

GUIDANCE NOTE ON THE PRICE MARKING (FOOD AND DRINK SERVICES) ORDER 2003

1 The Price Marking (Food and Drink Services) Order 2003 (Statutory Instrument No. 2253) will come into force on 2nd March 2004. This note outlines some of the main provisions of the Order, and provides guidance on it. It should not be treated as a substitute for the Order itself, which is available from the Stationery Office and their website at <http://www.hmsso.gov.uk/stat.htm>.

2 This Order requires restaurants, bars, cafeterias, take-aways and similar outlets to display information about the prices of food and drink. It covers the supply of food and drink to the consumer where the supplier provides the consumer with a service. It does not apply to food and drink sold in retail outlets (other than take-aways) - that is covered by The Price Marking Order 1999 (Statutory Instrument No. 3042).

3 Other relevant legislation is the Consumer Protection Act 1987, which contains provisions on misleading prices, and the Code of Practice for Traders on Price Indications, which is issued under the provisions of the 1987 Act. Copies of the legislation are available from the Stationery Office and of the Code by phone from the DTI Publications Order Line 0870 1502500 or on-line at www.dti.gov.uk/publications/.

ARTICLE 1 – DEFINITIONS

4 Defines the central terms used in the Order, and states the date when it will come into effect.

5 Points to note about the definitions are:

- a) Food covers both food and drink for human consumption. The Order does not apply to special orders made at the

specific request of a purchaser (i.e. food not normally available) or food provided at a price agreed in advance of the purchaser entering the premises (e.g. for a wedding breakfast or other catered function).

- b) Eating area means the part of a premises set aside and equipped for eating and drinking (i.e. a restaurant or cafe with waiter service). It excludes supply areas, which are defined as the part of a premises set aside and equipped for the supply of food and drink where the consumer pays for it before eating or drinking it on the premises. Both the self-service area of a cafeteria or the bar where food and drink are ordered in a public house would for example be a "supply area". Whether an area is an eating area or a supply area has important effect on where prices must be displayed (see Article 7).
- c) Take away area is defined as premises set aside and equipped for the supply of food prepared or heated at the request of a consumer or supplied as heated meals for consumption off the premises where it is sold. This covers standard take-away outlets (such as fish and chip shops, burger bars etc) but also establishments where there is a service element specific to the consumer. Thus, a sandwich bar where sandwiches are made up at the counter and where fillings can be varied at the consumer's request is covered by these regulations but, for instance, ready-made and packaged sandwiches sold in a supermarket, and which will not be varied to meet an individual consumer's request, are not. The latter are regulated under the Price Marking Order, which broadly requires that all items must be priced as opposed to this Order which requires traders to display the prices of a limited number of items. The logic is that where identified products are for sale at fixed prices as in a supermarket then their prices should all be displayed (i.e. the comprehensive pricing required by the Price Marking Order) but where, as in a restaurant, there may be many variations in the product to meet the wishes of individual

consumers then only selective prices have to be displayed.

6 The Price Marking Order does not apply to food supplied in the course of the provision of a service to which this Order applies. So, for example, in a large supermarket with a café on site the shop part will be covered by the Price Marking Order and the café by this Order. Where there is doubt (for example whether a delicatessen is a “take-away area”) and full pricing is possible because the products sold have fixed prices and their content are not altered at the request of a consumer, then the comprehensive pricing required by the Price Marking Order will ensure compliance with the law.

ARTICLE 2 - REVOCATION

7 Revokes the Price Marking (Food and Drink on Premises) Order 1979. This Order re-enacts the 1979 Order with amendments (for example the extension to take-aways and a new provision requiring prices for soft drinks) and updating and simplification of the wording.

ARTICLE 3 – SCOPE AND EXEMPTIONS

8 Sets out the scope of the Order and provides that it does not apply to bona fide clubs when they are serving members or their guests, for establishments such as hotels and boarding houses where food is normally supplied only to residents, and for staff canteens and educational establishments.

9 A particular point to note is the width of the definition of “staff canteens” in article 3(2)(b). It covers premises used by members of a group related by employment, but the exemption is not limited to employees, and there can be more than one employer. The exemption therefore extends to canteens operated by organisations, like the NAAFI, where partners, or children of the person in employment can be members of the organisation in their own right; and one where membership is extended to employees of a number of organisations.

ARTICLE 4 – OBLIGATION TO INDICATE PRICES

10 This article sets out the obligation to indicate prices. A particular point to note is that **all charges, additional to those indicated as the price of food, must be shown**; it is therefore necessary to show any cover or service charge.

11 The price of food must be given by description (e.g. fish and chips; *coq au vin*) unless the item is sold by quantity or weight (e.g. a pint of beer, six oysters). If the price is given by quantity or weight and other prices are directly proportionate to that price, one indication of price is sufficient. Thus if half a pint of beer costs half the price of a pint, or a dozen oysters twice the price of six oysters, the prices for a pint and for six oysters would suffice.

12 When a number of items are for sale together and the total price is the sum of the individual prices, then only the individual items need be priced. Thus a pub indicating separate prices for gin and for bitter lemon need not indicate a price for gin and bitter lemon; nor need a sandwich bar indicate the price for all possible combinations of sandwich fillings, provided the prices of the separate fillings are given. An exception to this is for fixed price meals, where the total price of all such meals must be displayed (article 5).

ARTICLE 5 – PRICES THAT MUST BE DISPLAYED

13 Sets out the specific obligations about how many prices must be displayed. The Order sets a minimum requirement. **There is nothing in the Order that prevents more prices or, indeed, all prices from being displayed.** The Order requires that:

- If up to 30 items of food, other than wine, are available then prices for **all** must be displayed.
- If more than 30 items of food, other than wine, prices of at least 30 must be displayed.

- Where prices are displayed in categories on a menu (e.g. soups, fish, entrées, drinks) then at least five items must be shown in each category, unless there are fewer than 5 items available in a category. Thus, if a soup category is shown and the establishment sells four differently priced soups then the prices of each must be displayed. If it sells nine soups, then the price of at least five must be displayed.
- The prices of at least five soft drinks – if this number is available – must be indicated. It should be noted that the five soft drink prices **form part of the total number of prices required to be displayed** and are not additional to it.
- When wine is sold for consumption with food (but not when merely sold among other drinks), the price of at least five wines – if this number is available – must be displayed. It should be noted that this is **additional to the prices of other foods required to be displayed**.
- The price of every fixed price meal must be displayed in addition to the other prices required by the Order.

14 Advice on providing the information in ways that are helpful to consumers is set out in best practice guidance produced by the trade and available at <http://www.beerandpub.com/newpages/retail/gpguides/price/pi.pdf>

ARTICLE 6 – WHEN TO WITHDRAW PRICES FOR FOOD THAT HAS RUN OUT

15 The limited number of prices required by the Order is intended to provide a fair representation of food that is actually available for sale. If food is supplied generally, rather than in a particular period of the day, (for example in a cafeteria that is open throughout the day) and a particular food runs out then that price should be removed from display. This should be done

as soon as is reasonably practicable after the food has become unavailable.

16 When food is available only during specific periods of the day (e.g. a lunch menu served from 12-2pm) and a particular food runs out, the price must be removed before the next period starts.

ARTICLE 7 – WHERE PRICES MUST BE DISPLAYED?

17 Sets out the provisions governing the way in which prices must be displayed. **The basic principle is that they must be unambiguous, easily identifiable and clearly legible to the consumer.** In addition, any minimum or service charge levied separately must be indicated at least as prominently as the prices of the food to which they relate.

18 The place at which prices must be indicated depends on whether they apply to an eating, supply or take-away area:

- For an eating area, prices must be shown at or near the entrance so that the prospective consumer can see them before he enters; a restaurant with direct access to the street will therefore be required to show prices so that they are visible from the street, whereas a restaurant in a larger complex of buildings (e.g. in a hotel) will meet the requirements of the Order by displaying the prices at the entrance to the actual eating area. A special exemption is given for eating areas in railway carriages where the Order merely requires prices to be shown at the table where the consumer is served.
- For a supply area, prices must be indicated where the consumer chooses his food (e.g. the price of a sweet in a self-service canteen must be indicated at or near the point where the consumer selects it) and if that indication cannot be seen by a customer before entering the area then a further indication must be given at or near the entrance. Choice is therefore given of how prices are displayed, for example, a single notice at or near the entrance and

individual pricing of items at the point of collection, or a single notice suitably placed so that it can be seen at both points.

- For a take-away area, prices must be indicated where the consumer chooses his food.

19 The trade best practice guidance (see paragraph 14 above) contains advice on how to interpret the Order in establishments with both waiter and self-service areas

20 Prices must be in sterling. If an establishment to which the Order applies advertises that it accepts other currencies in addition to sterling then it must either give the prices in the other currency and any commission to be charged or provide transparent information on conversion and commission rates so that consumers know how much items will cost them in those other currencies. In either case they must also indicate that these rates will not apply to transactions via payment cards. No additional information is required, however, if an outlet does not normally accept currencies other than sterling but will do so, on occasion, at the request of an individual consumer.

ARTICLE 8 – EXEMPTION IF PROVISIONS BREACH TOWN AND COUNTRY PLANNING ACT PROVISIONS

21 Provides that the requirements of article 7 do not apply if what is required would be contrary to regulations made by or under sections 220, 221 or 224 of the Town and Country Planning Act 1990 or sections 182, 183 or 186 of the Town and Country Planning (Scotland) Act 1997. These provide an exemption for those establishments where a lighted external display (for example) would be necessary to comply with the Order, but where such a display would be contrary to the regulations governing advertising.

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