

CAP and BCAP Consultation

Consultation on the implementation of the “less healthy” food and drink product advertising restrictions

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1. Executive summary

Overview

The Committees of Advertising Practice (CAP and BCAP) are consulting on new revised proposals for rules and guidance to implement the “less healthy” food and drink product advertising restrictions as set out in legislation.

The new restrictions represent a significant strengthening of the framework of advertising protections. They prohibit ads for identifiable less healthy products, where those products are depicted, in key broadcast and online media reducing children’s exposure to such commercial messages. The new restrictions will come into force on 5 January 2025.

Following Government’s introduction of new legislation to clarify in law how the restrictions should apply to “brand advertisements”, a new consultation process is necessary. The proposals set out here supersede those consulted on in 2023 and earlier in 2025.

Background

Ofcom is the statutory regulator for the new restrictions and has appointed the Advertising Standards Authority (ASA) as its frontline advertising co-regulator.

CAP and BCAP author the UK Advertising Codes. On behalf of the ASA, the Committees have developed proposed rules and guidance to implement the new restrictions through the Codes. The new rules set out in the Communications Act 2003 will prohibit:

- Ofcom-licensed television services from including advertising and sponsorship for identifiable less healthy products between 5:30am and 9:00pm;
- Ofcom-regulated on-demand programme services (ODPS) from including advertising and sponsorship for identifiable less healthy products between 5:30am and 9:00pm; 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.

The rules are subject to several exemptions, most notably, for food or drink small or medium sized enterprises (food or drink SMEs), and “brand advertisements” (as confirmed in the recently introduced legislation).

Why is this consultation necessary?

The purpose of the proposed rules (set out in Part I below) is to implement the legislative restrictions into the UK Advertising Codes; the ASA will enforce the restrictions through the application of the rules. The proposed guidance will advise businesses on how the new rules are likely to be interpreted and applied in relation to individual advertisements.

New consultation has been prompted by Government introducing [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#) to provide clarity in law regarding brand advertising. This follows a period of consultation on the proposed legislation; the [outcome](#) was published earlier in September.

The 2025 Regulations now explicitly exempt “brand advertisements” from scope necessitating significant changes to the approach taken in the proposed implementation guidance. CAP and BCAP consider a new, standalone consultation exercise offering stakeholders the opportunity to comment again in full on all aspects of the proposals.

Who should respond to this consultation?

Responses are welcome from any party with an interest in the matter, including members of the public. CAP and BCAP note many such stakeholders responded to previous consultations on the less healthy product advertising restrictions. These parties are urged to review the new revised proposals carefully and ensure all points they wish to make are submitted in a new response. Responses to the previous consultations will not be carried forward as part of this new process.

Next steps

The consultation is open until 5:00pm on 9 October 2025. Details of how to respond are included in section 5 below.

CAP and BCAP will evaluate responses, including making any necessary changes to the proposals, before delivering finalised rules and implementation guidance to the ASA in its role as frontline regulator. Owing to the co-regulatory nature of the new rules, the ASA will then seek Ofcom’s approval for the consultation outcomes. There is also a statutory duty to consult the Secretary of State over the guidance.

2. Background

2.1 Overview

This section summarises the development of the less healthy product advertising restrictions, including Government's work to develop and legislate for the restrictions, and Ofcom and the ASA system's respective activity to implement them.

2.2 Advertising of food and drink products and protection of children

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 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.

Ofcom was confirmed as the statutory regulator responsible for the framework of the new restrictions and, in 2023, it appointed the ASA as a co-regulator (the body responsible for, among other things, day-to-day frontline enforcement of the restrictions and drafting of guidance on them). To facilitate the effective implementation of the new framework, the ASA asked CAP and BCAP to conduct the consultation 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 and guidance on how to comply with the Codes.

2.3 "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 TV services from including advertising and sponsorship for identifiable less healthy products between 5:30am and 9:00pm (as set out 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 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 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; advertising in Ofcom-regulated TV services delivered over the internet (which are subject to the restriction on TV advertising); and unregulated TV services delivered over the internet that correspond to a regulated TV service.

When they come into effect on 5 January, 2026, the less healthy product advertising rules will form a new and additional tier of restriction augmenting CAP and BCAP’s existing HFSS rules. In circumstances where the less healthy product rules do not apply, the existing HFSS rules will continue to apply to advertisements for HFSS products.

2.4 Implementing the new restrictions

The amended Communications Act 2003 includes duties requiring the appropriate regulatory authority to develop guidance on how it intends to exercise its functions¹. The duties also require that the authority must consult the Secretary of State before drawing up

¹ The duties relate to advertising included in ODPS (as set out in section [368C](#)) and online (as set out in section [368Z18](#)). There is no equivalent duty 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.

or revising the guidance and publish it so as to bring it to the attention of affected stakeholders.

With confirmation of Ofcom's [designation](#), the ASA assumed the role of frontline regulator. The ASA subsequently 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 and guidance on how to comply with the Codes.

2.5 This consultation

This is the third CAP and BCAP consultation on the implementation of the less healthy product advertising rules and guidance, following consultations in [2023](#) and [2025](#). The new consultation has been necessitated by Government laying a statutory instrument [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#) before Parliament, under powers contained in the relevant parts of the Communications Act.² This follows a period of consultation, the [outcome](#) of which was published earlier in September.

Through the statutory instrument, Government has provided clarity in legislation of the existing policy intention regarding brand advertising that was understood by Parliament during the passage of the Health and Care Act in 2021-22. The introduction of Regulations that explicitly exempt "brand advertisements" means that significant changes are required to the approach taken in the guidance that CAP and BCAP had proposed in their 2025 consultation on the ASA's likely application of the restrictions, particularly relating to brand advertising.

With the statutory instrument now defining what "brand advertising" is and exempting brand advertising from the restrictions, CAP and BCAP consider it is preferable for the purposes of simplicity and comprehension and to facilitate comprehensive responses, for this to be a standalone consultation and not one that invites the reader to cross-refer to one or both previous consultations. Furthermore, previous consultation responses will not be considered as part of this process. The reader is advised, however, that relevant learnings from the previous consultations have been taken into account by CAP and BCAP in developing the rules and guidance proposed in this consultation.

² This followed a [written ministerial statement](#) in May setting out Government's intention followed by a [consultation](#) on the new legislation in July. Additionally, to allow for the new legislative process, and for ASA to then reflect the changes in its implementation guidance, another piece of secondary legislation, the [Communications Act 2003 \(Restrictions on the Advertising of Less Healthy Food\) \(Effective Date\) \(Amendment\) Regulations 2025](#), was laid in June 2025 putting back the date the less healthy product advertising restrictions take effect from 1 October 2025 to 5 January 2026.

3. Part I: Proposed less healthy product advertising rules

3.1 Overview

This part of the consultation sets out the proposed rules that will integrate the restrictions set out in law into the UK Advertising Codes forming the basis for the ASA's enforcement.

3.2 Consultation aims

Changes in the legislation summarised above have resulted in the need to draft revised rules. Although previous iterations of the rules have already been subject to consultation, CAP and BCAP consider it necessary to invite responses from stakeholders on the accuracy of the new proposed text for each rule in reflecting legislation. This is primarily to ensure appropriate alignment between the rules the ASA will enforce and the legislation that underpins them.

3.3 Development of the proposed rules

The less healthy product advertising restrictions involve distinct co-regulatory frameworks under Ofcom's statutory oversight specific to the three media covered by the restrictions. Reflecting these arrangements, CAP and BCAP propose to introduce:

- Television: a new rule in BCAP Code section 32 ([Scheduling](#)) reflecting the TV restriction set out in [section 321A](#) of the Communications Act 2003 (as amended);
- ODPS: a new rule in CAP Code Appendix 2 ([Advertising rules for on-demand services regulated by statute](#)) reflecting the ODPS restriction set out in [section 368FA](#) of the Communications Act 2003 (as amended); and
- Online: a new rule in CAP Code section 15 ([Food, food supplements and associated health or nutrition claims](#)) reflecting the online restriction set out in [section 368Z14](#) of the Communications Act 2003 (as amended).

The rules and supporting information also reflect relevant provisions of the associated secondary legislation:

- The [Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#), which cover products categories within scope, the SME exemption, and other exemptions applying to certain online advertising. These Regulations are accompanied by DHSC [guidance](#) providing further advice on how to interpret the categories of products within scope.
- [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#), which set out criteria to support an exemption for what it terms "brand advertisements". In general, these are advertisements that promote a brand but do not depict a specific less healthy product.

The proposed rules are closely aligned with each other, while reflecting the particulars of each media restriction. The rules will be accompanied by necessary supporting information setting out relevant background and definitions – see sections 3.4, 3.5 and 3.6 below for the text of each.

Additionally, CAP and BCAP will make several consequential amendments to the affected Code sections to incorporate the new rules in a clear manner assisting Code users to comply. This includes minor restructuring of some of the sections to ensure the existing CAP and BCAP HFSS restrictions are read in the context of the new less healthy product advertising rules.

See [Annex A](#) and [Annex B](#) which include the new rules as they will appear in the affected parts of the Codes alongside the changes that will be made to the existing text, including related to the HFSS rules. The existing guidance the HFSS restrictions will also be updated to reflect the change.

Ofcom, as statutory co-regulator, will have final approval of the rules.

3.4 TV rule

BCAP proposes to add the following rule and supporting information to the end of section 32 ([Scheduling](#)) reflecting the TV restriction in section [321A](#) of the Communications Act 2003 (as amended).

Restrictions on television advertising for food or drink products

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;
 - 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.

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 full mark-up of all the changes to BCAP Code section 32, including various consequential amendments to the existing rules and supporting information including sign-posting the need to comply with the new rule in section 13 ([Food, food supplements and associated health or nutrition claims](#)) where other relevant rules for food and drink advertising are situated, is included in [Annex A](#).

3.5 ODPS rule

CAP proposes to add the following rule and supporting information to the end of CAP Code Appendix 2 ([Advertising rules for on-demand services regulated by statute](#)) reflecting section [368FA](#) of the Communications Act 2003 (as amended).

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](#).

The new sub-section will be inserted at the end of the Appendix; there are no consequential amendments to other rules or supporting information. A full mark-up of the changes to CAP Code Appendix 2 is included in [Annex B](#).

3.6 Online rule

CAP proposes the following rule and supporting information to the end of CAP Code section 15 ([Food, food supplements and associated health or nutrition claims](#)) reflecting section [368Z14](#) of the Communications Act 2003 (as amended).

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](#).

A full mark-up of the changes to CAP Code section 15, including various consequential amendments to the existing rules and supporting information, is included in [Annex B](#).

3.7 Consultation questions

Respondents are invited to review the wording above, as well as the mark-up of the rules as they will appear in the relevant Code sections, and answer the following questions.

- **Question (i)** – 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.
- **Question (ii)** – 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.
- **Question (iii)** – 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.

4. Part II: Proposed implementation guidance

4.1 Overview

This part of the consultation invites responses on the proposed implementation guidance that will support the new rules – see [Annex C](#).

4.2 Consultation aims

The proposed implementation guidance is intended to reflect the underlying legislation and to explain how the ASA is likely to enforce the less healthy product advertising rules to support affected businesses in running compliant advertisements. It seeks to provide users with an understanding of how to effectively assess whether a business, a product or the content of a particular ad creative is, or is likely to be, within scope of the rules.

Readers should note this consultation process will not consider responses relating to underlying policy decided upon by Government through its consultation processes and as set out in the relevant pieces of legislation. This includes issues such as the evidence base used to support introducing new restrictions and the scope of those restrictions set out in legislation.

The proposals have been 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.

4.3 Developing the implementation guidance

The proposed implementation guidance benefits from the development of previous iterations of the guidance as part of the 2023 and 2025 consultations, as well as learnings from responses to those exercises.

CAP and BCAP have developed the proposed implementation guidance with a particular emphasis on usability and the need to make it as easy and practical as possible for users to quickly determine the compliance status of an individual ad. As such, it directs users firstly to the key tests that determine the scope of application of the restrictions. The restrictions do not apply in circumstances where an advertisement falls within one of the exemptions set out in the law.

- Advertisements for out-of-scope products (non-less healthy products).
- Advertisements for Small and Medium Sized Enterprises (companies with 250 or fewer staff meeting the criteria set out in [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#)).
- Advertisements in media not covered by the three restrictions (including various exemptions in relation to the online rule set out in legislation).
- “Brand advertisements” (within the meaning given by [The Advertising \(Less Healthy Food and Drink\) \(Brand Advertising Exemption\) Regulations 2025](#)).

If it falls under any of the above, an ad will straight-forwardly be outside scope of the rules. If none of the exemptions apply, a full assessment of the advertisement under the

identifiability test will be required to determine whether the ad meets the identifiability test and is therefore restricted.

4.4 Summary of the proposed guidance

The proposed implementation guidance is included in [Annex C](#). The following provides an overview of the various parts of the document:

- 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.
- 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 secondary legislation and associated DHSC guidance.
- Nature of the advertiser – Part 5 explains the exemption from the rules for ads by food or drink SMEs and directs users to the criteria for determining this as set out in [The Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2024](#). It also provides guidance concerning other types of advertiser, including those not directly involved in the supply of food or drink products.
- 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.
- The brand advertisement 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.
- The identifiability test – Part 8 explains how an individual advertisement that does not fall under one of the exemptions above will be assessed to determine whether it is for an identifiable less healthy product and therefore subject to the restrictions.

4.5 Consultation questions

Respondents are invited to review the proposed guidance included in Annex C. They should have appropriate regard to the relevant provisions of the Communications Act 2003 and the relevant secondary legislation and answer the following questions:

- **Question (iv)** – 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.
- **Question (v)** – 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.
- **Question (vi)** – 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.
- **Question (vii)** – 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.
- **Question (viii)** – Do you agree that the guidance set out in part 7 (The brand advertisement 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.
- **Question (ix)** – 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.

5. How to respond and next steps

5.1 Consultation process

CAP and BCAP are committed to considering all responses carefully and with an open mind. The following summarises the consultation and subsequent stages of the process:

- The consultation response window will be open for three weeks, closing at 5:00pm on 9 October 2025.
- CAP and BCAP will consider and carefully assess all responses and provide a narrative evaluation of significant points and themes in its regulatory statement on the outcome of the process. In particular, where point made by respondents warrant changes to the proposals, they will explain why.
- The Committees aim to deliver the outcome to the ASA, as appointed frontline regulator as soon as possible.
- Owing to the co-regulatory nature of the new rules, the ASA will seek Ofcom's approval for the consultation outcomes. There is also a statutory duty to consult the Secretary of State over the guidance.
- Once the governance process is complete, the final less healthy product advertising rules and supporting implementation guidance will be published on the ASA website, accompanied by CAP and BCAP's regulatory statement on the process. All non-confidential responses will be published alongside the statement.

5.2 How to respond

CAP and BCAP invite written comments and supporting information on the proposals contained in this document by 5:00pm on 9 October 2025.

Responses via email with attachments in Microsoft Word format are preferred to assist in their processing. Please send responses to: andrewt@cap.org.uk

If you are unable to respond by email you may submit your response by post to:

Regulatory Policy Team
Committee of Advertising Practice
Castle House
37-45 Paul Street
London, EC2A 4LS

5.3 Confidentiality

CAP and BCAP consider that everyone who is interested in the consultation should see the consultation responses. Original copies of the consultation responses will be published alongside the statement on the outcome of the consultation.


All comments will be treated as non-confidential unless you state that all or a specified part of your response is confidential and should not be disclosed. If you reply by email, unless you include a specific statement to the contrary in your response, the presumption of non-

confidentiality will override any confidentiality disclaimer generated by your organisation's IT system or included as a general statement on your fax cover sheet. If part of a response is confidential, please put that in a separate annex so that nonconfidential parts may be published with your identity. Confidential responses will be included in any statistical summary of numbers of comments received.

Contact us

Committee of Advertising Practice
Castle House
37-45 Paul Street
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