
DRAFT STATUTORY INSTRUMENTS

2021 No.

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

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 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⁽¹⁾ 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).

(1) 2000 c.14.