
STATUTORY INSTRUMENTS

2021 No. 909

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

Qualifying businesses

7.—(1) For the purposes of these Regulations, a business is a qualifying business during a financial year if—

- (a) on the first day of that financial year the business has 250 or more employees, and
- (b) the business is not an exempt business during that financial year.

(2) A business is an exempt business if it is one of the following institutions, unless paragraph (3) applies—

- (a) an educational institution, within the meaning of paragraph 1(11) of Schedule 16 to the Coronavirus Act 2020(1), other than an institution providing education to pupils below the age of 18;
- (b) a canteen at a work-place the purpose of which is to provide food to employees in that work-place;
- (c) a military establishment or criminal justice accommodation;
- (d) a hospital or other medical institution;
- (e) a care home or other institution providing social care.

(3) This paragraph applies if any catering services at the institution in question are provided by another business having 250 or more employees.

(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 of food (“the franchise business”), and paragraph (6) applies to the franchise business.

(6) This paragraph applies to a franchise business if—

- (a) subject to paragraph (7), 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,

are agreed by the franchisor, and is similar to those of other undertakings in respect of which the franchisor has entered into a franchise agreement.

(7) Paragraph (6) does not apply to a franchise business if the franchise agreement is limited to the alcohol provided in the franchise business and the franchisee is free to determine what other food is provided.

(8) 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) “criminal justice accommodation” means—
 - (i) a prison, within the meaning of the Prison Act 1952(2),
 - (ii) a young offender institution, within the meaning of section 43 of that Act,
 - (iii) a secure training centre, within the meaning of section 43 of that Act,
 - (iv) approved premises, within the meaning of section 13 of the Offender Management Act 2007(3), or
 - (v) a bail hostel, within the meaning of section 2 of the Bail Act 1976(4).

(2) 1952 c. 52. The definition of “young offender institutions” was inserted by paragraph 11 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), and amended by section 18 of the Criminal Justice and Public Order Act 1994 (c. 33) and paragraph 3 of Schedule 26 to the Criminal Justice and Immigration Act 2008 (c. 4). The definition of “secure training centres” was substituted by paragraph 6 of Schedule 8 to the Crime and Disorder Act 1988 (c. 37), and amended by paragraph 5 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraph 4 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). There are other amendments to section 43 not relevant to these Regulations.

(3) 2007 c. 21.

(4) 1976 c. 63. The definition of “bail hostel” was substituted by paragraph 50 of Schedule 9 to the Power of Criminal Courts (Sentencing) Act 2000.