APPENDIX 2 ADVERTISING RULES FOR ON-DEMAND SERVICES REGULATED BY STATUTE

Principle

The rules in Appendix 2 reflect the legal requirements in the Communications Act 2003 (as amended) with which media service providers must ensure they comply. Failure to ensure that advertising included in a regulated on-demand service complies with these rules may result in the matter being referred to Ofcom. If Ofcom concludes that the media service provider has contravened the relevant requirements of the Act, this may lead to Ofcom considering imposing a statutory sanction against the provider.

Definition

Some video-on-demand services are subject to regulation under the Communications Act 2003 (as amended). ('the Act'). In this section, "regulated on-demand services" refers to those services that are subject to statutory regulation and "media service providers" means providers of regulated on-demand services.

The rules in this section apply only to advertising "included" in a regulated on-demand service, which is advertising that can be viewed by a user of the service as a result of the user selecting a programme to view.

> Advertisements on regulated on-demand services are also separately subject to the CAP Code. The marketer, not the media service provider, bears the primary responsibility for ensuring compliance with the CAP Code.

Rules

30.1 Advertising must be readily recognisable as such.

30.2 Advertising must not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.

30.3 Advertising must not prejudice respect for human dignity.

30.4.1 Advertising must not contain any material likely to incite violence or hatred against a group of persons or a member of a group of persons based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union of 7 December 2000, as adopted at Strasbourg on 12 December 2007.

30.4.2 Advertising must not contain any prohibited material, as defined in section 368E(3) of the Communications Act 2003.

30.5 Advertising must not include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.

30.6 Advertising must not encourage behaviour prejudicial to health or safety.

30.7 Advertising must not encourage behaviour grossly prejudicial to the protection of the environment.

30.8 Advertising of the following products is prohibited:

30.8.1 cigarettes or other tobacco products

30.8.2 any prescription-only medicine.

30.8.3 electronic cigarettes or electronic cigarette refill containers (as defined in the section 368R of the Act)

30.9 Advertising of alcoholic drinks is only permitted in on-demand programme services if

30.9.1 it is not aimed specifically at persons under the age of eighteen, nor does it, in particular, depict such persons consuming alcoholic drinks;

30.9.2 it does not link the consumption of alcohol to enhanced physical performance or to driving;

30.9.3 it does not create the impression that the consumption of alcohol contributes towards social or sexual success;

30.9.4 it does not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;

30.9.5 it does not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light; and

30.9.6 it does not place emphasis on high alcoholic content as being a positive quality of alcoholic drinks.

30.10 Advertising must not cause physical or moral detriment to persons under the age of eighteen.

30.11 If advertising contains material which might seriously impair the physical, mental or moral development of persons under the age of eighteen, the material must be made available in a manner which secures that such persons will not normally see or hear it.

30.12 Advertising must not directly exhort persons under the age of eighteen to purchase or rent goods or services in a manner which exploits their inexperience or credulity.

30.13 Advertising must not directly encourage persons under the age of eighteen to persuade their parents or others to purchase or rent goods or services.

30.14 Advertising must not exploit the trust of persons under eighteen in parents, teachers or others.

30.15 Advertising must not unreasonably show persons under eighteen in dangerous situations.

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.