

Draft Regulations laid before Senedd Cymru under section 62(3) of the Regulatory Enforcement and Sanctions Act 2008, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2025 No. (W.)

FOOD, WALES

PUBLIC HEALTH, WALES

**The Food (Promotion and
Presentation) (Wales) Regulations
2025**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made by the Welsh Ministers in exercise of their powers under the Food Safety Act 1990 (c. 16) and the Regulatory Enforcement and Sanctions Act 2008 (c. 13). They provide for restrictions on the promotion and presentation of certain foods and drinks that are less healthy.

Part 1 of these Regulations includes general interpretation provisions (regulation 2).

Part 2 of these Regulations defines the food and drink (“specified food”) (regulation 3 and Schedule 1) and the businesses (“qualifying business”) (regulation 4) to which these Regulations apply.

Part 3 of these Regulations sets out restrictions on the promotion and presentation of specified food. Regulation 5 prohibits a qualifying business from offering certain price promotions on specified food. Regulation 6 prohibits a qualifying business from presenting specified food in certain locations in a store. Regulation 7 prohibits a qualifying business from presenting specified food in certain locations of an online marketplace.

Part 4 of these Regulations prohibits a qualifying business from offering free refill promotions on certain drinks (regulation 8).

Part 5 of these Regulations is concerned with the enforcement of the restrictions. Regulation 9 requires each food authority to enforce and execute these Regulations within its area. Regulation 10 enables a food authority to serve an improvement notice on a person where it has reasonable grounds for believing that the person is failing to comply with one or more of the restrictions in regulations 5 to 8.

Part 6 of these Regulations creates an offence where a person fails to comply with an improvement notice (regulation 11). This may result in an unlimited fine. Part 6 also enables a food authority to impose a fixed monetary penalty of £2,500 as a civil sanction alternative for the enforcement of an offence under regulation 11 and makes provision for the procedure relating to fixed monetary penalties (regulation 12 and Schedule 2). Where a fixed monetary penalty is imposed, this precludes a criminal conviction for the offence in respect of the act or omission giving rise to the penalty.

Part 7 of these Regulations deals with supplementary and administrative matters. Regulations 13 and 14 require a food authority to publish both guidance about its use of the power to impose fixed monetary penalties and reports about the enforcement action it has taken under these Regulations. Regulation 15 requires the Welsh Ministers to review the regulatory provision contained in these Regulations and to publish a report setting out the conclusions before the end of the period of 5 years beginning with the day on which these Regulations come into force and at intervals not exceeding 5 years after that.

Part 8 of these Regulations applies, with modifications, various provisions of the Food Safety Act 1990 (regulation 16 and Schedule 3).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is published on www.gov.wales.

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2025 No. (W.)

FOOD, WALES

PUBLIC HEALTH, WALES

**The Food (Promotion and
Presentation) (Wales) Regulations
2025**

Made ***

Coming into force 26 March 2026

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 6(4)(a), 16(1)(e) and (f), 26(3) and 48(1) of the Food Safety Act 1990(1) (“the 1990 Act”) and now vested in them(2), and section 62(2) of the Regulatory Enforcement and Sanctions Act 2008(3) (“the 2008 Act”).

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- (1) 1990 c. 16. Section 6(4)(a) was amended by paragraph 6 of Schedule 9 to the Deregulation and Contracting Out Act 1994 (c. 40); paragraph 10(1) and (3)(a) and (b) of Schedule 5, and Schedule 6 to the Food Standards Act 1999 (c. 28) (“the 1999 Act”); and Schedule 2 to S.I. 2002/794. Sections 16(1) and 48(1) were amended by paragraph 8 of Schedule 5 to the 1999 Act. Section 26(3) was amended by Schedule 6 to the 1999 Act.
- (2) Those functions, formerly exercisable by “the Ministers”, were conferred on the Secretary of State pursuant to paragraph 8 of Schedule 5 to the 1999 Act. Those functions, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as read with section 40(3) of the 1999 Act. Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32) (“the 2006 Act”).
- (3) 2008 c. 13. Section 39(4) was amended by S.I. 2015/664. Section 36(2) was amended by Part 3 of the Enterprise Act 2016 (c. 12). “Prescribed” is defined in section 71(1) of the Regulatory Enforcement and Sanctions Act 2008 (c. 13).

The Welsh Ministers have had regard to relevant advice given by the Food Standards Agency in accordance with section 48(4A) of the 1990 Act⁽¹⁾.

There has been consultation as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽²⁾.

The Welsh Ministers have consulted in accordance with sections 59(3) and 60(1) of the 2008 Act⁽³⁾.

The Welsh Ministers are satisfied in accordance with section 66 of the 2008 Act that food authorities (who are regulators for the purpose of these Regulations) will act in accordance with the principles referred to in section 5(2) of that Act in exercising a power conferred by these Regulations.

A draft of these Regulations was laid before Senedd Cymru in accordance with section 62(3) of the 2008 Act⁽⁴⁾, and approved by resolution of Senedd Cymru.

Part 1

Introduction

Title, extent, application and coming into force

1.—(1) The title of these Regulations is the Food (Promotion and Presentation) (Wales) Regulations 2025.

(2) These Regulations—

- (a) extend to England and Wales;
- (b) apply in relation to Wales, but not in relation to the territorial waters adjacent to Wales.

(3) These Regulations come into force on 26 March 2026.

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- (1) Section 48(4A) of the Food Safety Act 1990 (c. 16) was inserted by paragraph 21 of Schedule 5 to the Food Standards Act 1999 (c. 28).
 - (2) EUR 2002/178, to which there are amendments not relevant to these Regulations.
 - (3) Section 71(1) of the 2008 Act provides that “relevant authority” means, in relation to provision made under or by virtue of Part 3 by the Welsh Ministers, the Welsh Ministers.
 - (4) The reference in section 62(3) of the 2008 Act to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the 2006 Act.

Interpretation

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Food Safety Act 1990;

“consumer” (“*defnyddiwr*”) has the meaning given by section 2(3) of the Consumer Rights Act 2015⁽¹⁾;

“food” (“*bwyd*”) has the same meaning as in section 1(1) of the Act⁽²⁾;

“food authority” (“*awdurdod bwyd*”) has the meaning given by section 5(1A) of the Act⁽³⁾;

“online marketplace” (“*marchnadle ar-lein*”) means any software (including a website, part of a website, or an application) that is used to offer the qualifying business’s products for sale to consumers;

“prepacked food item” (“*eitem fwyd wedi ei rhagbecynnu*”) means an item referred to in Article 2(2)(e) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers⁽⁴⁾;

“qualifying business” (“*busnes cymhwysol*”) has the meaning given by regulation 4;

“qualifying person” (“*person cymhwysol*”) means a person acting in the course of carrying on a qualifying business;

“relevant special offer” (“*cynnig arbennig perthnasol*”) means an offer of a discounted price for multiple items promoted as intended to be consumed together as, or as part of, a single meal by one person or by two or more people together (such as “meal deal” or “dine in for two” offers);

“Schedule 1 food” (“*bwyd Atodlen 1*”) has the meaning given by regulation 3(2);

“specified food” (“*bwyd penodedig*”) has the meaning given by regulation 3;

“the Nutrient Profiling Technical Guidance” (“*y Canllawiau Technegol ar gyfer Proffilio Maethynnau*”) means the guidelines published by

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- (1) 2015 c. 15.
- (2) The definition of “food” in section 1(1) of the 1990 Act refers to Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (“Regulation (EC) No 178/2002”). Article 2 of Regulation (EC) No 178/2002 defines “food” for the purposes of that Regulation.
- (3) Section 5(1A) of the 1990 Act was inserted by paragraph 16(1) of Schedule 9 to the Local Government (Wales) Act 1994 (c. 19).
- (4) EUR 2011/1169, to which there are amendments not relevant to these Regulations.

the Secretary of State on 14 January 2011 about the application of the 2004-2005 Nutrient Profiling Model⁽¹⁾.

(2) For the purposes of these Regulations, a qualifying person offers a qualifying business's products for sale on an online marketplace if they determine (whether on behalf of the qualifying business or on behalf of another business) that the product is to be offered for sale and its price, irrespective of who undertakes on behalf of the qualifying business—

- (a) to obtain payment from the purchaser, or
- (b) to otherwise operate the online marketplace.

Part 2

Meaning of specified food and qualifying business

Specified food

3.—(1) For the purposes of these Regulations, “specified food” is food contained in a prepacked food item which—

- (a) is Schedule 1 food,
- (b) is less healthy (as defined in paragraph (5)), and
- (c) is not food to which paragraph (6) (charity food sales) applies.

(2) For the purposes of these Regulations, “Schedule 1 food” means food falling within a category specified in Schedule 1 to these Regulations (categories of specified food).

(3) Where a prepacked food item contains more than one type of food, all of the food contained in the item is to be treated for the purposes of paragraph (1)(a) as Schedule 1 food where one (or more) of the types of food contained in the item would, on its own, be Schedule 1 food.

(4) Where a product contains multiple items, of which one (or more) is a prepacked food item containing specified food, the entire product is to be treated as specified food.

(5) For the purposes of this regulation—

- (a) food that is not a drink is less healthy if it scores 4 or more points in accordance with the Nutrient Profiling Technical Guidance;

(1) An electronic copy can be found at <https://www.gov.uk/government/publications/the-nutrient-profiling-model>. Hard copies can be obtained by request to Population Health, Health and Social Services Group, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

- (b) a drink is less healthy if it scores 1 or more points in accordance with the Nutrient Profiling Technical Guidance.
- (6) This paragraph applies to food which is—
 - (a) provided by a charity, in the course of its charitable activities, free or for a price which is less than the cost of providing that food, or
 - (b) offered for sale by or on behalf of a charity to raise funds for its charitable activities at a single event.
- (7) For the purposes of paragraph (6)—
 - (a) “charity” has the meaning given by section 1 of the Charities Act 2011⁽¹⁾;
 - (b) “charitable activity” means an activity carried out for a charitable purpose, other than primarily for the purpose of raising funds;
 - (c) “charitable purpose” has the meaning given by section 2(1) of the Charities Act 2011.

Qualifying businesses

4.—(1) For the purposes of regulations 5 (price promotion restriction), 6 (in store presentation restriction) and 7 (online presentation 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 offer for 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 8 (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 8 applies for sale (in store) to consumers,
- (b) on the first day of the financial year during which any such offer for sale took place, the business had 50 or more employees, and
- (c) the business is not—
 - (i) a care home;
 - (ii) an educational institution.

(1) 2011 c. 25.

(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) A “franchise agreement” exists where—

- (a) 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
- (b) paragraphs (5) and (6) apply to the franchise business.

(5) This paragraph applies if the following are agreed by the franchisor—

- (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.

(6) This paragraph applies if the matters referenced in paragraph (5) are similar to those of other undertakings in respect of which the franchisor has entered into comparable contractual arrangements.

(7) 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) “care home” means a place in Wales at which a care home service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016(1), is provided wholly or mainly to persons aged 18 or over and 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 only education where that education is provided wholly or mainly 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;

(1) 2016 anaw 2.

- (f) “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).

Part 3

Restrictions on the promotion and presentation of specified food

Restriction on the price promotion of specified food

5.—(1) A qualifying person must not offer specified food for sale as part of a volume price promotion (whether in store or on an online marketplace).

(2) In this regulation, “volume price promotion” means—

- (a) a multibuy promotion, being the express offer of a financial incentive for buying multiple items compared with buying each item separately (including “3 for the price of 2”, “3 for £10”, or “buy 6 and save 25%”);
- (b) a promotion that indicates that an item, or any part of an item, is free (including “50% extra free”, or “buy one get one free”).

(3) A multibuy promotion does not include a relevant special offer.

Restriction on the presentation of specified food – in store

6.—(1) A qualifying person must not present specified food inside a store—

- (a) within 2 metres of a checkout facility, unless the specified food is presented in (but not at the end of) an aisle;
- (b) within 2 meters of a designated queuing area, unless the specified food is presented in (but not at the end of) an aisle;
- (c) in a display—
 - (i) at the end of (but not in) an aisle, or
 - (ii) on a separate structure (such as an island bin, free-standing unit, side stack or clip strip) connected or adjacent to, or within 50 centimetres of, the end of an aisle;
- (d) at any point within the prohibited distance of the midpoint of any public entrance to the store’s main shopping area;
- (e) in a covered external area.

(2) This regulation does not apply to either of the following—

- (a) stores with a relevant floor area of less than 185.8 square metres;
- (b) stores which only or mainly sell food from a single category listed in Schedule 1.

(3) In this regulation—

- (a) “checkout facility” means a facility intended to be used by consumers to make a purchase, including a self-checkout terminal and a counter at which a cash register is used (including the area behind such a counter);
- (b) “covered external area” means a covered area, outside and connected to a store’s main shopping area, through which the public passes to enter the main shopping area (such as a foyer, lobby or vestibule);
- (c) “designated queuing area” means an area set aside and marked for the purpose of providing a place for consumers to wait to make a purchase;
- (d) “prohibited distance” means the smaller of 15 metres or the following—

$$\sqrt{0.03 \times a}$$

where a is the store’s relevant floor area;

- (e) “relevant floor area” means the internal floor area of a store in a building, excluding any part of the store which—
 - (i) is not used for displaying goods or for serving customers in connection with the sale of goods (such as storage areas),
 - (ii) is used mainly for the preparation or sale of food intended for immediate consumption, whether on or off the premises (including a coffee shop or a canteen),
 - (iii) is a room used for consultation with customers in connection with any medical services (such as pharmacy or opticians’ services) offered in the store, or
 - (iv) is occupied by a business other than the business primarily responsible for managing and operating the store (“a concession”), but only where the concession operates its own payment facilities.

Restriction on the presentation of specified food – online

7.—(1) A qualifying person must not cause specified food to be offered for sale on an online marketplace—

- (a) on a home page (whether or not the consumer enters the online marketplace via the home page);
- (b) while a consumer is searching for or browsing products other than Schedule 1 food, unless paragraph (4) or (5) applies;
- (c) while a consumer is searching for or browsing Schedule 1 food, unless—
 - (i) the specified food falls within the same Schedule 1 category, or
 - (ii) paragraph (4) or (5) applies;
- (d) on a page not opened intentionally by the consumer (such as a “pop-up” page or a “brand burst”);
- (e) on a favourite products page, unless the consumer has previously purchased the specified food (whether in store or on an online marketplace) or intentionally identified it as a favourite product, but specified food must not be given greater prominence than other products on a favourite products page;
- (f) on a checkout page.

(2) Paragraph (1) does not prohibit offering specified food for sale on a page opened intentionally by a consumer for the purpose of browsing special offers generally.

(3) This regulation does not apply in respect of a qualifying business which only or mainly sells food from a single category listed in Schedule 1.

(4) This paragraph applies where—

- (a) a consumer is searching for or browsing food (whether or not specified food), and
- (b) the qualifying person causes specified food to be offered for sale together with the food referred to in sub-paragraph (a) as part of a relevant special offer.

(5) This paragraph applies—

- (a) where a consumer browses for a general category of product which includes the specified food (such as categories relating to seasonality, or to nutritional or dietary characteristics);
- (b) in relation to searching—
 - (i) where a consumer searches for a general category of product which includes the specified food;

- (ii) where a search term entered by the consumer matches in whole or in part—
 - (aa) the name under which the specified food is marketed, or
 - (bb) an ingredient listed on the packaging of the specified food.
- (6) In this regulation—
 - (a) “checkout page” means a page shown to a consumer as part of the checkout process, such as a page listing items the consumer has so far selected for purchase or a page dealing with payment, collection or delivery;
 - (b) “favourite products page” means a page opened by a consumer for the purpose of browsing products they have previously purchased or intentionally identified as favourite products;
 - (c) “home page” means any of—
 - (i) an online marketplace’s highest level public page;
 - (ii) the highest level public page of an online marketplace’s grocery section.

Part 4

Restriction on the price promotion of certain drinks

Restriction on the price promotion of certain drinks

- 8.—(1)** This regulation applies to a drink which is not a prepacked food item and which—
- (a) falls within category 1 of Schedule 1,
 - (b) is less healthy by virtue of scoring 1 or more points in accordance with the Nutrient Profiling Technical Guidance, and
 - (c) is not food to which regulation 3(6) (charity food sales) applies.
- (2) A qualifying person must not offer a free refill promotion on a drink to which this regulation applies.
- (3) A “free refill promotion” means a promotion that offers the consumer the same drink or another drink to which this regulation applies (including free top-ups of any such drink) for free after consumption of a first drink.

Part 5

Enforcement

Enforcement

9. Each food authority must enforce and execute these Regulations within its area.

Improvement notice

10. If a food authority has reasonable grounds for believing that a person is failing to comply with one or more of regulations 5 to 8, it may, by a notice served on that person (in these Regulations referred to as an “improvement notice”)—

- (a) state the authority’s grounds for believing that the person is failing to comply with one or more of regulations 5 to 8,
- (b) specify the matters which constitute the person’s failure so to comply,
- (c) specify the measures which, in the authority’s opinion, the person must take in order to secure compliance, and
- (d) require the person to take those measures, or measures that are at least equivalent to them, within such period as may be specified in the notice.

Part 6

Offence and civil sanction

Offence

11.—(1) A person commits an offence if they fail to comply with an improvement notice served under regulation 10.

(2) A person guilty of an offence under this regulation is liable on summary conviction to a fine.

Civil sanction

12. Schedule 2 (fixed monetary penalties) to these Regulations makes provision for imposing a fixed monetary penalty on a person (“fixed monetary penalty”) as a civil sanction alternative for the enforcement of an offence under regulation 11.

Part 7

Supplementary and administrative matters

Guidance as to use of fixed monetary penalties

13.—(1) Each food authority must publish guidance about its use of the power in paragraph 1 of Schedule 2 (power to impose fixed monetary penalties).

(2) The guidance referred to in paragraph (1) must contain information including (whether or not among other things)—

- (a) the circumstances in which a fixed monetary penalty is likely to be imposed under these Regulations,
- (b) the circumstances in which it may not be imposed,
- (c) the amount of the penalty,
- (d) how liability for the penalty may be discharged and the effect of discharge, and
- (e) a person's rights to make representations and objections and their rights of appeal.

(3) The food authority must revise the guidance where it considers appropriate.

(4) The food authority must consult with such persons as it considers appropriate before publishing any guidance or revised guidance.

(5) Each food authority must have regard to the guidance or revised guidance in exercising its functions under these Regulations.

Publication of enforcement action

14.—(1) Each food authority must from time to time publish a report about the enforcement action it has taken under these Regulations.

(2) The report referred to in paragraph (1) must specify—

- (a) the cases in which a fixed monetary penalty has been imposed, and
- (b) the cases in which liability to the fixed monetary penalty has been discharged by payment of the penalty following the notice of intent and without further action being taken.

(3) In paragraph (2)(a), the reference to cases in which the fixed monetary penalty has been imposed does not include cases where the penalty has been imposed but overturned on appeal.

(4) This regulation does not apply in cases where at the time the report is published—

- (a) the period of 28 days beginning with the day the fixed monetary penalty was imposed has not yet elapsed, or
- (b) an appeal brought in accordance with paragraphs 8 and 9 of Schedule 2 is pending in relation to the fixed monetary penalty.

(5) Nothing in this regulation authorises the processing of personal data where doing so would contravene the data protection legislation, and for these purposes “personal data” and “the data protection legislation” have the same meanings as in section 3 of the Data Protection Act 2018(1).

Review

15.—(1) In addition to the review carried out under section 67 (review) of the Regulatory Sanctions and Enforcement Act 2008, the Welsh Ministers must from time to time review the regulatory provision contained in these Regulations and publish a report setting out the conclusions of the review.

(2) The first report must be published before the end of the period of 5 years beginning with the day on which these Regulations come into force.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) A report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision in these Regulations,
- (b) assess the extent to which those objectives are achieved,
- (c) assess the extent to which those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, “regulatory provision” has the same meaning as in section 32 of the Small Business, Enterprise and Employment Act 2015(2).

(1) 2018 c. 12; section 3 was amended by S.I. 2019/419.
(2) 2015 c. 26.

Part 8

Application and modification of the Act

Application and modification of the Act

16.—(1) The following provisions of the Act apply for the purposes of these Regulations as if any reference in those provisions to the Act, or to any Part of the Act, were a reference to these Regulations—

- (a) section 3 (presumptions that food intended for human consumption);
- (b) section 20 (offences due to fault of another person);
- (c) section 21 (defence of due diligence) with the modifications specified in Part 1 of Schedule 3;
- (d) section 30(8) (which relates to documentary evidence);
- (e) section 32(1) to (8) (powers of entry) with the modifications specified in Part 2 of Schedule 3;
- (f) section 33(1) and (2) (obstruction etc. of officers);
- (g) section 34 (time limits for prosecutions) with the modification specified in Part 3 of Schedule 3;
- (h) section 35(1) and (2) (punishment of offences) with the modifications specified in Part 4 of Schedule 3;
- (i) section 36 (offences by bodies corporate);
- (j) section 36A (offences by Scottish partnerships);
- (k) section 37(1), (3), (5) and (6) (appeals to magistrates' court) with the modifications specified in Part 5 of Schedule 3;
- (l) section 39 (appeals against improvement notices) with the modifications specified in Part 6 of Schedule 3;
- (m) section 44 (protection of officers acting in good faith);
- (n) section 49(1), (3), (4) and (5) (form and authentication of documents) with the modification specified in Part 7 of Schedule 3;
- (o) section 50 (service of documents).

Name

Cabinet Secretary for Health and Social Care, one of the Welsh Ministers

Date

SCHEDULE 1 Regulation 3

Categories of specified food

Category 1

1. Prepared soft drinks containing added sugar ingredients (other than the exempt soft drinks listed in paragraph 2(9)).

2.—(1) The following provisions apply for the purposes of this category.

(2) “Soft drink” means—

- (a) a beverage of an alcoholic strength not exceeding 1.2%, or
- (b) a liquid or a powder which, when prepared in a specified manner, constitutes a beverage of an alcoholic strength not exceeding 1.2%.

(3) A liquid or a powder is prepared in a specified manner if it is—

- (a) diluted,
- (b) combined with crushed ice, or processed so as to create crushed ice,
- (c) combined with carbon dioxide, or
- (d) prepared by way of a process that involves any combination of the processes mentioned in paragraphs (a) to (c).

(4) A soft drink is “prepared” if it is—

- (a) a soft drink within the meaning of paragraph 2(2)(a),
- (b) a soft drink within the meaning of paragraph 2(2)(b), or
- (c) a beverage that would result from preparing a liquid or a powder within paragraph 2(2)(b)—
 - (i) in a specified manner (*see* paragraph 2(3)), and
 - (ii) in accordance with the relevant dilution ratio.

(5) The “relevant dilution ratio” means—

- (a) the dilution ratio stated on, or calculated by reference to information stated on, the packaging of the soft drink, or
- (b) where no such dilution ratio or information is stated, the dilution ratio of similar drinks on the market.

(6) A soft drink contains “added sugar ingredients” if any of the following are combined with other ingredients at any stage in the production of the soft drink—

- (a) calorific monosaccharides or disaccharides;

- (b) a substance containing calorific monosaccharides or disaccharides.

(7) But a soft drink does not contain “added sugar ingredients” only by reason of containing fruit juice, vegetable juice or milk (or any combination of them).

(8) In sub-paragraph (7)—

- (a) “fruit juice” is to be interpreted in accordance with regulation 5 of the Soft Drinks Industry Levy Regulations 2018⁽¹⁾ (sugar content condition: fruit juice) (“the SDIL Regulations”);
- (b) “vegetable juice” is to be interpreted in accordance with regulation 6 of the SDIL Regulations (sugar content condition: vegetable juice);
- (c) “milk” is to be interpreted in accordance with regulation 7 of the SDIL Regulations (sugar content condition and exempt soft drinks: milk and milk-based drinks).

(9) The following are “exempt soft drinks”—

- (a) soft drinks which are similar to a particular kind of alcoholic beverage and which meet specified conditions;
- (b) soft drinks of a specified description which are for use for medicinal or other specified purposes.

(10) For the purposes of sub-paragraph (9)(a), the specified conditions are—

- (a) condition 1 provided for by paragraph (2) of regulation 9 of the SDIL Regulations (exempt soft drinks: alcohol substitute drinks), and
- (b) one or more of conditions 2, 3 and 4 provided for by paragraphs (3) to (5) of regulation 9 of the SDIL Regulations.

(11) For the purposes of sub-paragraph (9)(b)—

- (a) the medicinal or other specified purposes are those provided for by paragraph (1) of regulation 10 of the SDIL Regulations (exempt soft drinks: for medicinal or other purposes), and
- (b) the specified descriptions are the corresponding descriptions provided for in paragraph (3) of regulation 10 of the SDIL Regulations.

Category 2

3.—(1) Any of the following—

(1) S.I. 2018/41.

- (a) savoury snacks whether intended to be consumed alone or as part of a complete meal including—
 - (i) products made from potato, other vegetables, grain or pulses;
 - (ii) extruded, sheeted and pelleted products;
 - (iii) bagged savoury crackers, rice cakes or biscuits,
such as crisps, pitta bread based snacks, pretzels, poppadums, salted popcorn and prawn crackers (but not raw, roasted, coated or flavoured nuts);
- (b) pork rind-based snacks whether intended to be consumed alone or as part of a complete meal.

Category 3

4. Breakfast cereals, including ready-to-eat cereals, granola, muesli, porridge oats and other oat-based cereals.

Category 4

5. Confectionery, including chocolates and sweets.

Category 5

6. Ice cream, ice lollies, frozen yogurt, water ices and similar frozen products.

Category 6

7. Cakes and cupcakes.

Category 7

8. Sweet biscuits and bars based on one or more of nuts, seeds or cereal.

Category 8

9. Morning goods, including croissants, pains au chocolat and similar pastries, crumpets, pancakes, buns, teacakes, scones, waffles, Danish pastries and fruit loaves.

Category 9

10. Desserts and puddings, including pies, tarts and flans, cheesecake, gateaux, dairy desserts, sponge puddings, rice pudding, crumbles, fruit fillings, powdered desserts, custards, jellies and meringues.

Category 10

11. Sweetened (whether with sugar or otherwise) yoghurt and fromage frais.

Category 11

12. Pizza (except plain pizza bases).

Category 12

13. Roast potatoes, potato and sweet potato chips, fries and wedges, potato waffles, novelty potato shapes (such as smiley faces), hash browns, rostis, crispy potato slices, potato croquettes.

Category 13

14.—(1) Any of the following—

- (a) products that are marketed as ready for cooking or reheating without requiring further preparation and intended to be consumed as a complete meal;
- (b) products, other than products that contain pastry, in or with a sauce (but not a marinade, glaze, dressing, seasoning or similar accompaniment) that are marketed as ready for cooking or reheating without requiring further preparation and intended to be consumed as the main element of a meal;
- (c) breaded or battered—
 - (i) vegetable, fish, shellfish, meat or poultry products;
 - (ii) substitute fish, shellfish, meat or poultry products,
including fish fingers, fish cakes and chicken nuggets.

SCHEDULE 2 Regulation 12

Fixed monetary penalties

Imposition of a fixed monetary penalty

1.—(1) A food authority may by notice impose a fixed monetary penalty on a person in relation to an offence under regulation 11.

(2) Before doing so, the food authority must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) The amount of penalty to be paid to the food authority as a fixed monetary penalty is £2,500.

Notice of intent

2.—(1) When a food authority proposes to impose a fixed monetary penalty on a person, the food authority must serve on that person a notice of what is proposed (“notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposal to impose the fixed monetary penalty;
- (b) the amount of the penalty;
- (c) a statement that the liability for the penalty can be discharged by paying 50% of the penalty within 28 days beginning with the day on which the notice was received;
- (d) information as to—
 - (i) the effect of the discharge payment in sub-paragraph (2)(c);
 - (ii) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;
 - (iii) the circumstances in which the food authority may not impose the fixed monetary penalty (including any defences relating to the offence in relation to which the notice is served).

Discharge of liability

3. The penalty is discharged if a person who receives a notice of intent pays 50% of the amount of the penalty within 28 days beginning with the day on which the notice was received.

Making representations and objections

4.—(1) A person on whom a notice of intent is served may, within 28 days beginning with the day on which the notice was received, make written

representations and objections to the food authority in relation to the proposed imposition of the fixed monetary penalty.

(2) After the end of the period for making representations and objections, the food authority must decide whether to impose the fixed monetary penalty.

Service of final notice

5.—(1) If the person who has received a notice of intent does not discharge liability within 28 days, the food authority may serve on that person a notice (“final notice”) imposing a fixed monetary penalty.

(2) The food authority must not serve a final notice on a person where the food authority is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates.

(3) Where a food authority has served a final notice relating to a fixed monetary penalty, it must not serve any other notice under these Regulations in relation to the offence.

Contents of final notice

6. A final notice must include information as to—

- (a) the amount of the penalty,
- (b) the grounds for imposing the penalty,
- (c) how payment must be made,
- (d) the period of 28 days within which payment must be made,
- (e) details of the early payment discount,
- (f) rights of appeal, and
- (g) the consequences of non-payment (including details of the late payment penalties).

Discount for early payment

7. If a person who was served with a notice of intent made representations or objections concerning that notice within the time limit, that person may discharge the final notice by paying 50% of the penalty within 14 days beginning with the day on which the final notice was received.

Appeals against a final notice

8.—(1) A person who receives a final notice may appeal against it.

(2) The grounds of appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;

- (c) that the decision was unreasonable;
- (d) that the decision was wrong for any other reason.

Appeals

9.—(1) An appeal under paragraph 8 is to the First-tier Tribunal.

(2) A final notice is suspended pending the determination or withdrawal of the appeal.

(3) The First-tier Tribunal may—

- (a) withdraw, confirm or vary the penalty or final notice,
- (b) take such steps as the food authority could have taken in relation to the act or omission giving rise to the penalty or final notice, or
- (c) remit the decision whether to confirm the penalty or final notice, or any other matter relating to that decision, to the food authority.

Non-payment after 28 days (late payment penalty)

10.—(1) The penalty must be paid within 28 days of receipt of the final notice.

(2) If the penalty is not paid within 28 days, the amount payable is increased by 50%.

(3) 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 (if the appeal is unsuccessful), and if it is not paid within 14 days the amount of the penalty is increased by 50%.

Recovery of payments

11. A food authority may recover any penalty imposed under this Schedule, and any financial penalty for late payment, on the order of a court, as if payable under a court order.

Criminal proceedings

12.—(1) If a notice of intent for a fixed monetary penalty is served on any person—

- (a) no criminal proceedings for the offence may be instituted against that person in respect of the act or omission to which the notice relates before 28 days from the date on which the notice of intent is received, and
- (b) if that person discharges liability, that person may not at any time be convicted of the offence in relation to that act or omission.

(2) If a fixed monetary penalty is imposed on any person, that person may not at any time be convicted

of the offence in respect of the act or omission giving rise to the penalty.

Withdrawing a notice

13. A food authority may at any time in writing withdraw a notice imposing a fixed monetary penalty.

SCHEDULE 3 Regulation 16

Modification of provisions of the Act

PART 1

Modification of section 21 of the Act (defence of due diligence)

- 1.** Section 21 applies as if—
 - (a) in subsection (2), the reference to an offence under section 14 or 15 were to an offence under these Regulations, and
 - (b) in subsection (4)(b), the references to “sale or intended sale” were to include “promotion or presentation”.

PART 2

Modification of section 32 of the Act (powers of entry)

- 2.** Section 32(1)(a) applies as if “or of regulations or orders made under it” were omitted.
- 3.** Section 32(6)(a) applies as if “or of regulations or orders made under it” were omitted.

PART 3

Modification of section 34 of the Act (time limits for prosecutions)

- 4.** Section 34 applies as if for “section 35(2) below” there were substituted “regulation 11(2)”.

PART 4

Modification of section 35 of the Act (punishment of offences)

5. Section 35(1) applies as if the reference to section 33(1) were to that section as applied by these Regulations.

6. Section 35(2) applies as if for “any other offence under this Act” there were substituted “an offence under section 33(2) as applied by these Regulations”.

PART 5

Modification of section 37 of the Act (appeals to magistrates’ court)

7. The heading to section 37 applies as if the reference to “or sheriff” were omitted.

8. Section 37(1) applies as if there were substituted—

“(1) Any person who is aggrieved by the decision of an authorised officer of a food authority to serve an improvement notice under regulation 10 may appeal to a magistrates’ court.”

9. Section 37(3) applies as if “or an appeal to such a court for which provision is made by regulations under Part II of this Act” were omitted.

10. Section 37(5) applies as if—

- (a) “or (4)” were omitted, and
- (b) in paragraph (b), “in the case of an appeal under subsection (1)(a) above, that period or” were omitted.

11. Section 37(6) applies as if—

- (a) “or (4)” were omitted, and
- (b) in paragraph (a), “or to the sheriff” were omitted.

PART 6

Modification of section 39 of the Act (appeals against improvement notices)

12. Section 39 applies as if—

- (a) the references to an improvement notice were to an improvement notice served under regulation 10, and
- (b) in subsection (3), “for want of prosecution” were omitted.

PART 7

Modification of section 49 of the Act (form and authentication of documents)

13. Section 49(4) applies as if “and of any regulations and orders made under it” were omitted.