

## Regulations on sale of foods and drinks

There are a number of Regulations in the UK that have an impact on the sale of food and drink from vending machines. These include the calorie labelling regulations, the promotion of products high in salt, fat and sugar and the regulations on labelling of foods prepacked for direct sale (Natasha's law). This note summarises the impact of these regulations on the vending industry.

### The Calorie Labelling (Out of Home Sector) (England) Regulations \*

The calorie labelling regulations come into force on April 6, 2022 and apply to 'service provider' companies with more than 250 employees.

The Department of Health and Social Care has issued guidance, which can be found at:

<https://www.gov.uk/government/publications/calorie-labelling-in-the-out-of-home-sector/calorie-labelling-in-the-out-of-home-sector-implementation-guidance>

The purpose of the Regulations is laid out in the introduction and that is to allow consumers of meals and drinks to include a knowledge of the calorie content of a food in deciding whether to buy it or not. The Regulations do not apply to packaged confectionery, snacks or canned/bottled drinks because they already have the calorie content on their label. Meals sold in vending machines already have to carry the calorie content on their label, but this reinforces the need for the consumer to be able to read the label before they make a purchase.

The Regulations have been written with the quick service restaurant sector of the hospitality industry rather than the vending industry in mind. The guidance below is directed at drinks machines because drinks are packed at the point of sale.

#### **Who has to label?**

The Regulations apply to companies which provide food and have more than 250 employees, so they apply directly to large operator companies and to other large businesses who operate vending machines that they have bought or leased. Alternately, if an operator company supplies a machine to a client company with more than 250 employees and the client puts the ingredients in the machine, then the client is covered by the Regulations. In this case, whether information has to be provided is determined by the size of the client company.

#### **The need to label all depends on who is operating the machine.**

**Scenario 1:** A vending company with fewer than 250 employees supplies and operates equipment for a client company with more than 250 employees. No calorie labelling is required

**Scenario 2:** A vending company with more than 250 employees supplies and operates equipment for a client company of any size. Calorie labelling is required.

**Scenario 3:** A vending company with fewer than 250 employees supplies and operates equipment on a sub-contracted basis for an operating/catering company with more than 250 employees at a site of any size. Calorie labelling is required.

**Scenario 4:** A vending company with fewer than 250 employees which supplies equipment to a client company with more than 250 employees. The equipment is operated by site personnel of the client company. Calorie labelling is required and the client company is responsible for calorie labelling.

The regulations also add: “While not subject to this regulatory requirement the government encourages smaller food businesses to also voluntarily adopt calorie labelling.”

### **What has to be labelled?**

The guidance to the Regulations gives examples of what has to be labelled:

- restaurants or canteens: **hot beverages (all varieties)** (but not prepacked cold drinks, such as frappes, milkshakes, and low or no alcohol drinks), starters, sides or small plates (such as garlic bread, loaded chips, nachos, chicken strips), **mains (such as pizza, sausages and mash, fish and chips, pasta dishes, roast meals)**, buffets and 'build your own' (such as salad bars and all you can eat buffets), desserts and 'build your own' (such as apple crumble and custard, chocolate brownie with ice cream, 'build your own' ice cream), and breakfast or brunch (such as cooked breakfast, bacon sandwich, eggs)

### **However, there is an exemption for things that the customer requests**

The guidance says that where a customer requests extra cheese on a burger and that extra cheese was not a menu option or where a customer requests a different type of milk in their coffee which deviates from that which is advertised for sale by the business, then the calorie content does not have to be provided.

So, drinks machines which provide options of the amount of sugar or milk only have to provide the calorie content of the default option, although touch screen machines may wish to provide additional information.

### **Businesses selling food in scope of the Regulations must:**

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

## **Where must the information be displayed?**

Calorie information, the reference to portion size, and the statement of daily calorie needs must be displayed clearly and prominently at the 'point of choice' for the customer; this is considered as any place where customers choose what food to buy. For businesses where consumers may choose their food in several locations, such as a menu on the premises, a display case on the premises, and an online menu, businesses are required to provide calorie information at each. In terms of vending this would mean that the information had to be displayed at the point where the consumer presses the button or touches the screen to make a purchase.

The Guidance is specific on the "point of choice" as the place where the information must be displayed. In other words, the customer must be able to see the calorie information before they finally make their choice of product.

## **How is the calorie content calculated?**

Your ingredient supplier will provide you with the calorie content per gram and you merely need to multiply this by the gram throw of the ingredient. Do not worry about being too precise, certainly do not attempt to calculate to less than 1 kcalorie. Nothing about calorie contents is more accurate than 1 calorie and the great majority of vended drinks would fall into the category of diet products.

## **Restrictions on the sale of high fat, salt and sugar products (HFSS) \***

These regulations have been heralded in the press, but the proposed introduction has been put back to October 2022 and the regulation has not been published yet. The draft regulations are available on:

<https://www.gov.uk/government/consultations/restricting-promotions-of-products-high-in-fat-sugar-and-salt-enforcement/restricting-promotions-of-products-high-in-fat-sugar-and-salt-by-location-and-by-price-enforcement#annexA>

The purpose of the regulations is to restrict the promotion of HFSS products and their placement where people queue for the checkout. Hot drinks are included if they are included in HFSS and that is bound to include coffee with sugar, for example. Whether it includes hot chocolate will depend on whether the hot chocolate is sweetened; with sugar or sweetener.

However, what is prohibited is promotions not routine sales; it is promotions either by volume (buy one get one free) or by price. The regulations also prohibit the placing of such products near checkouts.

As the legislation only covers retail spaces over 2,000m<sup>2</sup>, the impact of these regulations on vending should be minimal.

## Regulations on labelling of foods prepacked for direct sale (Natasha's law) \*

These regulations change the rules on the labelling of food prepacked for direct sale, that is products like those sold in a bakery where they are made for sale in the shop that day. Under the Food Information to Consumers Regulation these products did not have to have an allergen label because it was thought that the consumer could get the relevant information from a sales assistant. However, products sold in vending machines did not come under this exclusion and products sold from vending machines have always had to have a full ingredient information including the highlighting of allergens. **It would be good practice to ensure that products like sandwiches and plated meals are placed in machines so that consumers can see the allergen information before purchase.**

\* You may of course decide to also seek independent legal advice on any aspects of these regulations. Legal and administrative responsibility for compliance with the Regulations sits solely with you. Furthermore, we accept no responsibility or liability whatsoever for errors in processing or displaying this customer facing data or related information.

For the avoidance of doubt, the information that we have provided is up to date at time of publication.

**AVA: The Vending & Automated Retail Association - March 2022**