

CAP and BCAP Consultation

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

Annex C: Proposed CAP Code revisions



Explanatory notes for Annex C

This annex provides a mark-up of proposed changes to relevant parts of the CAP Code that are affected by the introduction of the less healthy product rules covering advertising in on demand programme services (ODPS) and paid online media. The changes will affect:

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

The annex should be read in conjunction with the relevant parts of the [consultation document](#). It is primarily intended to set out the proposed consequential amendments to the Code as described in Part C of the consultation document. It also includes text of the new less healthy product advertising rule and supporting information in accordance with Part B of the consultation document.

Readers should also have regard to 2.3 (Development of the proposed guidance) of the consultation document explaining CAP and BCAP's approach to Government's proposed secondary legislation (the [Advertising \(Less Healthy Food Definitions and Exemptions\) Regulations 2022](#)), which is currently subject to an ongoing Government [consultation process](#). References to the proposed secondary legislation in this document are bracketed and highlighted to indicate their provisional nature.

Readers should note that proposed deletions are struck through and additions are shown in red text.

[...]

Food and soft drink product marketing communications and children

Background

Paid advertisements in online media for identifiable food or drink products that are classified as “less healthy” are prohibited, reflecting specific provisions of the Communications Act 2003 (as amended) – see rule 15.19 (Placement of less healthy food and drink product advertisements in online media). Marketing communications for products high in fat, salt or sugar (HFSS) that are not covered by the prohibition are subject to a separate media placement restriction – see rule 15.18 (Placement of HFSS product advertisements).

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

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 in 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](#).

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

[...]

Placement of HFSS product advertisements ~~Product Ad Placement~~

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

This rule applies subject to compliance with rule 15.19 for paid advertisements for less healthy food or drink products in online media and rule 30.16 for advertisements for less healthy food or drink products in regulated on demand programme services between 5.30 am and 9.00 pm.

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

Placement of less healthy food and 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](#).

[...]

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](#).

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