”, or “buy one get one free”).

(3) For the purposes of paragraph (2)(a), a multibuy promotion does not include a relevant special offer.

(4) This regulation applies to promotions that are included on the packaging of food as well as to promotions that are communicated to a consumer via other means.

(5) Where the packaging of specified food includes a volume price promotion, a qualifying person may offer the specified food for sale until the end of the period of 12 months beginning on the day these Regulations come into force.

(9) 2000 c. 14.

Restriction on the price promotion of certain drinks

- 6.—(1) This regulation applies to a drink which is not a prepacked food item and which—
- (a) falls within category 1 of Schedule 1,
 - (b) is less healthy by virtue of scoring 1 or more points in accordance with the Nutrient Profiling Technical Guidance, and
 - (c) is not food to which regulation 3(5) (charity food sales) applies.
- (2) A qualifying person must not offer a free refill promotion on a drink to which this regulation applies.
- (3) In paragraph (2), “free refill promotion” means a promotion that offers the consumer the same drink or another drink to which this regulation applies (including free top-ups of any part of such a drink), for free after consumption of a first drink.

Restriction on the placement of specified food – in store

- 7.—(1) Subject to paragraph (3), a qualifying person must not place specified food inside a store—
- (a) within two metres of a checkout facility, unless the specified food is placed in (but not at the end of) an aisle;
 - (b) within two metres of a designated queuing area, unless the specified food is placed in (but not at the end of) an aisle;
 - (c) in a display—
 - (i) at the end of (but not in) an aisle, where the aisle end is adjacent to a main customer route through the store, or
 - (ii) on a separate structure (such as an island bin, free-standing unit, side stack or clip strip) connected or adjacent to, or within 50cm of, such an aisle end;
 - (d) at any point within the prohibited distance of the midpoint of any public entrance to the store’s main shopping area;
 - (e) in a covered external area.
- (2) This regulation does not apply to—
- (a) stores with a relevant floor area of less than 185.8m²;
 - (b) stores which only or mainly sell food from a single category listed in Schedule 1.
- (3) In this regulation—
- (a) “checkout facility” means a facility intended to be used by consumers to make a purchase, including a self-checkout terminal and a counter at which a cash register is used (including the area behind such a counter);
 - (b) “covered external area” means a covered area, outside and connected to a store’s main shopping area, through which the public passes to enter the main shopping area (such as a foyer, lobby or vestibule);
 - (c) “designated queuing area” means an area set aside and marked for the purpose of providing a place for consumers to wait to make a purchase;
 - (d) “prohibited distance” means the smaller of 15m or the following—

$$\sqrt{0.03 \times a}$$

where a is the store’s relevant floor area;