

CAP and BCAP Consultation

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

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1. Executive summary

Overview

In 2022, the UK Government introduced legislation amending the Communications Act 2003 to place additional restrictions on certain food and drink advertising. The aim was to build on the existing framework of rules to increase protections further mitigating the effects of advertising on children’s dietary choices. Ofcom is the statutory body responsible for the framework underpinning the new restrictions. Under powers conferred by the new legislation, it has [appointed](#) the Advertising Standards Authority (“ASA”) as the body responsible for frontline enforcement.

The ASA has asked the bodies that author the UK Advertising Codes, the Committees of Advertising Practice (“CAP and BCAP”), to carry out this consultation on proposed changes to the Codes reflecting the new restrictions, along with a proposal for new guidance to support their implementation.

New restrictions on the advertising of “less healthy” products

In recognition of public health concerns over children’s diet and health, there have been restrictions on the advertising of high fat, salt or sugar (“HFSS”) food or drink products since 2007. Amendments to the Communications Act 2003, place further restrictions on a sub-set of HFSS products categorised in legislation as “less healthy” food and drink products.

Once the new rules come into effect from October 2025, they will prohibit advertisements for identifiable less healthy food and drink products from being:

- included in Ofcom-regulated TV services between 5:30am and 9:00pm;
- included in Ofcom-regulated on-demand programme services (“ODPS”) between 5:30am and 9:00pm; and
- placed in paid-for space in online media at any time.

All three restrictions are subject to exemptions for small or medium enterprises (“food or drink SMEs”). The online media restriction does not apply to advertising that is not addressed to those in the UK, business-to-business advertising, and ads in online media connected to Ofcom-regulated radio services.

The less healthy product rules will form a new and additional tier of restrictions to CAP and BCAP’s existing HFSS rules. The two are separate. Advertisers, ODPS providers, TV broadcasters and other impacted media owners must ensure that ads for HFSS products comply with the new rules first where the advertisement is in-scope. The existing HFSS rules will continue to apply to advertisements for HFSS products where the less healthy product rules do not apply.

Structure of this consultation

The ASA has invited CAP and BCAP to conduct this consultation on aspects of the implementation of new the framework. The consultation covers three areas:

- ***Part A: Guidance on the less healthy product advertising rules*** – In line with the relevant duties in the Communications Act 2003 (as amended), this consultation proposes new guidance to advise users of the Codes how the ASA intends to apply

the new rules. It sets out the different tests that users must follow to determine whether a particular advertisement is within scope of the new rules. This part of the consultation summarises the content of the guidance and the process followed in developing it. Respondents are invited to review and comment on a full version of the proposed guidance included in [Annex A](#).

- ***Part B: New rules reflecting the less healthy product advertising restrictions*** – The new restrictions involve distinct co-regulatory frameworks specific to the three media covered. Reflecting these arrangements, three new rules will be added to the UK Advertising Codes. In its [consultation and statement](#) on the implementation of the restrictions, and using its powers of direction under the existing co-regulatory arrangements for broadcast advertising, Ofcom consulted on specific wording of a rule to be inserted into the [UK Code of Broadcast Advertising](#) (“the BCAP Code”) reflecting the TV restriction. CAP has developed rules to reflect the ODPS and paid online media restrictions based on the legislation, and having regard to Ofcom’s final text for the broadcast TV restriction. It proposes to add these to appropriate sections of the [UK Code of Non-broadcast Advertising and Direct & Promotional Marketing](#) (“the CAP Code”). To ensure the ODPS and online restrictions in legislation have been reflected accurately and clearly, respondents are invited to review and comment on the text of the proposed rules.
- ***Part C: Consequential amendments to the existing Codes and guidance*** – The new tier of less healthy product advertising rules is separate to the existing rules on HFSS product advertising. However, the new rules have implications for how parties affected by them consider compliance matters relating to food and drink advertising in general. In response, CAP and BCAP propose several technical changes to the existing structures and wording of the Code sections relating to food and drink advertising, and existing guidance supporting compliance with the HFSS rules. The aim is to ensure the new less healthy product rules are presented clearly alongside the existing HFSS rules. Respondents are invited to comment on mark-ups of the affected Code sections and guidance, which are included in Annexes B, C, and D.

Sections 5 and 6 of this document provide supporting background on the ASA system, an overview of the way food and soft drink advertising to children is presently regulated, and a summary of the development of the new restrictions on less healthy product advertising.

Next steps

The consultation will run until [5:00pm on 7 February 2024](#).

CAP and BCAP will evaluate responses to the consultation and finalise new guidance to accompany the less health product rules, along with the changes to the UK Advertising Codes and existing guidance.

The consultation outcomes will be reviewed by the ASA as the frontline regulator before Ofcom is invited to approve the changes (as applicable). The final outcome is expected to be published in mid-2024.

2. Part A: Guidance on the less healthy product advertising rules

2.1 Overview

The most significant part of this consultation concerns proposed guidance to explain the ASA's intentions in how it will apply the less healthy product advertising rules. The proposed guidance includes details of the scope of the restrictions in terms of media covered and the exemptions that apply. It also helps guidance users to interpret key concepts and tests that they will have to apply; principally, how an advertisement for an "identifiable" less healthy product should be understood.

The proposed guidance is based on the policy arrived at through Government's consultation process as implemented by the relevant amendments to the Communications Act 2003 and in proposed secondary legislation, which is currently subject to a further, ongoing Government consultation process.

Readers should refer to section 6 of the consultation, which summarises the relevant policy background. This includes detail of the existing HFSS rules, and the scope of the new less healthy product advertising restriction, how they were developed and the arrangements for the ASA's role as frontline enforcer (see in particular 6.9).

2.2 Duty to produce guidance

The amended Communications Act 2003 includes specific duties for the appropriate regulatory authority to develop guidance on the application of the less healthy product restrictions to advertising included in ODPS (as set out in section [368C](#)) and in paid online media (as set out in section [368Z18](#)). The authority must consult the Secretary of State before drawing up or revising the guidance and publish it so as to bring it to the attention of affected stakeholders. With confirmation of Ofcom's designation, these duties are the responsibility of the ASA as frontline regulator.

There is no equivalent duty relating to the restriction applying to TV. However, in confirming that the existing co-regulatory arrangements for broadcast advertising adequately cover the new less healthy food advertising restriction for TV, Ofcom indicated that BCAP could produce guidance on the application of that restriction. Although the statutory duties relate only to the ODPS and paid online media restrictions, the interpretation of key concepts and tests are relevant also to TV. The ASA will apply the less healthy product advertising rules in a consistent manner across the three media covered, recognising the importance of a level playing field and that cross-media advertising campaigns are common. It is therefore appropriate that the guidance be included in one document to ensure accessibility and ease of understanding for guidance users.

2.3 Development of the proposed guidance

As the appointed frontline regulator, the ASA has invited CAP and BCAP, as Code-owning bodies, to conduct this consultation (see in particular, 6.8 and 6.9 below for more information). The proposed guidance is based on legislation drawing as appropriate from Government's [statement](#) on the outcome of its consultation process, as well as from the ASA, CAP and BCAP's wider experience in enforcing rules relating to food and drink advertising and the protection of children.

As noted above, the new rules reflect provisions of primary legislation, which will be supported by secondary legislation. This secondary legislation has been proposed as part of an ongoing government [consultation](#) process. The proposed regulations, the [Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2022](#), provide supporting technical detail including criteria on the exemptions for food or drink SMEs and for online audio services. Most significantly, they also include a schedule that sets out in detail the food and drink categories that will be categorised as “less healthy” for the purposes of the new restrictions.

The ongoing Government consultation process does not prevent CAP and BCAP from consulting on guidance to accompany the new rules. The framework of the less healthy product restrictions has already been established in the amendments to the Communications Act 2003. The approach of the proposed guidance consulted on here is to summarise and direct users to the secondary legislation as the source of certain definitions that support the new rules. Its primary focus is to provide guidance on core provisions of the less healthy product restrictions established in primary legislation.

The proposed guidance in Annex A (along with the other consultation annexes that set out proposed changes to the relevant sections of the Codes as per parts B and C of this document) has been developed based on an understanding of Government’s proposed regulations as they have been consulted on. It should be considered having regard to the going government process.

Respondents are cautioned that the regulations may change when Government announces the outcome of its consultation. They should, however, be assured that once the secondary legislation has been finalised, CAP and BCAP will assess the implications for their finalised guidance and report publicly on any changes that might be required. In the event that the finalised regulations have significant and material effects on the guidance arrived at through this process, CAP and BCAP will consider whether further consultation is necessary.

A pre-consultation exercise with CAP and BCAP [member bodies](#), and industry trade associations including the Food and Drink Federation, and the British Retail Consortium was also carried out with the aim of better understanding industry’s informational requirements.

2.4 Consultation aims

The proposed guidance is intended primarily to reflect the relevant provisions set out in legislation. It seeks to provide users with an understanding of how they should assess whether a business, a product or the content of a particular ad creative will be within scope of the less healthy product advertising rules.

The proposed guidance has 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. However, respondents should note the nature of the statutory duty to produce guidance means the document must focus on the statutory restrictions. It is not, for example, an appropriate vehicle for providing in-depth advice on CAP and BCAP’s other rules relating to food and drink advertising and the protection of children.

Respondents should also note this consultation process will not consider responses relating to underlying policy decided upon by Government through its consultation process as set out in 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.

2.5 Proposed guidance

The proposed guidance for consideration by respondents is included in [Annex A](#).

Alongside background information on the new rules and the framework for their enforcement included in part 2 of the proposed guidance, part 3 explains the criteria that will inform the ASA's determinations on whether a particular advertisement is for an identifiable less healthy product and thereby within the scope of the less healthy product rules. The following summarises the main areas covered by part 3:

- Products in scope – 3.2 of the proposed guidance summarises the two-stage test for determining if a product is classified as less healthy. These are whether it is:
 - within one of the categories of food or drink products set out in proposed [secondary legislation](#) currently subject to an ongoing Government consultation process; and
 - defined as HFSS under the 2004-05 [nutrient profiling model](#).

The guidance directs users to refer to the categories laid out in the schedule to the proposed regulations, and DHSC's nutrient profiling technical guidance.

- Parties subject to the less healthy product advertising rules – 3.3 of the proposed guidance highlights the exemption from the rules for food or drink SMEs and directs users to the criteria for determining this as set out in the proposed [secondary legislation](#) currently subject to an ongoing Government consultation process.
- Media and scope – 3.4 of the proposed guidance provides definitions of the media subject to the new rules drawing on existing statutory definitions relating to TV and ODPS.

In relation to the online media rule (15.19), 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. The new restriction excludes from scope:

- media directed at people outside the UK;
 - business-to-business communications;
 - ads in online radio services;
 - ads in other online audio-only content¹; and
 - paid advertising subject to the ODPS restriction.
- "Identifiable" less healthy product advertisements – 3.5 of the proposed guidance explains how the content of potentially in-scope advertisements will be assessed by the ASA. It sets out factors useful for guidance users in determining whether an

¹ Readers should note this exemption is set out in the draft secondary legislation referred to in 2.3 above.

advertisement is for an identifiable product, as well as those unlikely to result in an advertisement being for an identifiable product. It makes clear that the inclusion of one or more factors likely to result in advertisement being for an identifiable product will lead the ASA to conclude that the advertisement is subject to the less healthy product rules.

The proposed guidance also addresses how the ASA will assess the use of branding (such as product-related logos, or brand characters) when determining whether an advertisement is for an identifiable product.

2.6 Consultation questions

Respondents are invited to review the proposed guidance included in [Annex A](#). They should have appropriate regard to the relevant provisions of the Communications Act 2003 (as amended), the proposed [secondary legislation](#) currently subject to an ongoing Government consultation process, and Government's consultation outcome [statement](#) on the introduction of the new restrictions to support their responses to the following questions:

- **Question (i)** – Is 3.2 (Products in scope) of the proposed guidance clear and does it accurately reflect the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.
- **Question (ii)** – Is 3.3 (Parties subject to the less healthy product advertising rules) of the proposed guidance clear and does it accurately reflect the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.
- **Question (iii)** – Is 3.4 (Media and scope) of the proposed guidance clear and does it accurately reflect the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.
- **Question (iv)** – Is 3.5 (Identifiable less healthy product advertisements) of the proposed guidance clear and does it accurately reflect the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.
- **Question (v)** – Do respondents have comments on any other parts of the proposed guidance document?
- **Question (vi)** – Recognising that guidance produced in accordance with a statutory duty must focus on the statutory restrictions, and the need for the new less healthy product advertising rules to function within the wider framework of food and drink advertising rules, respondents are invited to provide detail of further resources that would be useful, in addition to the guidance, to help affected businesses to comply.

3. Part B: New rules reflecting the less healthy product advertising restrictions

3.1 Overview

This part of the consultation concerns the amendments to the UK Advertising Codes that implement the new less healthy product restrictions as set out in legislation. In summary, these are:

- 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);
- 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
- a new rule in CAP Code section 15 ([Food, food supplements and associated health or nutrition claims](#)) reflecting the paid online media restriction set out in section [368Z14](#) of the Communications Act 2003 (as amended).

The proposed rules will be accompanied by supporting information to appropriately explain their basis in law and define key concepts.

3.2 Development of the new rules

Using its powers of direction under the existing co-regulatory arrangement that governs the regulation of broadcast advertising, Ofcom's consultation on the implementation of the restrictions included proposed text of a BCAP Code rule to reflect the TV restriction set out in section [321A](#) of the Communications Act 2003 (as amended) (see 3.10 and 3.11 of Ofcom's [statement and consultation](#)). The final wording of the rule was confirmed in the [consultation outcome](#) published in July (see part 4). Accordingly, BCAP will add this wording Ofcom to section 32 ([Scheduling](#)) of the BCAP Code (3.4 below explains how BCAP will insert the wording in to the Code).

Ofcom's designations for the ODPS and the paid online media restrictions require the ASA to secure updates to the CAP Code and its ODPS appendix to reflect those restrictions without material addition or omission. At the ASA's request, CAP has developed proposed rules reflecting the legislation implementing the ODPS and paid online restrictions having due regard to the finalised wording of the TV rule and supporting information.

3.3 Consultation aims

This part of the consultation is a technical exercise that aims to ensure the legislation is appropriately reflected in the proposed CAP Code and ODPS appendix rules. Respondents should note Part C (below) includes further proposals for technical changes to the Codes that adapt the existing rules and supporting information with the aim of ensuring that the new less healthy product rules and the existing HFSS rules are set out clearly for Code users.

3.4 TV rule

BCAP will add the wording arrived at by Ofcom's consultation process to section 32 ([Scheduling](#)) reflecting the TV restriction (see Communications Act 2003 (as amended) section [321A](#)).

The following supporting information will be added to a new sub-section at the end of section 32 containing both the new rule and the existing HFSS scheduling rule. Readers should note that minor administrative additions to Ofcom's finalised rule text are shown in red. They should also note the title of the secondary legislation, shaded grey, is subject to an ongoing Government consultation process so remains provisional:

TV advertising for food and drink products and children

[...]

Definitions and scope

"HFSS products" are those food or 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. Information on the nutrient profiling model is available on the Department of Health and Social Care's website [here](#).

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 202X\]](#) ("the Regulations"); and
- it is an HFSS product.

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 advertisements as being for that product.

Rule **32.21** does not apply to advertisements **by** or on behalf of a food or drink small or medium enterprise ("food or drink SME"), within the meaning given by the Regulations.

The rule reflecting Ofcom's finalised wording reflecting TV restriction will follow-on from the supporting information above:

Rules on TV advertising for food or drink products

32.21 TV advertising for identifiable less healthy food or drink products may not be shown between 5.30am and 9.00pm.

Guidance on the application of this rule 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, is included in [Annex B](#). As Ofcom has already consulted on the wording reflecting the TV restriction, BCAP has included the detail above for information only.

3.5 ODPS rule

Under the terms of the ODPS designation, the ASA must ensure that the rules in the ODPS appendix of the CAP Code reflect the relevant legislation, without material additions or omissions.

Having due regard to section [368FA](#) of the Communications Act 2003 (as amended), 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](#)):

Less healthy food and drink product advertisements

Definitions and scope

Advertisements for identifiable food or drink products that are classified as “less healthy” are subject to a timing restriction reflecting specific provisions of the Communications Act 2003.

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 202X\]](#) (“the Regulations”); and
- it is assessed as high in fat, salt or sugar (“HFSS”) 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 available on the Department of Health and Social Care’s website [here](#)).

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 advertisements as being for that product.

Rule 30.16 does not apply to advertisements by or on behalf of a food or drink small or medium enterprise (“food or drink SME”), within the meaning given by the Regulations.

Media service providers and marketers should also have regard to the other rules on less healthy and HFSS product advertising in section 15.

Rules for ODPS advertising of food or drink products

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

Guidance on the application of this rule 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 C](#).

Ofcom’s [statement and consultation](#) confirmed that the existing co-regulatory relationship governing advertising included in ODPS sufficiently caters for the addition of the new restriction so consultation over the proposed rule is not required. CAP will nevertheless consider feedback from respondents before the ASA submits a final version of the rule reflecting the ODPS rule to Ofcom for approval.

3.6 Online media rule

Ofcom's designation of the ASA requires it to ensure that the relevant requirements of the Communications Act 2003 (as amended) are reflected appropriately in a code to secure compliance with the online restriction.

Having due regard to section [368Z14](#), CAP proposes the following additions to CAP Code section 15 ([Food, food supplements and associated health or nutrition claims](#)).

In the sub-section containing provisions relating to the protection of children, CAP proposes to add the following supporting information to the existing 'Background' section:

Food and soft drink product marketing communications and children

Background

[...]

"HFSS products" are those food or 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. Information on the nutrient profiling model is available on the Department of Health and Social Care's website [here](#).

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 202X\]](#) ("the Regulations"); and
- it is an HFSS product.

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 advertisements as being for that product. Paying for advertisements to be placed in online media includes paying under a sponsorship agreement as result of which advertisements are placed in online media. Paying also includes monetary and non-monetary consideration.

Rule 15.19 (Placement of less healthy food or drink product advertisements in online media) does not apply to advertisements for identifiable less healthy food or drink products:

- in regulated on demand programme services between 5.30am and 9.00 pm (these are subject to a timing restriction set out in rule 30.16 in Appendix 2 of the Code);
- where the person paying for the advertisement to be placed is a food or drink small or medium enterprise ("food or drink SME"), within the meaning given by the Regulations;
- in online services connected to regulated radio services as defined in the Regulations;
- included in a service distributing an audio item by means of online media as defined in the Regulations; and
- which are not intended to be accessed principally by persons in any part of the UK.

Guidance on the application of the less healthy product rule is available here. [...]

At the end of the sub-section on protections for children, the following rule reflecting the paid online media restriction will be added:

Placement of less healthy food or drink product advertisements in online media

15.19 Paid advertisements for an identifiable less healthy food or drink product must not be placed in online media.

Guidance on the application of this rule is available [here](#).

A full mark-up of the changes to CAP Code section 15 is included in [Annex C](#). In this document, respondents can review text relating to the new less healthy product rule alongside the consequential amendments to the existing rules and supporting information proposed to accommodate the new rule. They should note the consequential amendments are addressed separately as the subject of Part C of this consultation below.

3.7 Consultation questions

Respondents are invited to review the wording above and answer the questions following. They may wish to have regard to Part C of this consultation below noting that the new rules will be added alongside several consequential amendments to the Codes (the related [Annex B](#) and [Annex C](#) show full mark-ups of changes to the affected sections of the CAP and BCAP Codes respectively). However, readers should note that this part of the consultation focuses narrowly on whether CAP has properly reflected the relevant legislation in developing the ODPS and paid online media rules.

- **Question (vii)** – Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above adequately 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 proposed wording of the paid online media rule (15.19) set out in 3.6 above adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

4. Part C: Consequential amendments to the existing Codes and guidance

4.1 Overview

This part of the consultation concerns proposals for consequential amendments that ensure the existing provisions of the UK Advertising Codes regulating HFSS advertising are clearly set out alongside the new rules on less healthy product advertising. It follows on from Part B above.

4.2 Development of the consequential amendments

As explained above, the new less health product rules are separate to CAP and BCAP's existing rules restricting HFSS product advertising. Affected advertisers and media owners must assess whether an advertisement complies with the less healthy product rules first using the guidance presently the subject of this consultation under Part A above. If they are satisfied that an advertisement is not within scope of those rules, they must subsequently consider its liability under the existing HFSS rules.

CAP and BCAP's general objective is to ensure that their rules and guidance are transparent, accountable, proportionate, consistent, targeted only where regulation is needed and written so the rules are easily understood, easily implemented and easily enforced. As such, amendments to the existing rules are proposed with the aim of ensuring they are presented clearly alongside the new less healthy product advertising rules that will be added to the Codes in line with the proposals in Part B of this consultation.

4.3 Consultation aims

This part of the consultation is a technical exercise focusing on the clarity of the Codes. CAP and BCAP will not consider submissions that seek material changes to the existing HFSS rules.

At the same time, they acknowledge that the Codes cannot include all substantive background information and advice on the application of the rules. As such, respondents are invited to make suggestions for further resources that could be made available to Code-users to improve their understanding of how the existing rules will be applied alongside the new less healthy food advertising rules (please refer to question (vi) under Part A above).

4.4 Consequential amendments to BCAP Code

The consequential amendments to the BCAP Code are set out in [Annex B](#). Respondents should have regard to the marked-up text and explanatory detail in the covering document.

BCAP's existing HFSS rules are in two sections of the Code:

- Section 13 ([Food, food supplements and associated health or nutrition claims](#)) includes a sub-section of rules on the content of food and soft drink advertisements for the purposes of protecting children.
- Section 32 ([Scheduling](#)) includes related rules restricting the scheduling of HFSS advertisements on TV, and in television text and interactive television services.

The new less healthy product advertising rules do not affect the provisions of section 13 directly. However, as it is the section with specific rules for food and drink advertising and includes important information on the HFSS framework, BCAP proposes several minor amendments to improve clarity and usability appropriately sign-posting section 32 and the new less healthy product advertising rules to Code users.

As set out in Part B of this consultation above, section 32 will be amended to include the new less healthy product rule for TV advertising. To ensure clarity for Code users, BCAP proposes to re-number the existing HFSS scheduling restriction – deleting rule 32.5.1 and replacing it with a new rule (32.22) – and to place it next to the new less healthy product rule (32.21) in a new sub-section specific to the food and drink advertising scheduling restrictions. New supporting information will also explain the relationship between the new and existing rules.

BCAP also proposes to add text to rule 32.20.10 on HFSS advertisements appearing in television text and interactive television services making clear that its application is subject to compliance with the new less healthy product rule (32.21).

4.5 Consequential amendments to CAP Code

The consequential amendments to the CAP Code are set out in full in [Annex C](#). Respondents should have regard to the marked-up text and explanatory detail in the covering document.

Section 15 ([Food, food supplements and associated health or nutrition claims](#)) of the CAP Code includes CAP's rules protecting children from inappropriate food and drink advertising. These include the existing rules on the content and placement of HFSS advertisements as part of a dedicated sub-section on food and drink marketing to children.

CAP proposes amendments to the information supporting the sub-section explaining the relationship between the new less healthy product advertising rules and the existing HFSS rules. It also proposes an amendment to rule 15.18, the HFSS placement rule, making clear that it is subject to compliance with the less healthy product rule for paid online advertising (15.19), and the rule for regulated on demand programme services (32.16).

There are no proposed consequential amendments to Appendix 2 ([Advertising rules for on-demand services regulated by statute](#)).

4.6 Consequential amendments to CAP and BCAP's HFSS branding guidance

The consequential amendments to CAP and BCAP's HFSS branding guidance, [Identifying brand advertising that has the effect of promoting an HFSS product](#), are set out in [Annex D](#). Respondents should have regard to the marked-up text of the guidance and the explanatory detail in the covering document.

The existing HFSS rules are supported by guidance, which explains where the rules apply. The HFSS rules differ from the new less healthy food rules in that their scope of application to brand advertising is much wider. CAP and BCAP recognise that HFSS products can be promoted both directly, by including them in an advertisement, and indirectly, through the use of branding synonymous with a specific HFSS product.

The policy underpinning the HFSS branding guidance is unaffected by the changes resulting from the implementation of the less healthy product restrictions. No material revisions to the substance of the guidance are proposed, but the introductory information has been updated to explain the new framework that food and drink advertisers must follow. The amendments also make clear that the approach to the use of branding under the HFSS rules is strictly separate to that of the less healthy product rules.

4.7 Consultation questions

Respondents are invited to review the proposed consequential amendments in the respective annexes and answer the questions following. This part of the consultation focuses on these amendments. Comments on the proposed rules reflecting the less healthy product restrictions, which are included in the annexes to set out the Code changes in their full context, are invited under Part B of the consultation above.

- **Question (ix):** Do you agree that the proposed consequential amendments to the BCAP Code in [Annex B](#) are clearly set out alongside the new rules on less healthy product advertising? If not, please state why including details of any alternative approach you consider more effective.
- **Question (x):** Do you agree that the proposed consequential amendments to the CAP Code in [Annex C](#) are clearly set out alongside the new rules on less healthy product advertising? If not, please state why including details of any alternative approach you consider more effective.
- **Question (xi):** Do you agree that the proposed consequential amendments to CAP and BCAP's HFSS branding guidance in [Annex D](#) are clear having regard to the changes to the Codes summarised above? If not, please state why including details of any alternative approach you consider more effective.

5. Background: the ASA system

5.1 The Advertising Standards Authority

The ASA is the UK's independent advertising regulator responsible for enforcing the UK Advertising Codes that require all UK advertising to be legal, decent, honest and truthful. It helps to ensure the self-regulatory system works in the public interest. The Codes are authored by CAP and BCAP.

Together, the three bodies, along with their funding bodies (see 5.7 below), comprise the 'ASA system'.

The ASA has administered the [non-broadcast Code](#) for over 60 years and the [broadcast Code](#) for nineteen. Its remit was [further extended](#) in 2011 to include advertising on companies' own websites and in social media spaces under their control. The system was also given responsibility under co-regulatory arrangements with Ofcom for the regulation of advertising in [on-demand programme services](#) in 2010, and on [video-sharing platforms](#) in 2021.

The ASA combines complaint-led enforcement activity with proactive monitoring and enforcement, tackling misleading, harmful or seriously offensive advertisements. Increasingly, its work draws on a growing data science capability as the ASA system evolves to more effectively meet the challenges of consumer protection in online media. In 2022, its enforcement resulted in 31,227 ads being amended or withdrawn.

That same year, it received 35,350 complaints with the vast majority relating to online advertising or to broadcast TV advertising. Complaints can originate from the public, people or groups representing the interests of others or industry. They are assessed against the Codes and where potential compliance issues are identified, the ASA can launch a formal investigation. Decisions on investigated complaints are taken by the independent [ASA Council](#). Rulings are published on the ASA's website and made available to the media. If the ASA Council upholds a complaint about an ad, it must be withdrawn or amended; there are a [range of sanctions](#) administered by CAP in the event of non-compliance. An Independent Review Procedure exists for interested parties who are dissatisfied with the outcome of a case.

Information about the ASA, including the complaint-handling and investigations [procedures](#) and the Independent Review [process](#) is available via these links.

5.2 Collective Regulation

As the UK's frontline advertising regulator, the ASA brings together different statutory, co-regulatory, and self-regulatory enforcement mechanisms so they appear seamless in ensuring access to effective redress for people and businesses. The system involves the active participation of a range of legal backstops in the consumer protection landscape.

There are close partnerships with a network of other bodies including Ofcom, the Gambling Commission, the Information Commissioner's Office, the Medicines and Healthcare products Regulatory Agency, the Financial Conduct Authority and the Competition and Markets Authority. Through the sharing of information, joined-up enforcement action and referral processes, partners bolster regulation assisting, where necessary, to bring non-

compliant advertisers into line. Together, this ‘collective regulation’ helps to protect people and responsible businesses from irresponsible advertising.

The ASA system also brings together the advertising industry and media owners to set, maintain and police high standards through their membership of CAP and BCAP. This means businesses have a direct stake and an enlightened self-interest in adhering to the standards they set and creating a level-playing field.

5.3 The Committee of Advertising Practice

CAP is the self-regulatory body that authors, revises and helps the ASA to enforce the [UK Code of Non-broadcast Advertising and Direct & Promotional Marketing](#) (the CAP Code).

By practising self-regulation, the marketing community ensures the integrity of advertising, promotions and direct marketing. The value of self-regulation as an alternative to statutory control is recognised in EC Directives, including Directive 2005/29/EC (on unfair business to consumer commercial practices). Self-regulation is also accepted by Government and the courts as a first line of control in protecting consumers and businesses.

The CAP Code covers non-broadcast marketing communications (including those placed in traditional and online media), promotional marketing, direct marketing communications and marketing communications on marketers’ own websites. Marketers bear primary responsibility for complying with the CAP Code and their ads must comply with it. Ads that are judged not to comply with the Code must be withdrawn or amended. Parties that do not comply with the CAP Code could be subject to adverse publicity, resulting from ASA rulings, or further [sanctions](#) including the denial of media space.

CAP’s members include organisations that represent advertising, promotional and direct marketing and media businesses. Through their membership of CAP member organisations, or through contractual agreements with media publishers and carriers, those organisations agree to comply with the Code so that marketing communications are legal, decent, honest and truthful, and consumer confidence is maintained.

There are multiple checks and balances in place to ensure the Committees’ development of rules and guidance is transparent, open to scrutiny and adheres to the principles of good regulation. These include calls for evidence and public consultations, and mandatory regard to the advice of an expert independent consumer panel. The ASA system’s processes are also subject to judicial review. This all ensures that the system is wholly accountable to everyone with a stake in advertising.

CAP is also dedicated to supporting industry in meeting the standards set by the Codes through awareness raising and education. In 2022, it delivered 1,037,037 pieces of advice and training. CAP provides a broad range of resources from issue-specific advice articles and dedicated e-learning modules, to bespoke, one-to-one pre-publication advice on pieces of ad copy.

Further information about CAP is available [here](#).

5.4 The Broadcast Committee of Advertising Practice

BCAP is the regulatory body responsible for maintaining the *UK Code of Broadcast Advertising* ([the BCAP Code](#)) under agreement with Ofcom. BCAP members include broadcasters and trade associations representing advertisers, broadcasters and agencies.

Ofcom has a statutory duty, under the [Communications Act 2003](#) (as amended), to maintain standards in TV and radio advertisements. In 2004, Ofcom entrusted BCAP and the broadcast arm of the ASA with the regulation of broadcast advertisements in recognition of CAP and the ASA's successful regulation of non-broadcast marketing for over 40 years, and in line with better regulation principles.

The Communications Act 2003 (as amended) requires Ofcom to set and, from time to time, review and revise, a Code containing standards for the content of broadcast advertisements carried by TV and radio services licensed under the Broadcasting Acts [1990](#) and [1996](#). Ofcom has contracted out the setting of advertising standards to BCAP under the [Contracting Out \(Functions Relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004](#). That function is exercised in consultation with and agreement of Ofcom.

The BCAP Code regulates all advertisements on television channels and radio stations licensed by Ofcom and all advertisements on Sianel Pedwar Cymru (S4C) and S4C digital, including teleshopping channels and any additional television service (including television text services and interactive television services). The BCAP Code is enforced against Ofcom-licensed broadcasters, Sianel Pedwar Cymru (S4C) and S4C digital. Broadcasters are required by the terms of their Ofcom licence, and, for S4C, by statute, to adhere to the standards set out in the BCAP Code.

Under [Section 324](#) of the Communications Act 2003 (as amended), BCAP must consult on proposed Code changes. BCAP strives to ensure that its rule-making is transparent, accountable, proportionate, consistent and targeted where action is needed, in accordance with the Communications Act 2003 (as amended). Ofcom must approve Code changes before BCAP implements them.

Further information about BCAP is available [here](#).

5.5 Commitment to Good Regulation, and evidence-based policy making

The ASA system has a strong commitment to transparent, proportionate and evidence-based regulation, both in the authorship of the Codes and their enforcement. The ASA, CAP and BCAP's [Commitment to Good Regulation](#) sets out six public commitments modelled on the UK government's, [Regulators' Code](#). The commitments are to:

- keep regulatory burdens to a minimum;
- engage with you;
- be targeted;
- share information;
- provide advice and training support; and
- be transparent.

Like the *Regulators' Code*, the commitments do not detract from the core purpose of

ensuring that all UK advertising is responsible. It remains important for the ASA to continue to strike the right balance between those regulated by the system and those protected by the system.

5.6 Evidence-based policy making

The ASA system is committed to evidence-based regulation, continually reviewing new evidence to ensure the rules and their application remain fit-for-purpose and up to date with developments across industry sectors and in advertising technology.

CAP and BCAP's policy making activities are informed by [published guidance](#) on the principles governing how it considers evidence as part of the process of assessing cases for regulatory change.

5.7 Funding

The entire system is funded by a levy on the cost of advertising space, administered by the Advertising Standards Board of Finance (Asbof) and the Broadcast Advertising Standards Board of Finance (Basbof). Both finance boards operate independently of the ASA to ensure there is no question of funding affecting the ASA's decision-making.

Information about Asbof and Basbof is available at www.asbof.co.uk and www.basbof.co.uk.

6. Background: limiting food and soft drink advertising to children

6.1 Overview

The ASA has enforced dedicated rules designed to limit the potential for HFSS product advertising to influence children's dietary choices since 2007. The HFSS product advertising rules combine limits on the media in which such advertising can appear and the content of ads. They seek to appropriately limit children's overall exposure to HFSS advertising – especially in media for younger audiences – and lessen the impact of ads they do see. The rules apply to advertising across the full range of media covered by the UK Advertising Codes from television, press and poster advertising, to online behavioural advertising, and social media and influencer marketing practices.

6.2 Existing HFSS rules

In 2007, Ofcom directed BCAP to [introduce scheduling restrictions](#) on TV prohibiting HFSS advertising from appearing:

- on children's channels;
- in or around programming commissioned for or principally directed at children; and
- in or around programming of particular appeal to children².

These rules were accompanied by restrictions for ads directed through their content at pre- and primary school children prohibiting the use of licensed characters and celebrities popular with the children, and promotional offers.

In 2017, recognising the very significant changes in children's media consumption owing to rapid developments in online media, CAP [introduced similar rules](#) to its Code. The non-broadcast placement and targeting rules prohibit HFSS advertising from appearing in children's media (such as children's interest magazines, or gaming websites), and, in general audience media, imposes a 25% limit on child audiences to ensure HFSS ads do not appear where children are significantly over-represented in the audience. In online media, the rules prohibit the targeting of ads at users likely to be under 16 through the use of 'ad tech' that allows marketers to create audiences based on data held about users³. CAP also mirrored BCAP's creative content rules.

6.3 UK Government's Obesity strategy

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,

² BCAP Code section 32 ([Scheduling](#)) sets out BCAP's policies on the scheduling of broadcast advertising. For TV ads, broadcasters are required to use audience measurement data to assess the proportion of children in the audience of general audience programming. Programmes where children are over-represented by 20% relative to their normal share of the viewing population are considered to have particular appeal to children. Such programmes are subject to the HFSS scheduling restriction in the same way as children's programming. BCAP has produced guidance on [Identifying TV programmes likely to appeal to children](#).

³ CAP's policies on ad placement and targeting are common across all sensitive product categories, including HFSS, alcohol and gambling. CAP has produced guidance, [Media placement restrictions: protecting children and young people](#), setting out their application in more detail.

[Schedule 18](#) of the Health and Care Act 2022 set out additional restrictions to be applied to certain HFSS products – those categorised as “less healthy” food or drink products.

6.4 New restrictions on “less healthy” product advertising

The less healthy product restrictions are implemented in law through amendments to the Communications Act 2003. They will take effect under the terms of the legislation on 1 October 2025 prohibiting:

- 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 aimed at UK consumers from being placed in online media at any time (as set out section [368Z14](#)).

6.5 Products within scope

The new restrictions apply to most but not all HFSS products. “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 proposed [secondary legislation](#) currently subject to an ongoing Government [consultation](#) process; 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, which is set out in DHSC’s [Nutrient profiling technical guidance](#).

Products meeting these tests are categorised as less healthy whether they are sold for consumption at home or elsewhere.

It should be noted that the DHSC nutrient profiling model is also used separately as a basis for defining which products are within scope of CAP and BCAP’s HFSS rules.

6.6 Exemptions

The less healthy product advertising restrictions are subject to several exemptions set out in the relevant sections of the Communications Act 2003 (as amended) and proposed secondary legislation currently subject to an ongoing Government consultation. The new restrictions do not apply to:

- advertising by or on behalf of small or medium enterprises (“food or drink SMEs”);
- business-to-business advertising in online media;
- advertisements in online media which are not intended to be accessed principally by persons in the UK;
- advertising in online services connected to Ofcom-regulated radio services, which are the same or substantially the same as items broadcast by a relevant radio service digitally or in analogue form; and

- advertisements included in other online audio services provided they are not visual advertisements⁴.

6.7 Regulatory framework of the new restrictions

In its [consultation response](#), the UK Government signalled its intention that Ofcom would be the statutory body responsible for the new restrictions as part of its wider regulatory role under the Communications Act 2003 (as amended).

Amendments to the Communications Act 2003 give Ofcom powers to designate a frontline regulator. In February, under these powers Ofcom published a joint [statement and consultation](#):

- confirming that the existing co-regulatory arrangements for TV and ODPS extend to the new restrictions for advertising in these media;
- consulting on proposed amendments to the BCAP Code to reflect the new restrictions that apply to advertising and sponsorship on TV; and
- consulting on a proposal to designate the ASA as a co-regulator for the online advertising prohibition.

Ofcom [published](#) the outcome of this process in July confirming the designation of the ASA as a co-regulator for the online advertising prohibition.

Under the co-regulatory arrangements, Ofcom retains statutory backstop powers. These may be used, for instance, where party does not co-operate with the ASA (including by failing to comply with its decisions). In such circumstances, the ASA can refer the matter to Ofcom, which has powers to investigate, request information and take enforcement action.

6.8 ASA's role as frontline regulator

From October 2025, the ASA will be responsible for frontline enforcement of the new restrictions. Taking each in turn:

- [TV restriction](#) – Ofcom has a long-standing co-regulatory relationship with the ASA, BCAP and BASBOF on the regulation of broadcast advertising, which contracts out certain functions set out in an authorisation under relevant statutory powers. This is supported by a [memorandum of understanding](#) between the parties to the authorisation. The ASA will enforce the new less healthy product rule for television in line with the existing co-regulatory arrangements for broadcast advertising.
- [ODPS restriction](#) – In 2010, Ofcom designated the ASA to regulate advertising included in ODPS; the relevant functions are set out in the [ODPS Designation](#). The designation gives the ASA powers to publish rules for the purpose of securing ODPS providers' compliance the relevant provisions of the Communications Act 2003 (as amended). The rules are included in Appendix 2 of the CAP Code ([Advertising rules for on-demand services regulated by statute](#)). Regulated media service providers must comply with them. The ASA will enforce the new less healthy product rule for ODPS in line with the existing co-regulatory arrangements for such advertising.

⁴ Readers should note this exemption is set out in the draft secondary legislation referred to in 2.3 above.

- Paid online restriction – Amendments to the Communications Act 2003 appointed Ofcom as the “appropriate regulatory authority” for the online restriction, including powers to designate another body as frontline regulator. In July, Ofcom confirmed the ASA’s designation in this role. It is required to:
 - ensure the requirements of the online restriction set out in the Communications Act 2003 (as amended) are reflected appropriately in a Code;
 - secure that advertisers comply with the online prohibition;
 - handle complaints, including from the public and industry, about online advertising for less healthy food and drink products;
 - record breaches of the rule and secure compliance with the decision; and
 - draw up and, from time to time, review and revise guidance on the application of the restriction.

The ASA will enforce the new less healthy product advertising restriction for paid online media through a new rule in the CAP Code and in accordance with its established case-handling [processes](#), while having due regard to the requirements of the designation.

6.9 This consultation

In the period prior to October 2025, the ASA will be responsible for work to implement new restrictions. This consultation process forms part of that work.

To ensure the effective implementation of the new framework, the ASA considers that it is essential to utilise the best means of providing businesses impacted with effective resources allowing them to understand the new regime and make necessary changes to their advertising compliance processes. The ASA has therefore asked CAP and BCAP to conduct the consultation recognising the Committee’s role as code-owning bodies, and their extensive experience in providing advertisers, media owners and other practitioners with advice and guidance on how to comply with the Codes.

Normally, the ASA agrees to have regard to CAP and BCAP guidance on the Codes when considering relevant cases. The ASA has final say over the interpretation of the Codes and is not strictly bound by any guidance produced. Given the applicable statutory duties and the fact that the ASA alone has been designated by Ofcom in relation to the ODPS and online restrictions, it takes direct responsibility for the co-regulatory relationship underpinning the less healthy food restrictions. This includes formal ownership of the guidance being developed through this consultation process.

CAP and BCAP will evaluate responses to the consultation and finalise new guidance to accompany the less health product rules, along with the changes to the UK Advertising Codes and existing guidance. The consultation outcomes will be reviewed by the ASA as the frontline regulator before Ofcom is invited to approve the changes (as applicable).

6.10 Interaction between the less healthy product rules and the existing rules

Advertisers and media owners should note the HFSS rules will continue to apply in scenarios where an advertisement for an HFSS product is not subject to the new less healthy product rules. For example:

- in-scope advertisements for an identifiable less healthy product will be prohibited on TV before 9:00pm, but it will be subject to BCAP's HFSS rules post-9:00pm;
- advertisements in ODPS pre-9:00pm that do not include an identifiable product under the terms of the less healthy product rules but are still likely to promote an HFSS product or brand will continue to be subject to CAP's HFSS rules; and
- in-scope advertisements for an identifiable less healthy product will be prohibited in paid online media, but not in online environments like social media that are owned by the advertiser where they will continue to be subject to CAP's HFSS rules.

An important difference between the scope of the new and existing regimes is how they treat the use of branding (for instance, use of logos, livery, straplines, fonts, colours and characters). As explained in Part A (above), the less healthy product rules have a much narrower approach to the use of branding that could 'identify' a specific product. This contrasts with the broader approach CAP and BCAP take in applying their HFSS rules both to ads that directly reference and promote a specific product and ads that use branding in ways likely to promote such a product. Respondents should note the two approaches are strictly separate and relate only to their respective frameworks.

7. How to respond and next steps

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

- The consultation will run for 8 weeks, closing at 5:00pm on 7 February 2024.
- CAP and BCAP will consider each response carefully and evaluate all significant points explaining the reasons behind the decisions made.
- The consultation outcomes will be reviewed by the ASA as the frontline regulator before Ofcom is invited to approve them (as applicable) in its role as statutory body responsible for the restrictions.
- A full evaluation of responses will be published on the ASA website alongside the statement announcing the outcome of the consultation.
- The final outcome is expected to be published in mid-2024.

7.1 How to respond

CAP and BCAP invite written comments and supporting information on the proposals contained in this document by 5:00pm on 7 February 2024.

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

7.2 Confidentiality


CAP and BCAP considers that everyone who is interested in the consultation should see the consultation responses. In its evaluation document, CAP will publish all the relevant significant comments made by respondents and identify all non-confidential respondents. The evaluation and copies of original consultation responses will be published with 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

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