

The Calorie Labelling (Out of Home Sector) (England) Regulations 2021 and The Food (Promotion and Placement) (England) Regulations 2021

This guidance is issued by Norfolk County Council and primarily concerns enforcement of the following two pieces of legislation, and in particular the issuing of any fixed monetary penalties in relation to them.

The Calorie Labelling (Out of Home Sector) (England) Regulations 2021

From 6 April 2022, large food businesses (with more than 250 employees) in England have been required to display the calorie information of non-prepacked food and soft drink items. Calorie information must be shown at the point of choice for the customer, which may be a printed or online menu, food delivery platform or label. The Regulations are intended to help people make more informed, healthier choices when eating out or ordering takeaways.

The Government has published guidance on the regulations. [Read the guidance on the Government's webpage.](#)

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

The Food (Promotion and Placement) (England) Regulations 2021 ("the Regulations") were passed on 2 December 2021, introducing rules that restrict the price, placement and online promotion of products high in fat, sugar and salt (HFSS) for qualifying businesses. The restrictions come into force in England on 1 October 2022 and apply to both food and non-food retailers.

The Government has published guidance on the Regulations on its Website. [Read the guidance on www.gov.uk.](#)

Enforcement

The requirements of both sets of Regulations are to be enforced by local authorities in their respective areas (Local authority has the meaning given in section 5 of the Food Safety Act 1990).

Compliance with these Regulations will be included as part of our other enforcement activities, which is in line with the Food Law Code of Practice ensuring compliance with food safety, traceability, and labelling requirements.

Where a business has entered a Primary Authority partnership with a single local authority (the 'primary authority'), they can obtain advice from their primary authority on complying with the provisions, and this advice will be respected by all local authorities. The primary authority will be notified of any enforcement action under the provisions that is proposed by a local authority against the business and may 'block' an enforcement action that is inconsistent with advice that it has given the business.

Further information on Primary Authority is available on the Government Website.

[Read more about Primary Authority on www.gov.uk.](http://www.gov.uk)

Any decision to undertake formal enforcement action will be taken in line with our Compliance and Enforcement Policy and in the context of operational priorities. Such decisions will include the use of intelligence in determining the nature of any response, as well as being subject to ongoing monitoring and review.

We publish our Compliance and Enforcement Policy on the Norfolk County Council website. [Read our Compliance and Enforcement Policy on Norfolk County Council's Website.](#)

The Key approach in seeking compliance is to:

- Engage
- Explain
- Encourage
- Enforce

The prime objective is to obtain compliance by consent - it is anticipated that, in the vast majority of cases, businesses will comply with the legal requirements further to the provision of advice.

Penalties

Where satisfied beyond reasonable doubt that a person has committed an offence, we 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, we will exercise our powers to impose an FMP in a way which is proportionate, consistent, and targeted only at cases in which action is needed. Businesses that are cooperative will usually not be given an FMP.

FMPs provide a means to enforce non-compliance with the Regulations by means of a civil penalty as an alternative to prosecution.

Process for issuing fixed monetary penalties

Before we propose to issue an FMP, we must first serve a notice of intent to the recipient. The notice of intent will:

- set out the rationale behind the provisional decision to impose an FMP
- state that the FMP will be £2,500

Information that must be included on a notice of intent is included in the regulations. The FMP proposed can be discharged if a person who receives a notice of intent pays 50% of the amount of the penalty within 28 days (starting from the day upon which the notice was received).

Additionally, a person on whom a notice of intent is served may, within 28 days (starting from the day upon which the notice was received), make written representations and objections to us in relation to the proposed imposition of the FMP, setting out why they feel an FMP would not be appropriate, which an enforcement authority will consider before coming to a final decision.

The Notice of Intent will also set out if Norfolk County Council can't impose a penalty (including any defences relating to the offence) and how to pay the penalty.

What happens if the business/person doesn't pay or comply

After 28 days, we consider any representations or objections made and decide whether to impose the penalty.

We can't impose a penalty if:

- the business makes a discharge payment within 28 days of receiving the notice of intent
- the business has previously made a payment in relation to the same issue
- we have previously imposed a discretionary requirement for the same issue
- we're not satisfied that the rules have been broken

Sending a final notice

We will send a 'final notice' if we decide to impose a penalty. The final notice states:

- why the penalty is imposed
- the businesses right of appeal to the First-tier Tribunal
- the consequences of failing to comply with the notice
- how much the business must pay
- how the business can pay
- that the business has 28 days to pay
- that the business gets a 50% discount if the fine is paid within 14 days from the day the notice was received
- that the fine increases by 50% if it's late-if not paid within 56 days

In the case of an appeal the penalty (whether varied or confirmed by the First-tier Tribunal) is payable within 14 days of the determination of the appeal and if it is not paid within 14 days the amount of penalty is increased by 50%.

We may, at any time withdraw a notice of intent or final notice.

We will try to speak with the business before taking any of these steps and then write to tell the business about it.

Appeals against final notices

A business can appeal against a final notice or an enforcement costs recovery notice by applying to the First-tier Tribunal on any grounds. These include if the penalty or discretionary requirements are based on an error, wrong in law or unreasonable, or that the decision was wrong for any other reason. The notice is suspended during the appeal.

If the First-tier Tribunal finds in favour of Norfolk County Council, we don't have to register a claim for the unpaid amount in the courts and can enforce it straight away.

How we enforce payments

We may choose to recover unpaid penalties as a civil debt (by registering a claim in court), or by applying to a court for an order so we can enforce the payment through:

- a warrant of control, allowing a county court bailiff to take control of goods or money to the value of the amount being recovered
- a charging order, placing a charge on property so that the debt due is paid from the proceeds of sale before the debtor receives them
- a third-party debt order, requiring a third party to pay the outstanding debt directly to the creditor from the debtor's money

Court fees can also be recovered from the debtor.

Note

Nothing in this guidance document shall be taken to compel us to take enforcement action. In certain instances, we may conclude that an enforcement response is not appropriate given the circumstances.