

CAP and BCAP Regulatory statement

Implementation of the “less healthy” food and drink product advertising restrictions

4 December 2025



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Executive summary

Overview

Following formal approval of the associated rules and guidance by the Advertising Standards Authority (ASA), as frontline regulator, and the backstop regulator, Ofcom, the [Committees of Advertising Practice](#) (CAP and BCAP) have concluded their [consultation](#) on the implementation of the “less healthy” food and drink product advertising restrictions. This regulatory statement confirms the arrangements for new restrictions, which will introduce additional controls on certain types of food and drink advertising.

New restrictions on food and drink advertising

From 5 January 2026, new rules in the UK Advertising Codes reflecting the relevant legislation will prohibit ads for “identifiable” less healthy food and drink products from appearing:

- on television between 5:30am and 9:00pm;
- in on-demand programme services (ODPS) between 5:30am and 9:00pm; and
- in paid online media at any time.

The final rules (set out in full in part I below) will be accompanied by formal guidance on their implementation and enforcement (the subject of part II below), the final version of which is published here: [Advertising Guidance: Advertising of less healthy food and drink products](#) (the Guidance).

This regulatory statement

This document summarises the policy background and process carried out to develop the rules and Guidance. It sets out CAP and BCAP’s evaluation of responses to the consultation questions covering each of the new rules, and the Guidance. In conjunction with the annexes, it confirms the final versions of the television, ODPS and online rules, and Guidance.

The statement should be read alongside the consultation document [here](#).

Next steps

The less healthy product advertising rules will come into effect on 5 January 2026, when the ASA will begin to apply them.

Affected parties must ensure that their advertisements are compliant having regard to the new rules and the Guidance. This applies both to new ads and existing ads appearing on or from 5 January.

CAP and BCAP strongly encourage affected parties to seek advice through the CAP [Copy Advice](#) service, and to utilise the [secondary advice resources](#) published alongside this statement. For broadcast clearance matters, advertisers should contact [Clearcast](#).

1. Background

1.1 Development of new restrictions on food and drink advertising

Since 2007, the ASA has enforced rules designed to limit the potential for high fat, salt or sugar (HFSS) product advertising to influence children's dietary choices. The HFSS product advertising rules combine specific scheduling and placement restrictions that apply across all media covered by the UK Advertising Codes, and place restrictions on the creative content of such ads. They seek to appropriately limit children's overall exposure to HFSS advertising, banning outright HFSS advertisements in media made for or that is disproportionately popular with children. They also prevent the use of specific creative techniques with the aim of reducing the impact of HFSS ads on children's food preferences.

In 2018, the UK Government [set out](#) its aim to halve childhood obesity by 2030. Following a process of consultation, a range of interventions intended to address continuing concerns over diet and health were announced in 2020. In relation to advertising, Government [concluded](#) that further action was necessary to improve protections for children. As a result, [Schedule 18](#) of the Health and Care Act 2022 amended the Communications Act 2003 to insert additional restrictions on certain food and drink advertising. The aim was to build on the existing framework of rules to increase protections and further mitigate the effects of advertising on children's dietary choices.

1.2 "Less healthy" food and drink product advertising restrictions

Amendments to the Communications Act 2003 place additional restrictions on a sub-set of HFSS products; those falling under categories set out in law of what are termed "less healthy" food and drink products. The restrictions prohibit:

- Ofcom-licensed television services from including advertising and sponsorship for identifiable less healthy products between 5:30am and 9:00pm (as set out in section [321A](#));
- Ofcom-regulated ODPS from including advertising and sponsorship announcements for identifiable less healthy products between 5:30am and 9:00pm (as set out in section [368FA](#)); and
- paid-for advertisements for identifiable less healthy products intended to be accessed principally by persons in the UK from being placed on the internet at any time (as set out in section [368Z14](#)).

"Less healthy" food or drink products are defined by a two-stage test. They are products that:

- fall within one of the categories set out in the Schedule to [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#) (and not an exempt product under paragraph 1 of that Schedule); and
- score 4 or more points for a non-drink, or 1 or more points for a drink, under the 2004-05 nutrient profiling model, as detailed in DHSC's [Nutrient profiling technical guidance](#).

The Communications Act 2003 states that a less healthy product is "identifiable", in relation to advertisements, if persons in the United Kingdom (or any part of the United Kingdom) could reasonably be expected to be able to identify the advertisements as being for that

product (the “identifiability test”). The rules are subject to several exemptions set out in legislation; principally, they do not apply to:

- advertisements for identifiable less healthy products by or on behalf of small or medium enterprises (food or drink SMEs) (as defined under [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#)); or
- “brand advertisements” the content of which does not depict a specific less healthy food or drink product (as defined under [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#)).

There are also exemptions in law to the online restriction for: advertising that is not addressed to those in the UK; business-to-business advertising; audio ads included in services connected to Ofcom-regulated radio services; audio ads included in other online audio services; and ads already regulated in the other media restrictions - advertising in Ofcom-regulated television services delivered over the internet (which are subject to the restriction on television advertising); and unregulated television services delivered over the internet that correspond to a regulated television service.

When they come into effect on 5 January 2026, the less healthy product advertising rules will form a new and additional tier of restrictions augmenting CAP and BCAP’s existing restrictions on HFSS ads. In circumstances outside the scope of the less healthy product restrictions, the existing HFSS rules will continue to apply to advertisements for HFSS products.

1.3 The roles of ASA, CAP, BCAP and Ofcom, and the purpose of consultation

Ofcom is the statutory regulator responsible for the framework of the new restrictions. In 2023, it [appointed](#) the ASA as the body responsible for frontline enforcement under co-regulatory arrangements covering the three media in scope. It also made the ASA responsible for drawing up the guidance required under the amended Communications Act 2003 as to how it intends to exercise its functions in relation to the less healthy product advertising restrictions¹. The authority is also required to consult the Secretary of State before drawing up or revising the guidance and to publish it so as to bring it to the attention of affected stakeholders.

With confirmation of Ofcom’s [designation](#), the ASA asked CAP and BCAP to develop the guidance on its behalf, recognising the Committees’ role as authors of the UK Advertising Codes, and their extensive experience in providing advertisers, media owners and other practitioners with advice on how to comply with the Codes.

The consultation, published in September 2025, sought public feedback on the text of the television, ODPS and online rules, and the main sections of the Guidance (see the [consultation document](#) for more detail). It is the third CAP and BCAP consultation on implementation (following consultations published in December [2023](#) and February [2025](#)).

¹ The requirement to draw up and publish guidance relates to advertising included in ODPS (as set out in section [368C](#)) and online (as set out in section [368Z18](#)). There is no equivalent requirement relating to the restriction applying to television. However, in confirming that the existing co-regulatory arrangements for broadcast advertising adequately cover the new less healthy food advertising restriction for television advertising, Ofcom indicated that BCAP could produce guidance on the application of that restriction. Although the statutory duties relate only to the ODPS and online restrictions, the interpretation of key concepts and tests are relevant also to TV.

The latest consultation was prompted by the introduction of [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#), which explicitly exempt what they define as “brand advertisements” from scope. CAP and BCAP opted for a third, standalone consultation exercise to ensure stakeholders have had the opportunity to comment, in full, on proposed rules and guidance developed following the introduction of the 2025 Regulations.

1.4 Overview of consultation responses

The consultation closed on 9 October. There were 29 responses from the following parties: Action on Salt and Sugar, Advertising Association, British Retail Consortium, British Soft Drinks Association, Cancer Research UK, Diabetes UK, Dine Time, DMG Media, Food and Drink Federation, Goodstuff, Incorporated Society of British Advertisers, Institute of Practitioners in Advertising, Internet Advertising Bureau UK, Kellanova, Mars UK, Nestle, News Media Association, Obesity Health Alliance, pladis (UK), Potato Processors' Association, Reach, Runragged, Safefood, Sky, Sustain and Waitrose. Additionally, three respondents requested confidentiality.

Responses represented a range of industry stakeholders including the food and drink industry, advertising industry practitioners, media owners, as well as non-industry parties such as charities and public health campaign groups. Most respondents had engaged with CAP and BCAP's previous consultations on the new restrictions.

Around 80% of responses were from industry stakeholders representing a broad cross-section, from advertisers and agencies, to publishers and social media platforms. Industry responses were mainly supportive of the proposals both in general and in detail. However, there were specific points of disagreement, and a considerable number of requests for further information and clarity to be provided (for instance, over how a particular piece of content or advertising approach would likely be treated under the new rules). Many of these requests presented advertising creative scenarios, asked practical questions and called for further detail to be added to the Guidance.

Non-industry responses tended to acknowledge the proposal's alignment with the underlying legislation, but raised strong concerns over their impact and whether they would conform to underlying public health goals. They focused in particular on how the proposals treated brand advertising and made a variety of requests for revisions to various parts of the Guidance.

Non-confidential consultation responses are available [here](#).

2. Part I: Less healthy product advertising rules

2.1 Overview

This part of the regulatory statement confirms the final version of the rules that will integrate the less healthy product advertising restrictions set out in legislation into the UK Advertising Codes following the approval of those rules by Ofcom in its role as statutory regulator. The rules will form the basis for the ASA's enforcement from 5 January 2026.

2.2 Consultation aims and questions

As set out in the consultation document, the aim of this part of the consultation was to ensure appropriate alignment between the rules the ASA will enforce and the legislation that underpins them.

Responses were invited on the text of each of the proposed television, ODPS and online rules, as well as how they will appear in situ alongside consequential amendments to the existing rules and supporting information intended to accommodate the new additions.

Consultation question (i) stated:

Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

Consultation question (ii) stated:

Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

Consultation question (iii) stated:

Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

2.3 Summary of consultation responses

Given their technical nature and the narrow focus of the consultation, there were no significant objections to the proposals. The vast majority of respondents commenting on the proposed text of the rules signalled their agreement. However, there were some points of response that raised questions and concerns over the way the proposed text of the rules reflected legislation:

- In relation to the exemption for food or drink SMEs as reflected in the supporting information to the television and ODPS rules, concerns were expressed over the proposals' reference to "the person paying for the advertisement ..." as the basis for

the exemption. They pointed out that the legislation, Communications Act 2003 section [321A\(4\)\(a\)](#), underlying the television restriction and section [368FA\(2\)](#), underlying the ODPS restriction, referred to advertisements included "...as a result of arrangements made by or on behalf of a person who is" an SME. Several respondents were uncertain over the effect the difference would have on compliance in scenarios where a non-SME party acted on behalf of an SME.

- In relation to the food or drink SME exemption in the supporting information for all three proposed rules, some respondents pointed out that Regulation 4(1)(b) of [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#), which set out the criteria for determining a food or drink SME, used the term "fewer than 250 people" not "less than" as in the proposals.
- In relation to the brand exemption, in the supporting information for all three proposed rules, a respondent suggested that the sub-bullet point reflecting paragraph 2(3) of [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#) should also include the conditions set out in sub-paragraphs (a) and (b) of that part of the legislation relating to permissible use of product names.
- In relation to the exemptions in the supporting information for the proposed online rule, some respondents requested the status of internet TV services be clarified making clear which rules the media exempt from the online restrictions should comply with.

None of the comments related to the respective rules as CAP and BCAP proposed that they appear in the affected Code sections, or on the consequential amendments to those sections proposed to accommodate the new restrictions.

2.4 CAP and BCAP's evaluation

CAP and BCAP note the general agreement with the proposals and that there were no significant points of objection. In order to address the specific points summarised above, the final versions of the text of each rule have been amended to:

- better align the wording of the television and ODPS rules with the relevant legislation relating to the food or drink SME exemption;
- include more relevant detail of paragraph 2(3) of [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#) on permissible use of names under the depiction test; and
- further explain the enforcement arrangements for advertisements falling under some of the exemptions to the scope of the online rule.

2.5 Consultation outcome: final television rule

BCAP confirms the outcome of question (i) on a new rule to reflect the less healthy product advertising restriction for television. The text of the rule and supporting information is confirmed as follows:

Scheduling of less healthy product advertisements

Background

The Communications Act 2003 [section 321A](#) prohibits television programme services provided between 5.30 am and 9.00 pm from including advertisements for an identifiable less healthy food or drink product. The restriction is reflected in rule 32.21.

Rule

32.21 – Television programme services must not include advertisements for an identifiable less healthy food or drink product between 5.30am and 9.00pm.

Definitions and supporting information

A food or drink product is “less healthy” if:

- it falls within a food or drink category specified in [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#); and*
- it is a food or drink product high in fat, salt or sugar (an HFSS product).*

For guidance on the less healthy product categories set out in the 2024 Regulations, see the Department of Health and Social Care’s guidance, [Restricting advertising of less healthy food or drink on TV and online: products in scope](#).

“HFSS products” are those food or soft drink products that are assessed as high in fat, salt or sugar in accordance with the Department of Health and Social Care’s [Nutrient Profiling Technical Guidance](#) issued in 2011.

A less healthy food or drink product is identifiable, in relation to advertisements, if persons in the UK (or any part of the UK) could reasonably be expected to be able to identify the advertisement as being for that product.

The following exemptions apply to Rule 32.21.

- Brand advertisements – In accordance with [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#), advertisements that promote a brand, including the brand of a range of products are exempt. This exemption does not apply to an advertisement:*
 - the content of which depicts a specific less healthy food or drink product (unless such depiction of the product is only by way of the name of the product, including where the name of the product appears in the logo of a company, franchise or other commercial entity or in the*

logo of a brand of a range of products, and that product's name falls within the criteria listed in the next sub-bullet);

- *that promotes a brand the name of which is the name of a specific less healthy food or drink product (unless the product's full name is the name or is included in the name of a company, franchise or other commercial entity which was established before 16th July 2025 and which held that name immediately before that date; or it is the name of the brand of a range of products, where that brand was in use, as the brand of that range, for the purposes of marketing, advertising or retail sale immediately before 16th July 2025 and held that name immediately before 16th July 2025); or*
 - *the content of which includes a realistic image of a food or drink product where the realistic image shows the food or drink itself and is not only of the product's packaging, and the food or drink product is visually indistinguishable from a specific less healthy food or drink product.*
- *Advertisements by food and/or drink SMEs – advertisements included in television programme services as a result of arrangements made by or on behalf of a person who is, at the time when the arrangements are made, a food or drink small or medium enterprise ("food or drink SME"), within the meaning given by [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#) (in general terms, a food or drink SME is a business that employs fewer than 250 people, including as part of a franchise agreement).*

Where terms are used in the rules and supporting information above that reflect legislation, their meaning should be understood with reference to the relevant legislation.

Guidance on the application of the less healthy product advertising rule (including information on the definition of terms used and the exemptions to which the rule is subject) is available [here](#).

A mark-up of affected BCAP Code sections is included in [Annex A](#). This shows the new rule as it will appear in the Code, alongside other changes to the Code to accommodate it. The Annex also highlights the changes to the proposed text consulted on responding to consultation feedback as described above in 2.4.

Rule 32.21 will be inserted into BCAP Code section 32 (Scheduling) and will come into effect, alongside its counterparts for ODPS and online and the other proposed changes to the Codes, on 5 January 2026.

2.6 Consultation outcome: final ODPS rule

CAP confirms the outcome of question (ii) on a new rule to reflect the less healthy product advertising restriction for ODPS. The text of the rule and supporting information is confirmed as follows:

Less healthy food and drink product advertisements

Background

The Communications Act 2003 [section 368FA](#) states that on-demand programme services must not, between 5.30 am and 9.00 pm, include advertisements for an identifiable less healthy food or drink product. The restriction is reflected in rule 30.16.

Rule

30.16 – Regulated on-demand programme services must not include advertisements for an identifiable less healthy food or drink product between 5.30am and 9.00pm.

Definitions and supporting information

A food or drink product is “less healthy” if:

- it falls within a food or drink category specified in [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#); and*
- it is a food or drink product high in fat, salt or sugar (an HFSS product).*

For guidance on the less healthy product categories set out in the 2024 Regulations, see the Department of Health and Social Care’s guidance, [Restricting advertising of less healthy food or drink on TV and online: products in scope](#).

“HFSS products” are those food or soft drink products that are assessed as high in fat, salt or sugar in accordance with the Department of Health and Social Care’s [Nutrient Profiling Technical Guidance](#) issued in 2011.

A less healthy food or drink product is identifiable, in relation to advertisements, if persons in the UK (or any part of the UK) could reasonably be expected to be able to identify the advertisement as being for that product.

The following exemptions apply to Rule 30.16.

- Brand advertisements – In accordance with [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#), advertisements that promote a brand, including the brand of a range of products are exempt. This exemption does not apply to an advertisement:*
 - the content of which depicts a specific less healthy food or drink product (unless such depiction of the product is only by way of the name of the product, including where the name of the product appears in the logo of a company, franchise or other commercial entity or in the logo of a brand of a range of products, and that product’s name falls within the criteria listed in the next sub-bullet);*

- *that promotes a brand the name of which is the name of a specific less healthy food or drink product (unless the product's full name is the name or is included in the name of a company, franchise or other commercial entity which was established before 16th July 2025 and which held that name immediately before that date; or it is the name of the brand of a range of products, where that brand was in use, as the brand of that range, for the purposes of marketing, advertising or retail sale immediately before 16th July 2025 and held that name immediately before 16th July 2025); or*
 - *the content of which includes a realistic image of a food or drink product where the realistic image shows the food or drink itself and is not only of the product's packaging, and the food or drink product is visually indistinguishable from a specific less healthy food or drink product.*
- *Advertisements by food and/or drink SMEs – advertisements included in on-demand programme services as a result of arrangements made by or on behalf of a person who is, at the time when the arrangements are made, a food or drink small or medium enterprise (“food or drink SME”), within the meaning given by [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#) (in general terms, a food or drink SME is a business that employs fewer than 250 people, including as part of a franchise agreement).*

Where terms are used in the rules and supporting information above that reflect legislation, their meaning should be understood with reference to the relevant legislation.

Media service providers and marketers should also have regard to the other rules on less healthy and HFSS product advertising in section 15. Guidance on the application of the less healthy product advertising rule (including information on the definition of terms used and the exemptions to which the rule is subject) is available [here](#).

A mark-up of affected CAP Code sections is included in [Annex B](#). This shows the new rule as it will appear in the Code, alongside other changes to the Code to accommodate it. The Annex also highlights the changes to the proposed text consulted on responding to consultation feedback as described above in 2.4.

Rule 30.16 will be inserted into CAP Code Appendix 2 (Advertising rules for on-demand services regulated by statute) and will come into effect, alongside its counterparts for TV and online and the other proposed changes to the Codes, on 5 January 2026.

2.7 Consultation outcome: final online rule

CAP confirms the outcome of question (iii) on a new rule to reflect the less healthy product advertising restriction for online. The text of the rule and supporting information is confirmed as follows:

Placement of less healthy food and drink product advertisements online

Background

The Communications Act 2003 [section 368Z14](#) states that a person must not pay for advertisements for an identifiable less healthy food or drink product to be placed on the internet. The restriction is reflected in rule 15.19.

Rule

15.19

Persons must not pay for advertisements for an identifiable less healthy food or drink product to be placed on the internet

Definitions and supporting information

A food or drink product is “less healthy” if:

- *it falls within a food or drink category specified in [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#); and*
- *it is a food or drink product high in fat, salt or sugar (an HFSS product).*

For guidance on the less healthy product categories set out in the 2024 Regulations, see the Department of Health and Social Care’s guidance, [Restricting advertising of less healthy food or drink on TV and online: products in scope](#).

“HFSS products” are those food or soft drink products that are assessed as high in fat, salt or sugar in accordance with the Department of Health and Social Care’s [Nutrient Profiling Technical Guidance](#) issued in 2011.

Paying for advertisements to be placed on the internet includes providing any consideration (monetary or non-monetary) and paying under a sponsorship agreement as result of which advertisements are placed on the internet.

A less healthy food or drink product is identifiable, in relation to advertisements, if persons in the UK (or any part of the UK) could reasonably be expected to be able to identify the advertisement as being for that product.

The following exemptions apply to Rule 15.19.

- *Brand advertisements – In accordance with [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#), advertisements that promote a brand, including the brand of a range of products are exempt. This exemption does not apply to an advertisement:*

- *the content of which depicts a specific less healthy food or drink product (unless such depiction of the product is only by way of the name of the product, including where the name of the product appears in the logo of a company, franchise or other commercial entity or in the logo of a brand of a range of products, and that product's name falls within the criteria listed in the next sub-bullet);*
 - *that promotes a brand the name of which is the name of a specific less healthy food or drink product (unless the product's full name is the name or is included in the name of a company, franchise or other commercial entity which was established before 16th July 2025 and which held that name immediately before that date; or it is the name of the brand of a range of products, where that brand was in use, as the brand of that range, for the purposes of marketing, advertising or retail sale immediately before 16th July 2025 and held that name immediately before 16th July 2025); or*
 - *the content of which includes a realistic image of a food or drink product where the realistic image shows the food or drink itself and is not only of the product's packaging, and the food or drink product is visually indistinguishable from a specific less healthy food or drink product.*
- *Advertisements by food and/or drink SMEs – where the person paying for the advertisement is, at the time when the payment is made, a food or drink small or medium enterprise (“food or drink SME”), within the meaning given by [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#) (in general terms, a food or drink SME is a business that employs fewer than 250 people, including as part of a franchise agreement).*
 - *Advertisements on the internet which are not intended to be accessed principally by persons in the UK.*
 - *Advertisements directed solely at persons who are engaged in, or employed by, a business which involves or is associated with the manufacture or sale of food or drink;*
 - *Advertisements in services connected to regulated radio services, where visual advertisements for less healthy products included in the connected service are not to be treated as part of that service, and where the connected service is:*
 - *provided by means of the internet; and*
 - *corresponds to a service broadcast by a relevant radio service (i.e. the majority of the audio items included in the connected service are broadcast on the relevant radio service at the same time as they are provided by the connected service; a relevant radio service is a radio service regulated by Ofcom).*
 - *Advertisements included in other online audio services that are not visual advertisements.*

- *Advertisements included in a television licensable content service, which is a regulated television service (these are subject to BCAP Code rule 32.21).*
- *Advertisements included in an unregulated television licensable content service, which:*
 - *is provided by means of the internet; and*
 - *corresponds to a regulated television service (i.e. all the programmes, including advertisements, provided by the regulated television service are provided at the same time on both services).*
- *Advertisements included in regulated on-demand programmes services (these are subject to rule 30.16 in Appendix 2 of the CAP Code).*

Where terms are used in the rules and supporting information above that reflect legislation, their meaning should be understood with reference to the relevant legislation.

Guidance on the application of the less healthy product advertising rule (including information on the definition of terms used and the exemptions to which the rule is subject) is available [here](#).

A mark-up of affected CAP Code sections is included in [Annex B](#). This shows the new rule as it will appear in the Code, alongside other changes to the Code to accommodate it. The Annex also highlights the changes to the proposed text consulted on responding to consultation feedback described above in 2.4.

Rule 15.19 will be inserted into CAP Code Section 15 (Food, food supplements and associated health or nutrition claims) and will come into effect, alongside its counterparts for TV and ODPS and the other proposed changes to the Codes, on 5 January 2026.

2.8 Consultation outcome: consequential amendments

CAP and BCAP also confirm the consequential amendments that will be made to the UK Advertising Codes to properly accommodate the new less healthy product advertising rules. These changes are purely technical and do not affect the application of the existing HFSS rules. The changes are confirmed in the mark-ups of the affected BCAP ([Annex A](#)) and CAP ([Annex B](#)) Code sections, alongside the new rules.

Additionally, CAP and BCAP have made several technical updates to their existing guidance supporting the HFSS advertising restrictions, [Guidance on identifying brand advertising that has the effect of promoting an HFSS product](#). A marked-up version of this guidance showing the changes is included in [Annex D](#).

These changes to CAP and BCAP's existing Codes and guidance will be implemented on 5 January, alongside the introduction of the less healthy product advertising rules.

3. Part II: Implementation guidance

3.1 Overview

This part of the regulatory statement confirms the final version of the Guidance, [Advertising Guidance: Advertising of less healthy food and drink products](#), that will accompany the new less healthy product advertising rules.

3.2 Consultation aims

As set out in the consultation document, the aim of this part of the consultation was to deliver Guidance that adequately reflects the underlying legislation and explains with appropriate clarity how the ASA is likely to enforce the new rules to support affected businesses.

CAP and BCAP developed the proposed Guidance primarily for marketers, with a particular emphasis on usability and making it as practical as possible to determine the compliance status of an individual ad. As such, the Guidance directs users firstly to the key tests that determine the scope of application of the restrictions, including the exemptions for food or drink SMEs and brand advertisements.

The proposals were developed having regard to CAP and BCAP's general objective that rules and guidance are transparent, accountable, proportionate, consistent, targeted only where regulation is needed and written so that the rules are easily understood, easily implemented and easily enforced.

3.3 Summary of general themes of consultation responses

The proposed Guidance was the main focus of the 32 responses.

(i) Alignment with legislation – Overall, there was a significant degree of agreement, from both industry and non-industry respondents, that the proposals met the primary aim of adequately reflecting the underlying legislation. However, there were several specific points of concern among industry respondents, along with stronger disagreement on specific points of concern from non-industry respondents.

While acknowledging the general alignment of the proposals with the legislation, non-industry respondents expressed concern over how the policy reflected their understanding of Government's original policy intent, its relationship to the evidence base around advertising's effect on children's dietary preferences, and the likely impact of the new framework, in terms of reducing children's exposure to food and drink advertising, and fairness among different businesses. Non-industry respondents made a variety of requests for the Guidance to be amended, most notably to:

- prioritise, in part 3 (Background), advertisers' promotion of healthier alternatives to less healthy products;
- include, in part 4 (Determining products in scope), an approach to assessing generic product imagery as part of the two-stage test for determining products in scope; and
- specify, in part 6 (Media and scope), that where an influencer has merely received products, benefits, or incentives, any content produced relating to in-scope less

healthy products should normally be treated as advertising irrespective of any arrangement between the influencer and the third party.

The most significant focus of non-industry respondents' concern was the proposals reflecting the brand advertising exemption, as set out in part 7. They objected that several provisions of this part of the Guidance allowed significant scope for the indirect promotion of less healthy products. They requested a variety of amendments to address what they regarded as weaknesses in how Government's policy and the legislation was set out in the proposed Guidance. These included changes to:

- exclude limited availability variants of a product from the definition of a "range" of products;
- make clear the brand advertising exemption should not apply where a brand or corporate identity is primarily or predominantly associated with less healthy products;
- require that, where a healthier product exists under a branded range of products, that product must be advertised instead of using the brand exemption; and
- assert the relevance of consumer perceptions of what an ad or piece of content promotes.

(ii) Clarity of the proposals – This was raised in the majority of responses. Most industry respondents posed questions, cited particular advertising scenarios, and many requested more detail be included in the Guidance in response. Non-industry respondents also called for more clarity in several areas from the perspective of limiting the potential, as they saw it, for industry to exploit loopholes. The most significant of these points of response are summarised and evaluated in relation to the relevant parts of the Guidance in the following sections of this statement below.

(iii) Process – Additionally, non-industry respondents made a variety of points relating to the process followed in developing the Guidance and in relation to the enforcement arrangements, including questioning and making recommendations relating to:

- how the complaints process will be fairly administered;
- which body will oversee enforcement;
- how the ASA Councils' rulings will incorporate public health and public perspectives; and
- the arrangements for the ASA's self-initiated monitoring and review of the rules, guidance and their enforcement.

Non-industry respondents also expressed concerns over the structural relationship between the ASA, BCAP, CAP, and Ofcom; in particular, what they regarded as the close ties between industry representatives and regulatory decision-making.

3.4 CAP and BCAP's general evaluation

(i) Alignment with legislation – CAP and BCAP consider it important to reemphasise that their consultation process had a narrow and deliberate focus – to deliver Guidance that adequately reflects the legislation following Government's work to develop the underlying less healthy product advertising restrictions policy. As such, matters relating to policy development, including questions over the evidence-base and regulatory impact are not within the scope of CAP and BCAP's work.

Accordingly, the evaluation of the individual consultation responses in the sections below focuses primarily on ensuring the Guidance is based on a proper interpretation of the law. CAP and BCAP cannot, for example, make material amendments of the kind requested particularly by non-industry respondents (see the summary in 3.3 above) where they go beyond a reasonable interpretation of the law and engage more with questions of policy making, which is a matter for Government.

(ii) Clarity of the proposals – CAP and BCAP acknowledge the importance of assisting affected businesses with their compliance efforts. However, it is also important to set expectations over this kind of guidance. It is intended to fulfil a statutory duty to develop guidance on how the ASA, the regulatory authority tasked with frontline enforcement, intends to exercise its functions. By its nature, the Guidance must reflect a reasonable interpretation of the underlying legislation. Its purpose is not to address all compliance scenarios, and it cannot do so in any case. Ultimately, a more developed interpretation of the rules and how they apply in practice will rely on ASA casework as it assesses and makes determinations on actual advertisements considering their content and, as appropriate, the wider context against the various tests and criteria set out in the Guidance. CAP and BCAP have evaluated these points of response with this in mind.

Alongside changes to the proposals stemming from the need to appropriately reflect the law, CAP and BCAP have also made limited changes to improve the clarity of the Guidance, noting again that it cannot address all compliance scenarios. The following sections of this statement summarise and provide CAP and BCAP's evaluation of these points in relation to the relevant parts of the Guidance.

The CAP Copy Advice team will now be available to [provide advice](#) to affected parties. Alongside bespoke advice on particular ads, they have developed [additional advice resources](#) to provide the view of the CAP Copy Advice Team on how best to find the answers to a wide range of advertising scenarios within the Guidance. This benefits from insights drawn from consultation responses and will be updated over time, in particular, after the ASA begins to publish rulings on live ads. CAP and BCAP consider that this is the most appropriate vehicle in the short term for addressing the majority of points of response owing to their focus on particular advertising scenarios.

The resources aim to help users access relevant parts of the Guidance in relation to a given advertising scenario and, where appropriate, provide commentary and examples to give an indication of the likely compliance risk. It is important to make clear, however, that secondary advice provided should be used on the strict understanding that it does not fulfil the same role as the rules and Guidance of setting out how the ASA intends to apply the restrictions. They give only the Copy Advice Team's 'best advice', in the absence of ASA determinations under the new restrictions, on a particular question or scenario. The ASA will expect advertisers to demonstrate that compliance decisions are based firmly on the provisions of the rules and Guidance in the event that one of their ads come under the scrutiny of the ASA complaints and investigations functions.

(iii) Process – CAP and BCAP note points from non-industry parties in relation to the consultation process and arrangements for enforcement. Firstly, the Committees note that development of the Guidance has been overseen by Ofcom. The final outcome, at least as far as the Guidance is concerned, has been approved by Ofcom following consultation with the Secretary of State, as required by the legislation. In relation to the ASA's role, the guidance makes clear that the ASA will apply its published [case-handling processes](#) in enforcing the new rules. Moreover, CAP and BCAP refer respondents of Ofcom's detailed

[process of consultation](#) which supported the decision to appoint the ASA as frontline regulator to enforce the restrictions.

The following sections of this statement summarise responses to each consultation question and provide CAP and BCAP's evaluation of points of response specific to each. Where changes have been made to the proposed text of the Guidance, readers should refer to the marked-up version in Annex C, which also includes additional commentary alongside the changes to the text.

3.5 Evaluation of responses on part 3 (Background)

Part 3 provides information on how to use the Guidance, the ASA and Ofcom's respective roles, how the ASA will approach assessment of advertising, and the status of the Guidance as part of the regulatory framework.

Consultation question (iv) asked:

Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Almost all respondents agreed, although non-industry responses did so conditionally; see points summarised in 3.4 above.

Industry respondents requested additional explanation about the basis for assessment of ads under the brand advertising exemption. They maintained that Government had been clear in developing [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#) that the assessment should be made on the basis of the ad content alone. They pointed out that the brand advertising exemption did not invite consideration of context beyond the content, unlike the approach to the 'identifiability test', which has regard to the perspective of a notional average consumer looking at the content and the broader context of an ad.

CAP and BCAP agree, and have amended paragraph 3.4.2 to make clear the distinction in the basis for applying the brand advertising exemptions and the 'identifiability test'. These changes are on page 8 and shown in mark-up in [Annex C](#).

3.6 Evaluation of responses on part 4 (Determining products in scope)

Part 4 summarises the two-stage test for determining if a product is classified as "less healthy" and directs users to refer to the categories laid out in [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#) and associated DHSC guidance.

Consultation question (v) asked:

Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Almost all respondents agreed, although non-industry responses did so conditionally; see points summarised in 3.4 above. There were some industry respondents who objected to the proposals.

Several industry respondents made minor points about the adequacy of paragraph 4.1.1 in its summary of the in-scope product categories set out in the secondary legislation. CAP and BCAP agreed with these observations and have made appropriate amendments to improve the wording. These changes are on page 9 and shown in mark-up in [Annex C](#).

3.7 Evaluation of responses on part 5 (Nature of the advertiser)

Part 5 explains the exemption from the restrictions for food or drink SMEs and directs users to the relevant criteria as set out in [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#). It also provides guidance on the liability of other types of advertiser, including those not directly involved in the supply of food or drink products.

Consultation question (vi) asked:

Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Almost all respondents agreed, although a small number of responses were conditional on points relating to clarity. Some responses requested more clarity on scope as it relates to food and drink delivery platforms, aggregators and other similar food and drink provision services.

These observations were based on concerns that the proposed wording of part 5.4 failed to make clear that such businesses could place their own ads for less healthy products in their own online spaces for products supplied by third party businesses available through such services. Responses drew parallels with the Guidance's treatment in part 6 of listings in online retail environments, which emphasised that such spaces were primarily marketers' own media and not in-scope, third party paid-for space. Additionally, they requested the guidance to clarify that such services, when acting as media owners, could accept paid advertising on behalf of food or drink SMEs benefiting from the exemption for such parties.

CAP and BCAP have as a consequence amended paragraph 5.4.2 to make clear that less healthy product ads by an advertiser, in their own spaces online, are not within scope. Paragraph 5.4.3 has also been revised, along with the addition of a new paragraph, 5.4.4, to clarify that less healthy product ads by such services on their own website or own app, on behalf of an SME, are not within scope. The changes also make more explicit the need to read 5.4 in conjunction with part 6.3 of the Guidance on the scope of the online rule. These changes are on pages 11 and shown in mark-up in [Annex C](#).

Further minor amendments to this section have been made to improve clarity of part 5, and to better link aspects of part 5 to other relevant parts of the Guidance.

3.8 Evaluation of responses on part 6 (Media and scope)

Part 6 sets out definitions of the media subject to the new rules drawing on existing statutory definitions relating to TV and ODPS. For the online rule, it explains how the test of paying for an advertisement to be placed online should be understood, and provides detail

on the various exemptions to which this restriction is subject. Media not listed are not subject to these restrictions.

Consultation question (vii) asked:

Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

The vast majority of respondents agreed. However, many made their agreement conditional on particular changes being made to improve clarity. A small number of respondents disagreed with the proposals because they felt they were insufficiently clear. Most responses posed questions and presented scenarios requesting further explanation of how the media scope provisions would be applied.

The main focus of responses was on influencer marketing and how the online rule would be applied to different influencer marketing scenarios. Many respondents asked questions relating to the 'payment test' that is the key criterion for the online rule. Several asked for the Guidance to provide further clarity on the status of the 'gifting' of products to and affiliate relationships with influencers. Respondents suggested changes to the wording of paragraph 6.3.6 relating to influencers to better explain how brands can engage legitimately with influencers with regard to the less healthy product ad restrictions. In response, CAP and BCAP have amended paragraph 6.3.6 to generally improve readability and, specifically, to clarify that:

- arrangements like gifting of products and affiliate deals are likely to be considered "payment" for the purposes of the payment test (they are likely to be deemed "consideration" under the legal definition reflected in paragraph 6.3.2); and
- advertisers can pay for the creation of influencer content promoting a less healthy product provided that content is only placed by the advertiser themselves in their own online space (i.e. the influencer is not paid to place such content on the influencer's social media).

Several respondents also asked for the Guidance to explain how the ASA would address scenarios where a product is gifted but the advertiser exercises no commercial or editorial control over the content an influencer unilaterally creates and disseminates. On this point, CAP and BCAP are satisfied that the Guidance appropriately explains how the ASA will apply the payment test in this respect. The ASA will need to consider the precise circumstances of each real-life case to determine whether the test has been met.

Some respondents, in seeking to understand whether influencers would be treated differently to journalists in relation to the less healthy product rules, asked for an explanation as to whether, in practice, gifting products to influencers and to journalists in the hope they will review them and publish content, would be treated differently by the ASA. The respondents believed the approach should be consistent. CAP and BCAP can advise that editorial content (for instance, where a publisher chooses to run a consumer review article by a journalist) is not within the remit of the CAP Code. For related scenarios, such as a journalist posting content in their own social media after having received a gifted product from an advertiser, again, the ASA will consider the precise circumstances of each real-life case to determine whether the payment test has been met bringing the content in scope.

Other respondents requested further clarity over the exemptions to the online rule set out in paragraph 6.3.9. Some requested the addition of examples for each exemption, as well as further explanation of the restrictions that would apply in media excluded from scope of the online rule. CAP and BCAP advise that the exemptions are set out in in [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#). It is important to refer to the 2024 Regulations in order to determine whether a media exemption applies. The regulations would be the primary reference point for the ASA in considering cases that engage them. Online media that are not covered by the online rule will continue to be subject to CAP's existing HFSS restrictions.

Further minor amendments to this section have been made to improve clarity of part 6 of the Guidance. The changes referred to in this part of the statement are on pages 14-15 and shown in mark-up in [Annex C](#).

3.9 Evaluation of responses on part 7 (the brand advertising exemption)

Part 7 explains the factors that would exempt an advertisement as a “brand advertisement” under the criteria set out in [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#). In short, an advertisement that promotes a brand and does not depict a specific less healthy product.

Consultation question (viii) asked:

Do you agree that the guidance set out in part 7 (The brand advertising exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

The majority of respondents agreed. However, most made their agreement conditional on CAP and BCAP agreeing to make particular changes to improve clarity and be more specific on particular points and several respondents disagreed that part 7 met the tests in the question, because it was insufficiently clear. Most responses included questions and presented advertising scenarios requesting further explanation of how the brand advertising exemption provisions would be applied in practice.

Further to CAP and BCAP's general evaluation (see 3.4 above), there are inherent limitations to what guidance can incorporate. It is important to note that the legislation underpinning the brand advertising exemption is detailed. In CAP and BCAP's view, most of the points of response in relation to part 7 of the Guidance are best addressed at this stage by feeding them into development of secondary advice resources.

The following summarise several particularly significant points of response and CAP and BCAP's evaluation.

- In relation to the definition of a range of products and the exclusion of certain groups of products from being deemed a range, several industry respondents requested that paragraphs 7.1.4 and 7.2.3 make the distinction between the format of packaging, and the format of products themselves, pointing out that products often comprise the same ingredients but are manufactured in different formats and sold as separate, distinct products.

CAP and BCAP note the definition of a range of products is now set out in law at some detail; it does not include a group of products that are “differentiated only” by pack size or packaging format. In relevant cases, the ASA will assess whether differentiation between products within the group is broader than this considering other attributes of the product like their name, product format and general presentation. Where it is such branding would be considered to relate to a range and is likely to be acceptable (subject to the wider ad’s compliance with all relevant aspects of part 7).

- Some industry respondents requested further detail in paragraph 7.3.2 on the definition of specific product, such as citing ‘SKU’ codes as a means of distinguishing between individual products and placing an emphasis on unique design features.

CAP and BCAP note there is now a detailed statutory definition of a specific product. These points are most usefully considered as part of the development of secondary advice; SKU codes are not referred to in the legislation, but may be a useful ‘rule of thumb’ in some scenarios for advertisers to explain the difference between products.

- On the provisions relating to the use of certain product/brand names and logos, a respondent asked whether paragraph 7.2.7 allowed company and brand logos that would otherwise fall under the second bullet point in paragraph 7.2.6 because a logo was for a specific less healthy product. They noted 7.2.7 referred only to names of products. Other industry respondents sought confirmation abbreviated logos and other trademarks would also fall under the definition of “included in the name of a company”.

CAP and BCAP consider 7.2.7 is clear that logos of companies or brands that include a specific less healthy product name benefit from the exemption, if they meet the requirements of 7.3.2 on their existing use (prior to 16 July 2025) for such purposes. This is likely to apply where such a company or brand logo *is* the name of a specific less healthy product. In relation to the status of trademarks under these provisions, the ASA will assess case-by-case based on the requirements in paragraph 7.3.2. It is not possible for the Guidance to include blanket statements on scenarios like the use of trade marked abbreviations given the potential for variation in how they are used by companies. CAP and BCAP will however feed this point into development of secondary advice resources.

Additionally, CAP and BCAP have made several amends to part 7 of the Guidance responding to other points made by respondents. Alongside changes to improve the clarity of the text and structure/linking between provisions, part 7.4 has been amended to better reflect the legislation relating to realistic product imagery. A respondent pointed out that the proposed reference to “picture of a product” differed from the use of “a realistic image” in the 2025 Regulations. They also requested clarification of what “additional information” advertisers should include in ads to make clear what a product is. Amendments have been made to paragraph 7.4.3 to address these concerns to make clear how advertisers can safely promote non-less healthy products that bear similarities to in-scope products. These changes referred to in this part of the statement are on pages 16-19 and shown in mark-up in [Annex C](#).

3.10 Evaluation of responses on part 8 (The identifiability test)

Part 8 explains how an individual advertisement that does not fall under one of the exemptions will be assessed to determine whether it is for an identifiable less healthy product and therefore subject to the restrictions.

Consultation question (ix) asked:

Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Most respondents agreed. However, many made their agreement conditional on CAP and BCAP agreeing to make particular changes to improve clarity and be more specific on particular points. Some respondents disagreed with the proposals owing to their concerns about how the Guidance had, in practice, taken a different sequential approach to that taken in the law. Many responses included questions and presented advertising scenarios requesting further explanation of how the identifiability test provisions would be applied.

The most significant point of response on part 8 came from several industry parties who questioned the structural approach of the document in placing the section on the identifiability test *after* those on the various exemptions. They cited the legislation and Government's recent consultation response in support and believed CAP and BCAP's proposed structure would cause confusion owing to how the primary scope test was presented after exemptions from it (respondents made these points in relation to several preceding parts of the guidance, but they are summarised and evaluated here for ease of reference).

CAP and BCAP developed the proposed Guidance primarily for advertisers, with a particular emphasis on usability and making it as practical as possible to determine the compliance status of an individual ad. They are satisfied that the structural approach of the document helps to meet that objective and is effective, in accordance with the legislation. Firstly, the introduction in part 1.3 makes clear the primacy of the identifiability test (as set out in primary legislation), stating explicitly that ads that do not meet the test are out of scope. It then explains how the Guidance can be best used to achieve compliance from a practical perspective by focusing on the option of taking steps to determine whether an ad benefits from one of the exemptions, if relevant. To reemphasise this, CAP and BCAP have amended paragraph 1.4.2 on using the Guidance to state explicitly that the ordering is not prescriptive in how various criteria and tests should be applied. However, in any event, the ASA cannot restrict an advertisement via the secondary legislation where that advertisement would have been permitted under the primary legislation.

Ultimately, the ASA will assess ads on a case-by-case basis in accordance with the criteria and tests relevant to the set of circumstances presented. CAP and BCAP are satisfied that advertisers will not be disadvantaged by choosing to approach compliance decisions either by first assessing an ad under the identifiability test, or against the various exemptions.

Allied to concerns over structure, some industry respondents on part 8 requested to reinstate more of the detail around the identifiability test and the role of product 'prominence', within ad creative, relating to the test. Some cited the version of the Guidance consulted on in February 2025 and how scenarios such as seasonal creatives by retailers

showcasing food and drink products as one part of a wider offering (for example, 'Christmas experience' ads).

CAP and BCAP acknowledge that the underlying legislation has changed since the February 2025 consultation. For this reason, they have carried out a further, standalone consultation exercise inviting feedback on fresh proposals. The rules and guidance consulted on in the latest September 2025 consultation benefited from insights and learnings drawn from earlier work, but they necessarily reflect the underlying legislation as it is now. Parts of the Guidance on the identifiability test have been rationalized to reflect this, and to make the Guidance more usable given the introduction of an exemption for brand advertising, which materially clarifies the scope of the restrictions for some types of advertising.

Notwithstanding this, CAP and BCAP have amended paragraph 8.2.2 adding a further bullet expanding on how prominence of product imagery and references to products should be considered when making an assessment under the identifiability test. Further minor amendments to this section have been made to improve its clarity. The changes referred to in this part of the statement are on pages 20-21 and shown in mark-up in [Annex C](#).

3.11 Consultation outcome

With the approval of the ASA and Ofcom, CAP and BCAP confirm the final version of the Guidance, which will accompany the new less healthy product advertising rules.

[*Advertising Guidance: Advertising of less healthy food and drink products*](#) is published and comes into effect from today for advertisers seeking to ensure their campaigns appearing on or from 5 January 2026 are compliant with the new rules.

4. Next steps

4.1 Overview

The consultation outcome is confirmed in parts I and II of this regulatory statement. In line with legislation, the less healthy product advertising restrictions will come into effect on 5 January 2026, when the ASA will begin to consider complaints under the rules supported by the Guidance.


Affected parties must ensure that their advertisements are compliant with the new rules. This applies both to new and existing campaigns appearing on or from 5 January. The Guidance comes into effect from today.

CAP and BCAP encourage affected parties to seek advice through the CAP [Copy Advice](#) service, and to utilise the [additional advice resources](#) published alongside this statement. For broadcast clearance matters, advertisers should contact [Clearcast](#).

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