

Draft Regulations laid before Parliament under section 62(3) of the Regulatory Enforcement and Sanctions Act 2008, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2021 No.

FOOD, ENGLAND

PUBLIC HEALTH, ENGLAND

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

Made - - - - *****

Coming into force - - *6 April 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(a) by sections 36, 39, 52, 54, 55, 62(2), 63 and 65 of the Regulatory Enforcement and Sanctions Act 2008(b) (“the 2008 Act”) and by section 105 of the Deregulation Act 2015(c) makes the following Regulations.

The Secretary of State has carried out consultations in accordance with sections 48(4) of the Food Safety Act 1990 and section 60 of the 2008 Act.

The Secretary of State is satisfied in accordance with section 66 of the 2008 Act that food authorities (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 6 April 2022.

(2) These Regulations extend to England and Wales, and apply in relation to England only.

(a) 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 by regulation 5(a) of the S.I. 2004/2990. There are other amendments to sections 6, 16 and 48 not relevant to this instrument.

(b) 2008 c.13. Section 39(4) was amended by paragraph 12(2) of Schedule 5 to S.I. 2015/664.

(c) 2015 c. 20.

Interpretation

2. In these Regulations—

“consumer” has the meaning given in section 2(3) of the Consumer Rights Act 2015(a);

“prepacked food”(b) means any single item for presentation as such to the final consumer, 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;

“specified food” has the meaning given in regulation 3;

“qualifying business” has the meaning given in regulation 4;

“the 2004/05 Nutrient Profiling Model” means the tool developed by the Food Standards Agency to identify food which is high in fat, salt or sugar(c).

Specified food

3.—(1) For the purposes of these Regulations “specified food” is prepacked food which—

- (a) falls within any of the categories listed in Schedule 1 to these Regulations,
- (b) is high in fat, salt or sugar, and
- (c) is not food to which paragraph (3) applies.

(2) For the purposes of this regulation—

- (a) food that is not a drink is high in fat, salt or sugar if it scores 4 or more points under the 2004/05 Nutrient Profiling Model;
- (b) a drink is high in fat, salt or sugar if it scores 1 or more points under the 2004/05 Nutrient Profiling Model.

(3) 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

(a) 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.

(b) “Food” in these Regulations takes its meaning from section 1(1) of the Food Safety Act 1990, which 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. Article 2 of that Regulation provides that:

[...] ‘food’ means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be, ingested by humans.

‘Food’ includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment. It includes water after the point of compliance as defined in Article 6 of Directive 98/83/EC and without prejudice to the requirements of Directives 80/778/EEC and 98/83/EC.

‘Food’ shall not include:

- a) feed;
 - b) live animals unless they are prepared for placing in the market for human consumption;
 - c) plants prior to harvesting;
 - d) medicinal products within the meaning of Council Directives 65/65/EEC and 92/72/EEC;
 - e) cosmetics within the meaning of Council Directive 76/768/EEC;
 - f) tobacco and tobacco products within the meaning of Council Directive 89/622/EEC;
 - g) narcotic or psychotropic substances within the meaning of the United Nations Single Convention on Narcotic Drugs, 1961, and the United Nations Convention on Psychotropic Substances, 1971;
 - h) residues and contaminants.
- (c) An electronic copy of guidance on the application of the 2004/05 Nutrient Profiling Model can be found at <https://www.gov.uk/government/publications/the-nutrient-profiling-model>. Hard copies of this guidance can be obtained by request to Obesity Team, Department of Health and Social Care, 39 Victoria Street, London, SW1H 0EU.

- (b) offered for sale by or on behalf of a charity, at a single event, to raise funds for its charitable activities.
- (4) For the purposes of paragraph (3)—
 - (a) “charity” has the meaning given by section 1 of the Charities Act 2011(a);
 - (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 (reading the reference in section 2(1) to the law of England and Wales as including a reference to the law of Scotland and the law of Northern Ireland).

Qualifying businesses

- 4.**—(1) For the purposes of these Regulations a business is a “qualifying business” if—
- (a) it sells to consumers (whether in store or online)—
 - (i) any prepacked food, or
 - (ii) any drinks to which regulation 6(1) applies,
 - (b) on the first day of the financial year during which any such sale took place, it had 50 or more employees, and
 - (c) it is not an exempt business.
- (2) A business is an exempt business if it is—
- (a) an institution providing education to pupils below the age of 18;
 - (b) a canteen at a work-place unless paragraph (3) applies;
 - (c) a military establishment or prison (other than a restaurant run at a prison which offers food to the public);
 - (d) a care home (within the meaning of section 3 of the Care Standards Act 2000(b)) which only provides food to residents of the care home and charges for that service as part of the cost of the accommodation.
- (3) This paragraph applies if the catering services at a work-place canteen are provided for the employer by another business having 50 or more employees on the first day of the financial year during which any such services are provided.
- (4) 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.
- (5) For the purposes of paragraph (4), a “franchise agreement” exists where one undertaking (“the franchisee”) and another undertaking (“the franchisor”) agree that the franchisee carries on a business activity which includes the sale or distribution of food (“the franchise business”), and paragraph (6) applies to the franchise business.
- (6) This paragraph applies if one or more of—
- (a) the products provided in the franchise business;
 - (b) the internal or external appearance of the premises where the franchise business is carried on; or
 - (c) the business model used for the operation of the franchise business,

(a) 2011 c. 25.

(b) 2000, c.14. Section 3 provides that an establishment is a care home if it is not a hospital (within the meaning of the National Health Service Act 2006), a children’s home, or of a description excepted by regulations, and if it provides accommodation, together with nursing or personal care, for any of the following persons:

- a) persons who are or have been ill;
- b) persons who have or have had a mental disorder;
- c) persons who are disabled or infirm;
- d) persons who are or have been dependent on alcohol or drugs.

are agreed by the franchisor, and are similar to that of other undertakings in respect of which the franchisor has entered into comparable contractual arrangements.

(7) 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) “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;
- (c) “contract of employment” means a contract of service, whether express or implied, and (if it is express) whether oral or in writing;
- (d) “financial year” means the 12-month period ending on 31st March;
- (e) “military establishment” means an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence;
- (f) “prison”—
 - (i) includes any youth detention accommodation within the meaning of section 107(1) (detention and training orders) of the Powers of Criminal Courts (Sentencing) Act 2000(a), but
 - (ii) does not include any naval, military or air force prison.

Restrictions on the price promotion of specified food

5.—(1) Subject to paragraph (5), a qualifying business must not offer volume price promotions on specified food (whether the specified food is offered in store or online).

(2) “Volume price promotion” means—

- (a) a multibuy promotion, meaning the offer of a discount or special price for buying multiple items compared with the price for buying each item separately (for example “three for the price of two”, “3 for £10”, “buy 6 and save 25%”);
- (b) a promotion that indicates that a product, or any part of a product, is free (for example “fifty per cent extra free”, or “buy one get one free”).

(3) For the purposes of paragraph (2)(a), “multiple items” includes—

- (a) more than one of the same item; and
- (b) different items from within one of the categories in Schedule 1.

(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 business may offer the specified food for sale until 5 April 2023.

Restrictions on the price promotion of certain drinks

6.—(1) This regulation applies to drinks which are not prepacked food and which—

- (a) fall within category 1 of Schedule 1,
- (b) are high in fat, salt or sugar by virtue of scoring 1 or more points under the 2004/05 Nutrient Profiling Model, and
- (c) are not food to which regulation 3(3) (charity food sales) applies.

(2) A qualifying business must not offer a free refill promotion on drinks to which this regulation applies.

(a) 2000 c. 6. Section 107(1) has been amended by section 34(5) and (6)(a), (b) and (c) of the Offender Management Act 2007 (c. 21) and para 12 of Schedule 9 to the Criminal Justice and Courts Act 2015 (c. 2).

(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, for free (including free top-ups of any part of a drink).

Restrictions on the placement of specified food – in store

7.—(1) Subject to paragraph (3), a qualifying business must not place specified food inside a physical store —

- (a) within two metres of a checkout area;
- (b) within two metres of a designated queuing area, unless the specified food is placed in a main shopping aisle;
- (c) in an end-of-aisle display;
- (d) [OPTION 1: in the prohibited entrance area];
- (e) [OPTION 2: at any point within the prohibited distance of the midpoint of any public entrance to the store’s main shopping area];
- (f) in a covered external area.

(2) In paragraph (1)—

- (a) “checkout area” means a point in the store intended to be used by consumers to pay for products, including a self-checkout till and a counter at which a cash register is used (including the area behind such a counter);
- (b) “designated queuing area” means an area where consumers are intended to queue when waiting to complete a purchase;
- (c) [OPTION 1: “prohibited entrance area” means an area immediately inside each public entrance to the store’s main shopping area, being a square—
 - (i) of area equal to the smaller of 225m² or 5% of the store’s floor area, and
 - (ii) drawn so one edge of the square coincides with the line of the entrance, with the midpoint of that edge coinciding with the midpoint of the entrance.irrespective of whether such area is obstructed by walls or other structural features of the store];
- (d) [OPTION 2: “the prohibited distance” means a distance being the smaller of 15m or the following—

$$\sqrt{(0.05 \times a)}$$

where a is the store’s floor area].

(3) This regulation does not apply to—

- (a) stores with a floor area of less than 185.8m²;
- (b) stores which only or mainly sell food from a single category listed in Schedule 1.

(4) In this regulation—

- (a) “covered external area” means a covered area outside a store’s main shopping area connected to the store and through which the public passes to enter the store (such as a foyer, lobby or vestibule);
- (b) “floor area” means an area equal to the store’s main shopping area;
- (c) “main shopping area” includes all service areas accessible to the public (such as deli and checkout counters and the areas behind them) but excludes external covered areas and areas with no public access (such as backrooms and storerooms).

Restrictions on the promotion of specified food – online

8.—(1) Subject to paragraphs (3) and (4), a qualifying business must not promote specified food on an online marketplace—

- (a) on an entry page (whether or not the consumer enters the online marketplace via the entry page);
- (b) while a consumer is searching for or browsing products other than specified food;
- (c) while a consumer is searching for or browsing specified food, unless the promoted food falls within the same Schedule 1 category;
- (d) on a page not opened intentionally by the consumer (such as a “pop-up” or “pop-under” page);
- (e) on a favourite products page, unless the consumer has previously purchased the promoted food or intentionally identified it as a favourite product;
- (f) on a checkout page.

(2) For the purposes of this regulation—

- (a) “entry page” means any of—
 - (i) an online marketplace’s highest level public page;
 - (ii) the highest level public page of an online marketplace’s grocery section;
 - (iii) a page containing pre-determined offers to which a consumer is directed on entering an online marketplace (a landing page);
- (b) “checkout page” means a page shown to a consumer as part of the checkout process, such as a page listing items the consumer has so far selected for purchase or a page dealing with payment, collection or delivery;
- (c) “favourite products page” means a page opened by a consumer for the purpose of browsing products they have previously purchased or intentionally identified as favourite products;
- (d) “promote”—
 - (i) means offer for sale or otherwise present in a way intended to attract the attention of a consumer (including “in case you missed it” or, except on a favourite products page, “previously purchased” recommendations);
 - (ii) does not include any presentation of third-party advertising material which is not in the direct control of the qualifying business.

(3) Paragraph (1) does not prohibit promoting specified food on a page opened intentionally by a consumer for the purpose of browsing special offers generally.

(4) This regulation does not apply to stores which only or mainly sell food from a single category listed in Schedule 1.

Enforcement

9. Each food authority must enforce and execute these Regulations within its area.

Improvement notice

10. If an authorised officer of a food authority has reasonable grounds for believing that a person is failing to comply with regulation 5, 6, 7 or 8, the authorised officer may, by a notice served on that person (in these Regulations referred to as an “improvement notice”)—

- (a) state the officer’s grounds for believing that the person is failing to comply with regulation 5, 6, 7 or 8;
- (b) specify the matters which constitute the person’s failure so to comply;

- (c) specify the measures which, in the officer’s opinion, the person must take in order to secure compliance; and
- (d) require the person to take those measures, or measures that are at least equivalent to them, within such period as may be specified in the notice.

Offences

11. A person commits an offence if they fail to comply with an improvement notice served under regulation 10.

Sanctions

12.—(1) A person guilty of an offence under regulation 11 is liable on summary conviction to a fine.

(2) Schedule 2 makes provision for fixed monetary penalties.

Guidance as to use of fixed monetary penalties

13.—(1) Each food authority must publish guidance containing information as to—

- (a) the circumstances in which a fixed monetary penalty is likely to be imposed under these Regulations;
- (b) the circumstances in which it may not be imposed;
- (c) the amount of the penalty;
- (d) how liability for the penalty may be discharged and the effect of discharge; and
- (e) a person’s rights to make representations and objections and their rights of appeal.

(2) The food authority must revise the guidance where appropriate.

(3) The food authority must consult with such organisations as appear to them to be representative of interests likely to be substantially affected by the guidance before publishing any guidance or revised guidance.

(4) The food authority must have regard to the guidance or revised guidance in exercising its functions under these Regulations.

Publication of enforcement action

14.—(1) Each food authority must publish reports from time to time.

(2) The reports referred to in paragraph (1) must specify—

- (a) the cases in which a fixed monetary penalty has been imposed, except where it has been overturned on appeal;
- (b) the cases in which liability to the fixed monetary penalty has been discharged pursuant to paragraph 3(2)(c) of Schedule 2 to these Regulations.

(3) Nothing in this regulation authorises the processing of personal data where doing so would contravene data protection legislation, and for these purposes “personal data” and “data protection legislation have the same meanings as in section 3 of the Data Protection Act 2018(a).

Review

15.—(1) In addition to the review carried out under section 67 of the 2008 Act (Review), the Secretary of State must from time to time carry out a review of the regulatory provisions of these Regulations (including Schedule 1) and publish a report setting out the conclusions of the review.

(a) 2018 c. 12.

(2) The first report must be published before the expiry of the period of five years beginning on the date on which these Regulations come into force.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) A report published under this regulation must, in particular—

- (i) set out the objectives intended to be achieved by the regulatory provisions of these Regulations;
- (ii) assess the extent to which those objectives are achieved;
- (iii) assess whether those objectives remain appropriate; and
- (iv) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation “regulatory provision” has the same meaning as in 32(4) of the Small Business, Enterprise and Employment Act 2015.

Application of various sections of the Food Safety Act 1990

16.—(1) The provisions of the Act set out in paragraph (2) apply for purposes of these Regulations—

- (a) as if any reference in those provisions to the Act, or to any Part of the Act, were a reference to these Regulations;
- (b) with any modifications specified in paragraph (2).

(2) The provisions of the Act applying, as modified, are—

- (a) section 3 (presumptions that food intended for human consumption);
- (b) section 20 (offences due to fault of another person);
- (c) section 21 (defence of due diligence), as if —
 - (i) subsections (2) to (4) applied in relation to an offence under these Regulations as they apply in relation to an offence under section 15, and
 - (ii) in subsection (4)(b) the reference to “sale or intended sale” included “promotion or presentation”;
- (d) section 30(8) (which relates to documentary evidence);
- (e) section 33(1) (obstruction etc of officers);
- (f) section 33(2), as if the reference to “any such requirement as is mentioned in subsection (1)(b) above” were a reference to any such requirement as is mentioned in that subsection as applied by sub-paragraph (e);
- (g) section 34 (time limits for prosecutions);
- (h) section 35(1) (punishment of offences), in so far as it relates to offences under section 33(1) as applied by sub-paragraph (e);
- (i) section 35(2) and (3), in so far as it relates to offences under section 33(2) as applied by sub-paragraph (f);
- (j) section 36 (offences by bodies corporate);
- (k) section 36A (offences by Scottish partnerships);
- (l) section 44 (protection of officers acting in good faith); and
- (m) section 50 (service of documents).

Address
Date

Name
Parliamentary Under Secretary of State
Department

SCHEDULE 1

Regulation 3

Categories of food

Category 1: Non-alcoholic soft drinks with added sugar which are either ready to drink or which, to be made ready to drink, must be processed.

For the purposes of this category—

- (a) “added sugar” means sugar added to a drink during production which is of a type or in such quantity not naturally occurring in the other ingredients;
- (b) “non-alcoholic” means with a content of not more than 1.2% alcohol by volume;
- (c) “processed” means one or more of the following—
 - (i) diluted with water;
 - (ii) mixed with crushed ice;
 - (iii) processed to make crushed ice;
 - (iv) mixed with carbon dioxide;
- (d) “soft drinks” means—
 - (i) still or carbonated water-based drinks;
 - (ii) milk-based drinks;
 - (iii) fruit or vegetable juice-based drinks;
- (e) “sugar” includes all monosaccharides and disaccharides, including—
 - (i) all types of cane and beet sugar;
 - (ii) sugar from other sources such as coconut palm sugar;
 - (iii) crystalline sucrose, invert sugar, dextrose, molasses;
 - (iv) sugars in honey, treacle, malt extract and all types of syrup including malt syrup, fruit syrup, rice malt syrup, corn syrup, high-fructose corn syrup, maple syrup, glucose syrup, glucose-fructose syrup;
 - (v) fructose, sucrose, glucose, lactose, hydrolysed lactose and galactose added as an ingredient;
 - (vi) sugars in all types of nectars such as coconut blossom nectar, date nectar, agave nectar;
 - (vii) sugars in juice concentrates.

Category 2: Crisps and other savoury snacks including all potato crisps and similar products made from potato, other vegetables, grain or pulses, including extruded, sheeted and pelleted snacks such as pitta bread based snacks, pretzels, poppadums, prawn crackers, pork scratchings, salted popcorn, and savoury crackers or biscuits which are in individually-portioned bags. This category does not include savoury snacks that are nuts, whether raw or to which other food has been added (such as salt).

Category 3: Breakfast cereals including ready-to-eat cereals, granola, muesli, porridge oats and other oat-based cereals.

Category 4: Confectionery including chocolates and sweets.

Category 5: Ice cream, ice lollies, frozen yogurt, water ices and similar frozen products.

Category 6: Cakes (including cupcakes).

Category 7: Sweet biscuits.

Category 8: Morning goods, meaning croissants, pains au chocolat and similar pastries, crumpets, pancakes, buns, teacakes, scones, waffles, Danish pastries and fruit loaves.

Category 9: Desserts and puddings, including pies, tarts and flans, cheesecake, gateaux, dairy desserts, sponge puddings, rice pudding, crumbles, fruit fillings, powdered desserts, custards, jellies and meringues.

Category 10: Yoghurt.

Category 11: Pizza (except plain pizza bases).

Category 12: Roast potatoes, potato and sweet potato chips, fries and wedges, potato waffles, novelty potato shapes (such as smiley faces), hash browns, rostis, crispy potato slices, potato croquettes.

Category 13: Products that are marketed as a meal that is ready for cooking or reheating without requiring further preparation and which include a carbohydrate accompaniment.

Category 14: Products that are marketed as a meal that is ready for cooking or reheating without requiring further preparation and which do not include a carbohydrate accompaniment, such as prepared fish, shellfish, meat, poultry and meat alternative products in a sauce, but not including fish, shellfish, meat, poultry and meat alternatives (either served plain or) in a marinade, glaze, dressing, seasoning or similar accompaniment.

Category 15: Breaded or battered fish, shellfish, meat, poultry and meat alternative products including fish fingers, fish cakes, chicken nuggets and breaded Quorn.

SCHEDULE 2

Regulation 12

Fixed Monetary Penalties

Interpretation

1. In this Schedule, references to an authorised officer are to an authorised officer of the food authority.

Civil sanctions

2.—(1) An authorised officer may by notice impose a fixed monetary penalty on a person in relation to an offence under regulation 11.

(2) Before doing so, the officer must be satisfied beyond reasonable doubt that the person has committed an offence.

(3) For the purposes of this paragraph, “fixed monetary penalty” means a fine of £2,500.

Notice of intent

3.—(1) When an authorised officer proposes to impose a fixed monetary penalty on a person, the officer must serve on that person a notice of what is proposed (“a notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposal to impose the fixed monetary penalty;
- (b) the amount of the penalty;
- (c) a statement that the liability for the penalty can be discharged by paying 50% of the penalty within 28 days beginning with the day in which the notice was received;
- (d) information as to—
 - (i) the effect of that discharge payment;

- (ii) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;
- (iii) the circumstances in which the authorised officer may not impose the requirement (including any defences relating to the offence in relation to which the notice is served).
- (iv) the consequences of non-payment.

Discharge of liability

4. The penalty is discharged if a person who receives a notice of intent pays 50% of the amount of the penalty within 28 days beginning with the day on which the notice was received.

Making representations and objections

5. A person on whom a notice of intent is served may within 28 days beginning with the day on which the notice was received make written representations and objections to the authorised officer in relation to the proposed imposition of the fixed monetary penalty.

Service of final notice

6.—(1) If the person who has received notice of intent does not discharge liability within 28 days, the authorised officer may serve a final notice imposing a fixed monetary penalty.

(2) The authorised officer may not serve a final notice on a person where the authorised officer is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates.

(3) An authorised officer who serves a final notice relating to a fixed monetary penalty may not serve any other notice under these Regulations in relation to the offence.

Contents of final notice

7. A final notice must include information as to—

- (a) the amount of the penalty;
- (b) the grounds for imposing the penalty;
- (c) how payment may be made;
- (d) the period of 28 days within which payment must be made;
- (e) details of the early payment discounts and late payment penalties;
- (f) rights of appeal;
- (g) the consequences of non-payment.

Discount for early payment

8. If a person who was served with a notice of intent made representations or objections concerning that notice within the time limit, that person may discharge the final notice by paying 50% of the penalty within 14 days beginning with the day on which the final notice was received.

Grounds of appeal

9.—(1) The person receiving the final notice may appeal against it.

(2) The grounds for appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable.

Appeals

- 10.**—(1) An appeal under paragraph 9 is to the First-tier Tribunal.
- (2) A final notice is suspended pending the determination or withdrawal of the appeal.
- (3) The First-tier Tribunal may—
- (a) withdraw, confirm or vary a final notice;
 - (b) take such steps as an authorised officer could have taken in relation to the act or omission giving rise to a final notice; or
 - (c) remit the decision whether to confirm a final notice, or any other matter relating to that decision, to an authorised person.

Non-payment after 28 days

- 11.**—(1) The penalty must be paid within 28 days of receipt of the final notice.
- (2) If the penalty is not paid within 56 days, the amount payable is increased by 50%.
- (3) In the case of an appeal it is payable within 14 days of the determination of the appeal (if the appeal is unsuccessful), and if it is not paid within 14 days the amount of the penalty is increased by 50%.

Recovery of payments

12. An authorised officer may recover any penalty imposed under this Schedule as if payable under a court order.

Criminal proceedings

- 13.**—(1) If a notice of intent for a fixed monetary penalty is served on any person—
- (a) no criminal proceedings for the offence may be instituted against that person in respect of the act or omission to which the notice related before 28 days from the date on which the notice of intent is received; and
 - (b) if that person discharges liability, that person may not at any time be convicted of the offence in relation to that act or omission.
- (2) If a fixed monetary penalty is imposed on any person, that person may not at any time be convicted of the offence in respect of the act or omission giving rise to the penalty.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for restrictions on the marketing in retail stores of certain foods and drinks that are high in fat, salt or sugar.

Regulation 3 defines the food and drink to which the Regulations apply.

Regulation 4 defines the business to whom the Regulations apply (“qualifying businesses”).

Regulation 5 prohibits qualifying businesses from offering certain price promotions on food and drink to which the Regulations apply.

Regulation 6 prohibits qualifying businesses from offering certain promotions (“free refills”) on drinks within the scope of regulation 6.

Regulation 7 prohibits qualifying businesses from placing food and drink to which the Regulations apply in certain locations in retail stores.

Regulation 8 applies to online retailers and prohibits the placement of food and drink in certain parts of the website from which the food and drink is sold.

