

## Coronavirus (COVID-19) (/coronavirus)

Guidance and support

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### Guidance

# Calorie labelling in the out of home sector: implementation guidance

Published 17 September 2021

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Applies to: England

## Summary

### Purpose

This guidance document has been developed to help illustrate how the provisions of [The Calorie Labelling \(Out of Home Sector\) \(England\) Regulations 2021 \(the Regulations\)](https://www.legislation.gov.uk/uksi/2021/909/made) work and to provide assistance to those affected by the Regulations in understanding and applying them.

The Regulations come into force from 6 April 2022.

### Legal status

These guidance notes have been produced to illustrate the legal requirements of the Regulations, as well as provide some examples of their practical application and recommendations businesses could implement.

These guidance notes should be read in conjunction with the Regulations themselves. The text should not be taken as an authoritative statement or interpretation of the law, as only the courts have this power. Every effort has been made to ensure that these guidance notes are as helpful as possible. However, it is ultimately the responsibility of individual businesses to ensure their compliance with the law.

### Intended audience

This guidance is aimed primarily at those affected by the provisions in the Regulations, such as businesses implementing the calorie labelling requirements and enforcement authorities enforcing them.

This guidance, and the Regulations to which it refers, apply to food offered for sale in England.

### Contact

For further information contact [childhood.obesity@dhsc.gov.uk](mailto:childhood.obesity@dhsc.gov.uk).

### Introduction

The [government consulted on calorie labelling for food and drink served outside of the home](https://www.gov.uk/government/consultations/calorie-labelling-for-food-and-drink-served-outside-of-the-home) in 2018. Following this the government has introduced legislation to implement mandatory calorie labelling among large food businesses (businesses with 250 or more employees) in the out of home sector.

The out of home sector is generally considered to be any outlet where food or drink is prepared in a way that means it is ready for immediate consumption, on or off the premises.

The most common types of out of home food businesses include restaurants, cafes and takeaways. However, retail businesses, such as supermarkets, are growing contributors to food sold for consumption on the go.

Food and drink that is prepacked is required to display nutritional information, meaning consumers are familiar with seeing calorie content on the majority of items sold in the retail sector, such as supermarkets and convenience stores.

In contrast, the out of home sector typically sells non-prepacked food and is therefore not required to display nutritional information. This makes it difficult for consumers to make informed, healthier decisions when purchasing food from such businesses.

In addition to helping consumers to make healthier decisions, calorie labelling also aims to encourage businesses to reformulate the food and drink they offer and provide lower calorie options for their customers.

This guidance helps to illustrate how the Regulations mandating calorie labelling in the out of home sector for businesses with 250 or more employees should be implemented. Failure to comply with the Regulations may result in a food business being issued with an improvement notice.

While not subject to this regulatory requirement the government encourages smaller food businesses to also voluntarily adopt calorie labelling, as set out in this guidance document. The government will review the implementation of the Regulations for large businesses within 5 years of the Regulations coming into force and will consider extending the requirement to smaller businesses in the future.

## Points to note

These guidance notes also include recommendations and examples for businesses to consider. Recommendations and examples outlined in these guidance notes are not legal requirements of the Regulations.

### Recommendations, examples and further context

Any recommendations, examples or further context on the Regulations can be identified in this document by this style of formatting.

## Businesses in scope

Except for certain exempt businesses outlined in this section, the requirement to calorie label extends to any business with 250 or more employees ('a qualifying business') which offers for sale non-prepacked food or drink suitable for immediate consumption by the person who buys it (see section 'Food in scope' below).

For example, the types of businesses covered by the requirement include (but may not be limited to):

- restaurants, fast food outlets, cafes, pubs and supermarkets
  - home delivery services and third-party apps selling food that is in scope
  - cafes and takeaways within larger shops and venues, such as supermarkets, department stores, and entertainment venues such as cinemas
  - specialist food stores, delicatessens, sweet shops and bakeries
  - contract catering – for example, for events and canteens (see mass catering subsection below)
  - domestic transport businesses including planes, trains, ferries and other forms of water transport within the UK
-

## **Further context**

The definition of an employee in the Regulations is someone who has a contract for full-time or part-time employment. Part-time employees should therefore be included as part of the headcount.

## **Franchises**

For the purpose of determining how many employees a business has, and therefore whether the calorie labelling requirement applies, a business that is carried on pursuant to a franchise agreement is to be treated as part of the franchisor and not as a separate business carried on by the franchisee. Under these Regulations, a franchise agreement is seen to exist where the one undertaking (the franchisee) and another undertaking (the franchisor) agree that the franchisee carries on a business activity which includes the sale of food (the franchise business) and the food, appearance of the premises and business model are agreed by the franchisor and are similar across its franchise network. This does not apply if the agreement is limited to alcohol and the franchisee can determine what other food is provided.

Therefore, in these circumstances, franchisees carrying on trading as a business under a franchise agreement, where the sum of employees operating under the franchise are 250 or more, would be considered qualifying businesses for the purposes of the Regulations and therefore required to calorie label. It is the responsibility of the business selling the food (the franchisee) to ensure that calorie information is displayed in accordance with the Regulations.

Where franchising arrangements do not mandate a common food offer across the franchise network, or only cover the provision of alcoholic drinks (such as some pub arrangements), a franchisee's business is not considered part of the franchisor's for the purpose of determining whether it is a qualifying business.

## **Further context**

The intention is that the Regulations may apply to franchises or arrangements (like symbol groups) where multiple business often operate under the same name or banner. For the purpose of determining how many employees the business has and therefore whether the calorie labelling requirement applies, the business of the symbol group retailer will be treated as part of the business of the franchisor if they meet the requirements for a franchise agreement set out in the Regulation 7(5) and 7(6).

## **Food sold online**

The requirement extends to food that is sold on a website or mobile application, including third party delivery apps. Where food in scope of the Regulations is sold on a website or mobile application, the business responsible for that website or mobile application (the 'remote provider'), irrespective of the size of their business, is required to display the calorie information of food offered for sale by any qualifying business. Where the remote provider offers for sale food which another business has provided, such as third-party delivery apps, the business providing the food must give the remote provider the calorie information for display on the website or mobile application.

In accordance with Article 14 (2) of the Retained EU Regulation 1169/2011, if food is sold by distance selling means, such as online or by phone, calorie information must be made available to the customer when the food is delivered. Means of providing information on delivery to the customer include enclosing a copy of a calorie labelled menu with the order or placing stickers on food containers displaying calorie information. Written calorie information could also be presented to the customer by the member of staff from the business delivering the food, provided it is clear how the written information relates to each food item delivered.

## Mass catering

Calorie labelling is not required in certain establishments when food is provided 'in-house'. However, where the food at that establishment is provided by another organisation with 250 or more employees (such as a contract caterer), calorie information must be displayed. This rule applies to the following establishments:

- an educational institution for those over 18 years old
- a military establishment
- criminal justice accommodation
- a hospital or other medical institution
- a care home or other institution providing social care
- a canteen at a workplace providing food to employees

## Food in scope

Food in scope of the Regulations and therefore requiring calorie labelling is food which is:

- offered for sale in a form which is suitable for immediate consumption
- not prepacked food
- not exempt food

### Further context

For the purposes of this guidance and the Regulations 'food' includes drink and has the same meaning as given in [section 1 of the Food Safety Act 1990](https://www.legislation.gov.uk/ukpga/1990/16/contents) (<https://www.legislation.gov.uk/ukpga/1990/16/contents>).

## 1. Food for immediate consumption

Food is considered suitable for immediate consumption if it is either:

- offered for sale for consumption on the premises on which it is sold
- offered for sale for consumption off the premises and does not require any preparation by the consumer before it is consumed (preparation includes peeling, hulling or washing, cooking, thawing and heating or reheating pre-cooked food)

## 2. Food which is not prepacked food

Food items which are not prepacked food are those which do not fall within the definition of prepacked food in [article 2\(2\) of Retained EU Regulation 1169/2011 on the provision of food information to consumers Regulations](https://www.legislation.gov.uk/eur/2011/1169/contents) (<https://www.legislation.gov.uk/eur/2011/1169/contents>).

This includes but is not limited to food without packaging, food packed on the sales premises at the consumer's request, and food prepacked for direct sale (food that is packed before being offered for sale on the site on which it is sold).<sup>[[footnote 1](#)]</sup>

### 3. Exempt food

#### Certain categories of food sold for consumption off the premises

Exempt food in these categories includes:

- fresh fruit or vegetables, including potatoes, provided that they are not added to other food, or sold as an ingredient in food consisting of more than one ingredient

#### Example

Loose fresh fruit in a supermarket does not need to display calorie information. However, if prepared into a fruit salad, the fruit salad must be calorie labelled.

- unprocessed products consisting of a single ingredient which do not come under the fresh fruit or vegetable category above

#### Example

Herbs, nuts and seeds are examples of single-ingredient items that are not considered fruits or vegetables.

- fish, meats or cheese, provided that the fish, meat or cheese is not added to other food, or sold as an ingredient in food consisting of more than one ingredient

#### Example

Sliced ham, rotisserie chicken or smoked salmon from a fish or meat counter are examples of items that do not need to be calorie labelled if offered for sale for consumption off-premises. However, when fish, meat or cheese is sold as an ingredient in food, such as fish as part of a sushi platter or chicken as an ingredient in a 'build your own' sandwich, calorie information must be displayed.

- loaf of bread or baguette

## **Example**

Loaves of bread (including those with additional ingredients such as seeds or olives) fall under this exemption and do not need to be calorie labelled. However, rolls or buns do not fall under the exemption for loaves and require calorie labelling.

## **Food for particular audiences**

Exempt food for particular audiences includes:

- food that is 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 offered for sale by or on behalf of a charity, at a single event, to raise funds for its charitable activities
- food which is provided at an educational institution for pupils below the age of 18 years old
- food provided (not for payment) to patients at a hospital or other medical establishment, or to residents of a care home or other social care institution
- food served by the armed forces to a member of the armed forces outside a military canteen
- food that is served on international transport (on an aircraft, a train or a ferry) to or from a country that is not part of the United Kingdom

## **Other specific exemptions**

Other specific exemptions include:

- food which is on the menu temporarily, that is for less than 30 consecutive days and a total of 30 days in any year

## **Further context**

This exemption provides flexibility for businesses to make use of temporary menu items to help reduce their food waste, use seasonal produce and offer special menu items at certain points of the year.

- food which is not included on the menu or otherwise offered for sale and which is expressly requested by the consumer to be made available or prepared differently to the way it is usually prepared

## **Example**



Where a customer requests extra cheese on a burger and that extra cheese was not a menu option or where a customer requests a different type of milk in their coffee which deviates from that which is advertised for sale by the business.

- alcoholic drinks over 1.2% ABV (alcohol by volume)
- condiments which are provided to be added by the consumer to their food (this exemption does not include condiments which are part of the food served)

## Examples

### Exempt condiments (added by the consumer)

Salt and pepper, coffee syrups added after purchasing, tomato ketchup, mint sauce, mustard, mayonnaise, horseradish sauce, bread sauce, vinegar and so on, where they are available to be added by a customer.

### Condiments in scope of the Regulations (incorporated into dish or purchased as a discrete item on a menu or menu board)

Tomato ketchup on a burger in a bun, dressings included in salad dish, mayonnaise in fishfinger wrap, mustard in hot dog roll, pickle with a cheese ploughman's and so on.

## Examples of food in scope

Examples of food in scope of the policy includes (but is not an exhaustive list of the types of business or food and drinks options which could be in scope):

- bakery stores: hot beverages (all varieties) (but not prepacked cold drinks, such as frappes, milkshakes, and low or no alcohol drinks), sausage rolls, pies, pasties, pizza slices, breakfast rolls, sandwiches, toasties, pastries, biscuits and cakes
- coffee shops or cafes: hot beverages (all varieties) (but not prepacked cold drinks, such as milkshakes, frappes, smoothies), biscuits, cakes, muffins, pastries, sandwiches, paninis, toasties, wraps, soups, pasta bowls, salads, porridge, cereals and yogurts
- convenience grab and go: hot beverages (all varieties) (but not prepacked cold drinks), bakery items (such as pastries, cakes, sausage rolls, pasties), ready to eat pies pizza and sandwiches
- quick service restaurants: hot drinks (all varieties) (but not prepacked cold drinks, such as frappes, milkshakes, and low or no alcohol drinks), breaded chicken pieces, burgers, fries, onion rings, pizza, pasta, rice boxes, salad boxes, wraps, ice cream sundaes, cakes and muffins
- restaurants or canteens: hot beverages (all varieties) (but not prepacked cold drinks, such as frappes, milkshakes, and low or no alcohol drinks), starters, sides or small plates (such as garlic bread, loaded chips, nachos, chicken strips), mains (such as pizza, sausages and mash, fish and chips, pasta dishes, roast meals), buffets and 'build your own' (such as salad bars and all

you can eat buffets), desserts and 'build your own' (such as apple crumble and custard, chocolate brownie with ice cream, 'build your own' ice cream), and breakfast or brunch (such as cooked breakfast, bacon sandwich, eggs benedict)

- sandwich bars: hot beverages (all varieties) (but not prepacked cold drinks, such as frappes, milkshakes, and low or no alcohol drinks), sandwiches including 'build your own' sandwiches prepared at the consumer's request, filled rolls, baguettes, bagels, salads, pasta bowls and cakes
- supermarket grab and go: hot beverages (all varieties) (but not prepacked cold drinks), in-store bakery items (such as loose pastries, cakes, biscuits), ready to eat, delicatessen items (such as sushi, cooked pizza) and sandwiches

### **Further context**

The Regulations require calorie information to be displayed at the point where a customer chooses what food to purchase, such as on menus and on labels next to food on display. The Regulations do not require calorie information to be displayed on advertising and promotional materials, for example television adverts, billboards, and promotional posters.

## **Displaying calorie information**

Businesses selling food in scope of the Regulations must:

- display the energy content of the food in kilocalories (kcal)
- reference the size of the portion to which the calorie information relates
- display the statement that 'adults need around 2000 kcal a day' (for the purposes of this guidance, this statement will be referred to as the 'statement of daily calorie needs')

Calorie information, the reference to portion size, and the statement of daily calorie needs must be displayed clearly and prominently at the 'point of choice' for the customer; this is considered as any place where customers choose what food to buy. For businesses where consumers may choose their food in several locations, such as a menu on the premises, a display case on the premises, and an online menu, businesses are required to provide calorie information at each.

When implementing the Regulations, there are 2 principal types of 'point of choice' a business should consider, and labelling requirements vary accordingly. They are:

- food chosen from a menu (such as menu boards, electronic menus, online and third-party delivery app menus)
- food chosen from items on display (such as display cases, shelves, and buffets)

This section outlines how calorie information should be displayed with reference to the 2 types of 'point of choice' outlined above. Graphics illustrating calorie labelling in different scenarios can be found in Annex C.

In all cases, the information businesses are required to display must be easily visible, clearly legible, and not in any way hidden or obscured by other written or pictorial matter, or any other intervening material. Ensuring the information is easily visible could be achieved by using the same font type or

style of lettering, colour, size and background of the description or price of the corresponding food item.

The Regulations permit businesses to provide a menu without the required calorie information at the express request of the customer. While a menu without calorie information can be provided at the request of the customer, a menu with the required calorie information must be offered to the customer by default.

### **Further context**

There are people, such as those living with eating disorders, who may find seeing calorie information on menus and labels difficult. Therefore, the Regulations permit a business to provide a menu without the required calorie information where the consumer expressly requests it (at the business's discretion).

Businesses are encouraged to consider the needs of their customers and have a menu without calorie information available at the request of their customers where possible.

## **1. Displaying calorie content**

Energy content of food and drink must be calculated in kilocalories (kcal) and be displayed:

- where food is chosen from a menu: on the menu, next to the description or the price of the food
- where food is chosen from items on display: on a label identifying the food, next to, or in close proximity to each item of food which may be chosen, and displayed in a position which ensures that the label can be read by anyone choosing that food

For prepacked for direct sale food chosen from items on display, calorie information may be displayed on its packaging as an alternative or in addition to a label next to or in close proximity to the item. Prepacked for direct sale items that are advertised for sale on a menu must have calorie information displayed on the menu.

For most items a business sells, displaying calorie information on a menu will be straightforward. However, for some items, such as 'build your own', coffee menu boards or meal deals, and other customisable items there may be a lot of potential combinations the customer could select. Businesses must ensure that they display the information as required under the Regulations where the consumer chooses from a menu, or from items on display, as they apply in the particular circumstances. Below are some examples of ways which could be considered.

### **Examples**

#### **'Build your own' and meal deals**

A 'build your own' sandwich shop could provide calorie information for the base product, the bread, along with calorie information for a standard portion for each of the potential additions the customer could add to the sandwich.

A business selling meal deals could, instead of providing calorie information for all potential combinations of items a customer could choose, provide calorie information for each of the individual items the customer could choose from as part of their meal deal.

#### **Coffee menu board**

Businesses such as coffee shops, which give customers the ability to tailor their drinks with different milk options may have difficulty fitting the information required in respect of different combinations on a menu board. In considering ways of displaying calorie information applicable to their situation, businesses could consider, for example, providing calorie information on their menu board using the standard milk offer (for example semi-skimmed milk) and refer customers to a menu which displays the calorie content of coffees made with the different milk varieties on offer.

#### **Further context – kilojoule labelling**

The Regulations do not require businesses to display energy content in kilojoules (KJ) as evidence suggests that kilojoules are a unit of energy measurement used by only a minority of the population. However, there is nothing in the Regulations preventing businesses from including kilojoule information in addition to kilocalorie information.

## **2. Referencing portion size**

Businesses are required to display the energy content of a single portion of the food or, where the item has been prepared by the business for consumption by more than one person, of the whole item.

To better inform the customer, it is important that calorie information is displayed in a way which makes it clear the portion size to which it is referring. Therefore, the Regulations also require businesses to indicate the size of the portion to which the calorie information relates, or in the case of an item prepared for more than one person, the number of people it is intended to serve. Information referring to portion size should be displayed as per the requirements where food is chosen from a menu or items on display set out in the section above on 'displaying calorie content'.

#### **Example**

Where items are intended for consumption by a single person, such as single serve item on a menu or a single portion or slice of cake in a bakery, calorie information must be provided for that item.

Businesses are not required to state that a single portion serves one. On a menu, the description of the menu item is a sufficient description of the portion size which the calorie information is referring to. Where an item is chosen from items on display, such as choosing a chocolate brownie from a tray of brownies, businesses should make clear to the customer the size of the portion to which the calorie information relates (for example chocolate brownie, 350kcal per slice).

If an item is intended for consumption by multiple people, such as a sharing platter or whole cake, calorie information must be provided for the whole item, along with information on how many people that item is intended to serve (for example 'serves 3 people' or 'serves 2 to 3 people').

Calorie information must be given per portion (for example per item, per scoop) and not per weight or measure (for example per 100g or 100ml). This can be achieved in a few different ways depending on the particular scenario and businesses should consider how to make this information the most meaningful to consumers. Annex C provides illustrations of how this information could be displayed in different scenarios.

### **Example**

#### **For 'pick and mix'**

Where food items (such as sweets or nuts) are selected by the customer, businesses should display calorie information 'per scoop' or other portion size (for example giant snake sweet, 210 calories per item).

#### **Where food is sold by weight**

A business should display calorie information by portion. And they could indicate how many grams are in a standard portion, for example brazil nuts, 164 calories per serving (25g).

## **3. Displaying the statement of daily calorie needs**

Reference information about people's average daily calorie needs is an important tool that helps people to understand their food choices in the context of the rest of their diet. It is important to show the consumer how many calories an average adult needs in a day by including the statement 'adults need around 2000 kcal a day'. The wording in quotation marks is prescribed by the Regulations and cannot be amended.

The statement of daily calorie needs must be displayed:

a) where food is chosen from a menu, once on every page of the menu (and where the menu is a double-sided card, on each side of the card). Where food and drink items are displayed on a menu board, in a position on the boards which ensures the statement can be read by a person looking at the boards

b) otherwise, in a prominent position where the statement can be seen and read by anyone buying food at the point at which they choose what to buy – for example, when food is chosen from items on display

### **Example**

The statement of daily calorie needs must be displayed so that it is easily visible by the consumer when looking at the item they are purchasing. When displaying calorie information for foods 'on display', businesses will need to consider the size of their display and the location or frequency of the statement of daily calorie needs so it can be easily visible by consumer when making their purchasing decisions.

For prepacked for direct sale items chosen from items on display, the statement of daily needs may be displayed on its packaging as an alternative or in addition to a label next to or in close proximity to the item.

Children's menus are required to display calorie information. However, they are not required to display the statement 'adults need around 2000 kcal a day' as the calorie needs of children are less. The statement does not need to be included on a menu which only lists food for children, or on a page in a menu if the page only lists food for children.

## **Calculating calorie content**

The calorie content displayed should be calculated using the conversion factors listed in Annex XIV of the Retained EU Regulation 1169/2011 on the provision of food information to consumers and should be average values based on either:

- the manufacturer's analysis of the food
- a calculation from the known or average values of the ingredients used
- a calculation from generally established and accepted data (in the UK this usually refers to the McCance and Widdowson's Composition of Foods dataset; other established data may be more suitable for imported foods, for example EuroFIR or USDA Food Composition Data may be more appropriate for foods imported from the United States)

A combination of these methods is permissible for the same menu, or even the same product if it is made up of different constituent parts.

## **Accuracy of calorie information**

Businesses should develop and implement processes to ensure that calorie information is as accurate as possible to ensure the food can be reproduced consistently each time it is made. However, in view of the inherent variation in ingredients, processing of foods, and exact portion size a tolerance of plus or minus 20% would be considered an acceptable margin of difference between actual and declared calorie values. Enforcement officers should consider factors that may influence the accuracy of calorie information. For example, for items that are self-service, using measures such as 'per scoop', the exact portion size may vary more significantly than for portions which are not self-service.

### **Further context – responsibility of suppliers**

There may be instances where the qualifying business may not produce the food it sells, instead relying on a supplier. In this instance it may be difficult for the qualifying business to know the calorie content of the food it sells, therefore it is important that qualifying businesses and suppliers work together to ensure that the qualifying business has the information it needs in

order to display accurate calorie information. Retained EU Regulation 1169/2011 on the provision of food information to consumers (Article 8) requires suppliers to provide information to the retailer to enable the provision of mandatory information to the final consumer.

### **Further context – substitutions**

Due to variations in supply, or to prevent food waste, some businesses may need to substitute ingredients on their menus.

The obligation to calculate calorie content will continue to apply to the food as sold and there is a tolerance for plus or minus 20%, as explained in the 'Enforcement' section below.

Depending on the substitution and the length of time during which it is in place, the 30 day exemption may apply if the substituted ingredient changes the nature of the meal to such an extent that it constitutes a new menu item.

### **Example**

If a business substitutes a different type of cheese for a macaroni cheese dish, then the business should calculate the total calories of the amended dish, if the ingredient substitution does not fall within the 20% tolerance allowed.

If a business substitutes halloumi for a vegetable burger, changing the nature of the meal, then the halloumi burger does not require calorie labelling if it is on the menu for 30 days or less, since this would count as a new menu item and fall within the exemption.

### **Recommendation**

To demonstrate the accuracy of calorie calculation it will be helpful if businesses keep records to explain to enforcement officers how calorie information has been calculated for recipes.

## **Enforcement**

The requirements in the Regulations are to be enforced by local authorities in their respective areas. Compliance with these Regulations can be included as part of other enforcement activities, which is in line with the Food Law Code of Practice ensuring compliance with food safety, traceability, and labelling requirements.

Local authorities have discretion in how they enforce the Regulations, including the accuracy of calorie information. Some methods to assess the accuracy of calorie content, such as laboratory analysis, may be expensive and burdensome methods to assess compliance.



Therefore, it is expected that enforcement officers will take account of the method used by businesses to generate the calorie information and that they will give due consideration to the constraints and variability caused by the different approaches. It is not expected that enforcement officers will need to conduct further investigation if they consider the method that has been used to calculate information to be appropriate and the calorie total displayed, within plus or minus 20% of the actual total or what an officer may consider feasible.

When conducting inspections, it is expected that enforcement officers will check:

- the presence of calorie information on food and drink items that are in scope of the policy
- calorie information is displayed as per the requirements under the Regulation
- the method businesses have used to calculate calorie content is considered appropriate and reliable
- calorie information is appropriately displayed on any online presence that the business may have, including third party delivery platforms

## Recommendation

Some businesses are likely to have a partnership with a [Primary Authority](https://www.gov.uk/government/publications/primary-authority-overview) (<https://www.gov.uk/government/publications/primary-authority-overview>). In this scenario, it is recommended that businesses use their Primary Authority relationship as their first point of contact.

## Penalties

If an officer has reasonable grounds for believing that the proprietor of a qualifying business is failing to comply with the Regulations, the authorised officer may serve an improvement notice on the proprietor, providing the business with the opportunity to secure compliance. However, improvement notices need not be the first action upon an enforcement officer uncovering a potential infraction. Enforcement officers are permitted and encouraged to have initial conversations with businesses to resolve potential non-compliance before issuing formal notices.

Any person who fails to comply with an improvement notice is guilty of an offence. Where satisfied beyond reasonable doubt that a person has committed an offence, the enforcement authority may impose a civil sanction under the Regulatory and Sanctions Act 2008 (**RESA**) of a fixed monetary penalty (**FMP**) of £2,500 as an alternative to criminal prosecution.

In accordance with the principles in **RESA**, it is expected that enforcement authorities will exercise their powers to impose an **FMP** in a way which is proportionate, consistent, and targeted only at cases in which action is needed. The enforcement approach will be for enforcement officers to consider on a case-by-case basis, when exercising their functions.

**FMPs** provide a means to enforce non-compliance with the Regulations by means of a civil penalty as an alternative to prosecution. However, the enforcement authority will retain the power to bring a criminal prosecution if they consider it appropriate. It is expected that these instances would be rare, such as cases where there had been deliberate and/or repeated breach of the Regulations.

## Annex A: healthier menus



There is scope for calorie labelling in the out of home sector to be used as part of a wider set of measures to provide healthier choices and tackle obesity.

Public Health England (PHE) published advice to food businesses in [Healthier Catering Guidance for Different Types of Businesses](https://www.gov.uk/government/publications/encouraging-healthier-out-of-home-food-provision) (<https://www.gov.uk/government/publications/encouraging-healthier-out-of-home-food-provision>), which sets out key guiding principles for all food and drinks supplied.

## **Reduce portion size**

Eating too many calories can lead to excess weight and obesity, which in turn increases the risk of diabetes, heart disease and some cancers. Even small portion size reductions at each meal can make a real difference.

## **Reduce fats and frying practices**

High-fat foods contain lots of calories, which can lead to weight gain. This in turn can lead to diabetes, heart disease and some cancers. Reducing saturated fat intakes can lower blood cholesterol and reduce the risk of heart disease.

## **Reduce salt**

It's important to reduce salt intakes as too much salt can lead to high blood pressure and an increased risk of stroke and heart disease.

## **Reduce sugar**

Eating too many foods and drinks high in sugar can contribute to excess calories and lead to weight gain, which in turn increases the risk of heart disease, type 2 diabetes, stroke and some cancers. It is also linked to tooth decay.

## **Increase the content of fruit, vegetables and fibre (while not adding more fat, sugar or salt)**

Fruit and vegetables are typically low in calories and good sources of vitamins, minerals and dietary fibre; eating plenty of these and higher fibre foods will help to promote digestive health and can help prevent heart disease, stroke and some cancers.

## **Promote healthier options**

It is important to improve the nutrient content of all offerings or foods on the menu and you can additionally develop promotions to give small businesses a unique selling point and encourage customers to pick a healthier meal or snack to eat.

## **Procuring healthier ingredients and food products from suppliers**

Businesses should check the labels of products they buy, or ask their supplier to assist them, to choose options with higher fibre and less salt, sugar and fats.

This healthier catering advice describes simple practical changes that different types of businesses can make when procuring, preparing, cooking, serving and promoting food. This guidance builds on previous work to support local businesses, for example on salt reduction, and reflects current government dietary recommendations for sugars, the Eatwell Guide and 5 A Day advice. By gradually making the simple changes covered in these tips, businesses can help their customers make healthier choices.

## Annex B: reduction and reformulation programme

Out of home businesses working within the food industry are also encouraged to engage with the voluntary [reduction and reformulation programme](https://www.gov.uk/government/collections/sugar-reduction) (<https://www.gov.uk/government/collections/sugar-reduction>) that PHE oversees, as set out in the government's Childhood Obesity Plan chapters 1 and 2 ([COP 1](https://www.gov.uk/government/publications/childhood-obesity-a-plan-for-action) (<https://www.gov.uk/government/publications/childhood-obesity-a-plan-for-action>) and [COP 2](https://www.gov.uk/government/publications/childhood-obesity-a-plan-for-action-chapter-2) (<https://www.gov.uk/government/publications/childhood-obesity-a-plan-for-action-chapter-2>)) and chapter 3 in the prevention Green Paper [Advancing our health: prevention in the 2020s](https://www.gov.uk/government/consultations/advancing-our-health-prevention-in-the-2020s) (<https://www.gov.uk/government/consultations/advancing-our-health-prevention-in-the-2020s>).

This programme is designed to help children and support families to reduce their sugar, calorie and salt consumption through action by the food industry to reformulate and reduce portion size. The commitments made in the childhood obesity plans apply to all sectors of the food and drink industry, including the eating out of home sector, and government has been very clear about its expectations that all those providing food and drink have a responsibility to act. The approach of reformulating popular products does not solely rely on changing an individual's behaviour, which is more difficult to achieve, and therefore supports the healthier choice being the easier choice.

Based on PHE's analysis of the data, it is evident that there is a large range of calories available in everyday purchased foods and meals. Calorie ranges available in products sold in those businesses that provide the food and meals that we buy and eat out of the home are substantially larger than retailer and manufacturer branded products. Portion sizes available are also larger.

The calorie reduction programme challenges the food industry to reduce excess calories in everyday foods by up to 20% by 2024 in product categories that contribute to significantly to children's calorie intakes (up to the age of 18 years). A maximum calorie per single serve portion guideline has also been set for most product categories in the sugar and calorie reduction programmes. Shifting consumer purchasing towards lower calorie options provides an additional mechanism for action.

See [further information relating to this programme](https://www.gov.uk/government/publications/calorie-reduction-guidelines-for-the-food-industry) (<https://www.gov.uk/government/publications/calorie-reduction-guidelines-for-the-food-industry>).

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1. Food prepacked for direct sale is food that is packed before being offered for sale by the same food business to the final consumer either on the same premises, on the same site or 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.
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**OGL**

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