

CAP and BCAP Consultation

Implementing further restrictions on advertising for “less healthy” food and drink products

Annex B: Mark-up of proposed CAP Code revisions, including the proposed ODPS and online rules



Explanatory notes for Annex B

This annex provides an abridged mark-up of changes to the CAP Code including showing the text of the proposed less healthy product advertising rules for on-demand programme services (ODPS) and online in situ, and other consequential amendments to relevant parts of the CAP Code that are affected by their introduction.

The proposed changes will affect:

- [Section 15](#) – Food, food supplements and associated health or nutrition claims
- [Appendix 2](#) – Advertising rules for on-demand services regulated by statute

The annex should be read in conjunction with Part I of the [consultation document](#) on the proposed rules to implement the new restrictions. Further amendments are technical in nature, intended to improve clarity and usability. They do not reflect a change in any of CAP's existing rules or policies. Section 15 has been restructured with the existing HFSS rule renumbered so it appears after the new online less healthy product advertising rule. The existing wording of Appendix 2 is unchanged with the new rule added at the end.

Readers should note that deletions are struck through, and additions to the Code are marked in red. The proposed new less healthy product advertising rules and supporting information are denoted by purple text.

Proposed changes to CAP Code section 15

The following is an abridged mark-up of changes to this Code section:

15 Food, food supplements and associated health or nutrition claims

Principle

*Public health policy increasingly emphasises good dietary behaviour and an active lifestyle as a means of promoting health. Commercial product advertising cannot reasonably be expected to perform the same role as education and public information in promoting a varied and balanced diet but should not undermine progress towards national dietary improvement by misleading or confusing consumers **and ensuring appropriate protections for children.***

Rules in the first part of this section reflect relevant provisions of legislation as they relate to advertising food and drink products to consumers in general. The second part of the section sets out rules on advertising food or drink products and children.

General rules for food and soft drink product marketing communications

Background

These rules apply to all marketing communications for food products, and must be read in conjunction with the relevant legislation.

[...]

Food and soft drink product marketing communications and children

Background

These rules set general responsibility standards for all marketing communications for food and soft drink products. There are also specific content rules for HFSS products as well as a media placement restriction for HFSS products (see rule 15.20) and a prohibition on paid advertising for identifiable less healthy products on the internet (see rule 15.19).

*"HFSS products" are those food or soft drink products that are assessed as **high in fat, salt or sugar** ~~High in Fat, Salt or Sugar~~ in accordance with the Department of Health and Social Care's **Nutrient Profiling Technical Guidance issued in 2011**. Information on the nutrient profiling model is ~~now~~ available on the Department of Health and Social Care's website [here](#). ~~at the nutrient profiling model~~*

~~See also the Help Note for food or soft drink product advertisements and children.~~

[...]

HFSS Product Ad Placement

~~15.18 HFSS product advertisements must not be directed at people under 16 through the selection of media or the context in which they appear. No medium~~

~~should be used to advertise HFSS products, if more than 25% of its audience is under 16 years of age.~~

15.18 Rule renumbered and moved to 15.20 on 5 January 2026

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;*
 - *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 is for the advertisement is 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 less 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 (see 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, as detailed immediately above).*

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](#).

Placement of HFSS product advertisements

15.20 HFSS product advertisements must not be directed at people under 16 through the selection of media or the context in which they appear. No medium should be used to advertise HFSS products, if more than 25% of its audience is under 16 years of age.

Guidance to help marketers identify brand advertising that has the effect of promoting an HFSS product is available [here](#).

Proposed changes CAP Code Appendix 2

The following is an abridged mark-up of changes to the appendix:

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.

[...]

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;
 - 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 is for the advertisement is 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 less 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](#).

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