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## Out of Home Calorie Declarations – NEW LEGISLATION COMING SOON

The Calorie Labelling (Out of Home Sector) (England) Regulations 2021 are due to come into force on 6<sup>th</sup> April 2022. They require businesses to declare the calorie content of non-prepacked food and drink.

### **Who do the regulations apply to?**

They apply to food businesses with 250 or more employees in the out of home sector. This is generally considered to be any business where food is prepared in a way that means it is ready for immediate consumption, both on or off site e.g. bakeries.

### **How will employee numbers be calculated?**

When determining if businesses have 250 or more employees, both full-time and part-time employees will be considered.

Businesses trading under franchise agreements, where the food, premises and business model are similar to each other, will qualify if the sum of employees operating under the franchise is 250 or more.

Government guidance is unclear with regard to multi-site operations that may have separate limited companies or incorporated bodies, so the CBA has sought and is awaiting clarification on this from the Government.

In the meantime, Steve Johnson, Senior Trading Standards Officer at East Sussex County Council (who are one of the CBA's primary authority partners) has given this preliminary opinion:

*"My interpretation of the legislation and guidance is that if businesses have more than one site, the count of employees is across all sites. If the operations are split between separate limited company names or incorporated bodies, the employee count would be for each entity.*

*However, in such circumstances, the operation may be sufficiently similar to meet the definition of a franchise arrangement even though it is not ordinarily considered to be one. That would then result in a count of staff in those operations combined."*

### **Which foods do the regulations apply to?**

Non-prepacked food and drink which is offered for sale in a form which is suitable for immediate consumption.

This includes foods without packaging, food packed at the consumers request and food prepacked on the same site that it is sold (prepacked for direct sale).

Examples include hot beverages, sausage rolls, pies, pasties, pizza slices, breakfast rolls, sandwiches, toasties, pastries, biscuits and cakes.

### **Are any foods exempt?**

Yes, foods not covered by these regulations include:

- Loaves of bread or baguettes (but not rolls or buns)
- Fish, meat, or cheese (but not if added to multi-ingredient products e.g. chicken sandwiches)
- Fresh fruit or vegetables and other unprocessed products such as nuts, or seeds (but not if added to multi-ingredient products e.g. fruit salads)
- Foods sold temporarily i.e. for less than 30 consecutive days and a total of 30 days in any year
- Food not on a product list/menu or otherwise offered for sale but is expressly requested by the consumer to be prepared differently to usual.
- Alcoholic drinks over 1.2% ABV (alcohol by volume)
- Condiments added by the consumer e.g. ketchup, mustard etc.

### **How should the calorie information be displayed?**

Businesses with more than 250 employees, selling food within the scope of the regulations must:

- display the energy content in kilocalories (kcal)
- reference the size of portion to which the calorie content relates
- display the statement 'adults need around 2000 kcals a day'

This information must be displayed clearly and prominently at the 'points of choice' e.g. on menus (including online menus) and at food displays such as grab and go fridges and display counters.



Food ordered online or by telephone is considered 'distance selling' so as well as at the point of choice, this information must also be provided at the point of delivery e.g. by enclosing menus or by placing labels on food containers.

More guidance can be found on [www.gov.uk](http://www.gov.uk) 'Calorie labelling in the out of home sector: implementation guidance' or contacting the CBA.

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### **BACKGROUND INFORMATION**

Melissa Thompson, Managing Director of Safer Food Scores, is a Chartered Environmental Health Officer and has been a specialist adviser to the Craft Bakers Association for 10 years. Safer Food Scores offer CBA members free telephone advice on food hygiene, health and safety and food labelling matters.