STATUTORY INSTRUMENTS

# 2024 No. 1266

# BROADCASTING
# ELECTRONIC COMMUNICATIONS
# FOOD
# PUBLIC HEALTH

## The Advertising (Less Healthy Food Definitions and Exemptions) Regulations 2024

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| *Made - - - -* | *2nd December 2024* |
| *Laid before Parliament* | *3rd December 2024* |
| *Coming into force - -* | *1st October 2025* |

The Secretary of State, in exercise of the powers conferred by sections 321A(3), (4) and (5), 368FA(3), (4) and (5) and 368Z14(4), (5) and (6) of the Communications Act 2003(**1**), makes the following Regulations.

The Secretary of State has consulted in accordance with sections 321A(8), 368FA(8) and 368Z14(9) of the Communications Act 2003.

### Citation, extent, application and commencement

**1.**—(1) These Regulations may be cited as the Advertising (Less Healthy Food Definitions and Exemptions) Regulations 2024.

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland, and apply to England, Wales, Scotland and Northern Ireland.

(3) These Regulations come into force on 1st October 2025.

### Interpretation

**2.**—(1) In these Regulations—

"the 2003 Act" means the Communications Act 2003;

(**1**) 2003 c. 21. Sections 321A, 368FA and 368Z14 were inserted into the Communications Act 2003 by paragraphs 1, 2 and 3 respectively of Schedule 18 to the Health and Care Act 2022 (c. 31).

"accessibility text" mean subtitles and captions intended to make an item accessible to people with disabilities;

"audio item" means an item—

(a) created for the purpose of being listened to, and

(b) consisting wholly of sound;

"audio service" means a service distributing an audio item by means of the internet which—

(a) is not a service connected to regulated radio services, within the meaning of regulation 5, and

(b) does not contain any visual content except for—

(i) accessibility text associated with an audio item, or

(ii) limited visual images which relate to the provision of the audio service or to audio items available on the audio service;

"the Nutrient Profiling Technical Guidance" means the guidance with that title published by the Department of Health on 1st January 2011(**2**);

"the SDIL Regulations" means the Soft Drinks Industry Levy Regulations 2018(**3**);

"visual advertisement" means an advertisement which consists of moving or still images, or legible text other than accessibility text, or a combination of those things.

**Less healthy food or drink products**

**3.**—(1) For the purposes of sections 321A(1) (objectives for advertisements: less healthy food and drink), 368FA(1) (advertising: less healthy food and drink) and 368Z14(1) (prohibition of paid-for advertising of less healthy food and drink) of the 2003 Act, a product is a "less healthy food or drink product" if—

(a) it falls within one of the categories set out in paragraphs 2 to 17 of the Schedule to these Regulations, and is not an exempt product within the meaning of paragraph 1 of that Schedule, and

(b) the score for the product when the nutrient profiling model is applied to it in accordance with the Nutrient Profiling Technical Guidance is—

(i) 4 or more points in the case of a product which is not a drink, or

(ii) 1 or more points in the case of a product which is a drink.

(2) Products within the categories set out in the Schedule are "less healthy food or drink products" whether they are sold for consumption at home or elsewhere.

**Food or drink SMEs**

**4.**—(1) For the purposes of sections 321A(3), 368FA(2) and 368Z14(2) of the 2003 Act, a person is a "food or drink SME" during a financial year if that person—

(a) carries on one or more businesses which involve or are associated with the manufacture or sale of food or drink during that financial year, and

(b) on the first day of the financial year, employs fewer than 250 people for the purposes of those businesses.

(**2**) An electronic copy can be found at https://www.gov.uk/government/publications/the-nutrient-profiling-model. Hard copies can be obtained by request to Obesity Team, Department of Health and Social Care, 39 Victoria Street, London, SW1H 0EU.
(**3**) S.I. 2018/41, to which there are no relevant amendments.

(2) For the purposes of determining how many persons are employed for the purposes of a business—

(a) a business that is carried on pursuant to a franchise agreement is to be treated as part of the business of the franchisor and not as a separate business carried on by the franchisee;

(b) persons employed for the purposes of the business in a country or territory outside the United Kingdom are to be taken into account.

(3) For the purposes of paragraph (2), a "franchise agreement" exists where one undertaking ("the franchisee") and another undertaking ("the franchisor") agree that the franchisee carries on a business activity which includes the sale or distribution of food or drink ("the franchise business"), and paragraph (4) applies to the franchise business.

(4) This paragraph applies to a franchise business if—

(a) the food or drink provided in the franchise business,

(b) the internal or external appearance of the premises where the franchise business is carried on, and

(c) the business model used for the operation of the franchise business,

are agreed by the franchisor, and are similar to those of other undertakings in respect of which the franchisor has entered into comparable contractual arrangements.

(5) Paragraph (4) does not apply to a franchise business if the franchise agreement is limited to the alcoholic drinks provided in the franchise business and the franchisee is free to determine what other food or drink is provided.

(6) For the purposes of paragraph (1)(b)—

(a) the employees of a business are the persons who are employed for the purposes of the business;

(b) "employee" means an individual who has entered into, or works under, a contract of employment, whether that contract is for full-time or part-time employment;

(c) "contract of employment" means a contract of service, whether express or implied, and, if it is express, whether oral or in writing;

(d) persons employed for the purposes of a business include persons who are members of staff of an associated company of the business who also work for the purposes of the business, and for these purposes—

(i) "associated company" means a company which is a parent undertaking or a subsidiary undertaking of the company which owns the business, and

(ii) "parent undertaking" and "subsidiary undertaking" have the same meaning as in section 1162 of the Companies Act 2006(**4**).

**Services connected to regulated radio services**

**5.**—(1) For the purposes of section 368Z14(3)(c) of the 2003 Act, a service is a "service connected to regulated radio services" if it is a service—

(a) provided by means of the internet;

(b) which corresponds to a service that is broadcast by a relevant radio service.

(2) For the purposes of paragraph (1)(b)—

(**4**) 2006 c. 46.

(a) a service corresponds to a service that is broadcast by a relevant radio service if the majority of the audio items included in the service are broadcast on the relevant radio service at the same time as they are provided by the service;

(b) a "relevant radio service" is a radio service, other than a radio multiplex service (within the meaning of section 258 (radio multiplex services) of the 2003 Act), regulated by OFCOM(**5**) under section 245 (regulator of independent radio services) of the 2003 Act(**6**).

(3) A visual advertisement for an identifiable less healthy food or drink product included in a service connected to regulated radio services, which distributes an audio item, is not to be treated as part of that service.

### Section 368Z14: further exemptions

**6.**—(1) Section 368Z14(1) of the 2003 Act does not apply in relation to advertisements for identifiable less healthy food or drink products which—

(a) are included—

(i) in an audio service, and are not visual advertisements, or

(ii) in a television licensable content service, within the meaning of section 232 (meaning of television licensable content services) of the 2003 Act(**7**) which is a regulated television service, or

(b) are included in an unregulated television licensable content service which—

(i) is not a regulated television service,

(ii) is provided by means of the internet, and

(iii) is a service which corresponds to a regulated television service.

(2) In paragraph (1)—

(a) a "regulated television service" is a service which is regulated by OFCOM under section 203 (function of OFCOM in relation to S4C)(**8**) or section 211 (regulation of independent television services)(**9**) of the 2003 Act;

(b) a service corresponds to a regulated television service if all the programmes, including advertisements, provided by the regulated television service are provided at the same time on both services.

### Review

**7.**—(1) The Secretary of State must from time to time—

(a) carry out a review of the regulatory provision contained in these Regulations; and

(b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 1st October 2030.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(4) (reports on regulatory provision) of the Small Business, Enterprise and Employment Act 2015(**10**) requires that a report published under this regulation must, in particular—

(**5**) "OFCOM" is defined in section 405(1) of the Communications Act 2003 (c. 21).
(**6**) Section 245 was amended by section 46(2) and (3) of the Media Act 2024 (c. 15) and S.I. 2019/224.
(**7**) Section 232 has been amended by S.I. 2006/2131, 2009/2979 and 2020/1062.
(**8**) Section 203 has been amended by paragraph 32(1) of Schedule 4 to the Media Act 2024 (c. 15).
(**9**) Section 211 has been amended by paragraph 34 of Schedule 4 to the Media Act 2024, and S.I. 2019/224.
(**10**) 2015 c. 26. Section 28 was amended by section 19 of the Enterprise Act 2016 (c. 12), and paragraph 36 of Schedule 8 to the European Union (Withdrawal) Act 2018 (c. 16).

(a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);

(b) assess the extent to which those objectives are achieved;

(c) assess whether those objectives remain appropriate; and

(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, "regulatory provision" has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

*Andrew Gwynne*
Parliamentary Under-Secretary of State
Department of Health and Social Care

2nd December 2024

SCHEDULE Regulation 3

Categories of specified food or drink

**Exempt product**

**1.**—(1) A product is an exempt product for the purposes of regulation 3(1) and this Schedule if it is a product for use for—

(a) special medical purposes, which meets the description in sub-paragraph (2)(a),

(b) infants or young children, which meets the description in sub-paragraph (2)(b), (c) or (d), or

(c) total diet replacement for weight control, which meets the description in sub-paragraph (2)(e).

(2) For the purposes of sub-paragraph (1), the descriptions referred to are—

(a) food for special medical purposes, as defined in Article 2(2)(g) of Regulation (EU) 609/2013 on food intended for infants and young children, food for special medical purposes and total diet replacement for weight control(**11**), which meet the requirements in Commission Delegated Regulation (EU) 2016/128 supplementing Regulation (EU) 609/2013 as regards the specific compositional and information requirements for food for special medical purposes(**12**),

(b) foodstuffs intended for particular nutritional use by infants during the first months of life and satisfying by themselves the nutritional requirements of such infants until the introduction of appropriate complementary feeding, which complies with—

(i) Article 9 of Regulation (EU) 609/2013 on food intended for infants and young children, food for special medical purposes and total diet replacement for weight control, and

(ii) Articles 2(1) and (3), 3(1) and (3), 4 and 5 of Commission Delegated Regulation (EU) 2016/127 as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding(**13**), as it forms part of domestic law ("Regulation (EU) 2016/127"),

(c) foodstuffs intended for particular nutritional use by infants when appropriate complementary feeding is introduced and constituting the principal liquid element in a progressively diversified diet of such infants, which complies with—

(i) Article 9 of Regulation (EU) 609/2013 on food intended for infants and young children, food for special medical purposes and total diet replacement for weight control, and

(ii) Articles 2(2) and (3), 3(2) and (3), 4 and 5 of Regulation (EU) 2016/127,

(d) baby foods and processed cereal-based foods, as defined in the Processed Cereal-based Foods and Baby Foods for Infants and Young Children (England) Regulations 2003(**14**), which comply with the requirements of regulations 5 to 7 of those Regulations, and

(e) specially formulated foods intended for use in energy-restricted diets for weight reduction which—

(**11**) EUR 2013/609, amended by S.I. 2019/651, 2020/1476 and 2023/28.
(**12**) EUR 2016/128, amended by S.I. 2019/651, 2020/1476 and 2023/28.
(**13**) EUR 2016/127, amended by S.I. 2020/1476, 2021/168 and 2023/28,
(**14**) S.I. 2003/3207.

(i) comply with the compositional requirements in Schedule 1 to the Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997(**15**) as it applies in England; and

(ii) when used as instructed by the manufacturer, replace the whole of the total daily diet.

(3) So far as this paragraph applies to Northern Ireland, references in sub-paragraph (2) to—

(a) Regulation (EU) 609/2013 on food intended for infants and young children, food for special medical purposes and total diet replacement for weight control;

(b) Commission Delegated Regulation (EU) 2016/128 supplementing Regulation (EU) 609/2013 as regards the specific compositional and information requirements for food for special medical purposes;

(c) Commission Delegated Regulation (EU) 2016/127 as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding,

are to be read as references to those instruments as they have effect in EU law and in Northern Ireland by virtue of the Windsor Framework.

(4) In paragraph (3), the "Windsor Framework" means the part of the EU withdrawal agreement known as the Windsor Framework by virtue of Joint Declaration No 1/2023 of 24th March 2023 made between the EU and the United Kingdom in the Joint Committee established by the EU withdrawal agreement(**16**).

**Category 1:**

**2.** Prepared soft drinks containing added sugar ingredients (other than exempt products referred to in paragraph 1 or the exempt soft drinks referred to in paragraph 5(1)).

**3.**—(1) The following provisions apply for the purposes of this category.

(2) "Soft drink" means—

(a) a beverage of an alcoholic strength not exceeding 1.2%, or

(b) a liquid or a powder which, when prepared in a specified manner, constitutes a beverage of an alcoholic strength not exceeding 1.2%.

(3) A liquid or a powder is prepared in a specified manner if it is—

(a) diluted,

(b) combined with crushed ice, or processed so as to create crushed ice,

(c) combined with carbon dioxide, or

(d) prepared by way of a process that involves any combination of the processes mentioned in paragraphs (a) to (c).

(4) A soft drink is "prepared" if it is—

(a) a soft drink within sub-paragraph (2)(a), or

(b) a beverage that would result from preparing a liquid or a powder within sub-paragraph (2)(b)—

(i) in a specified manner (see sub-paragraph (3)), and

(ii) in accordance with the relevant dilution ratio.

(**15**) S.I. 1997/2182.

(**16**) Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1145699/Joint_Declaration_by_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_and_the_European_Union_in_the_Withdrawal_Agreement_Joint and from the Department of Health and Social Care, 39 Victoria Street, London SW1H 0EU.

(5) The "relevant dilution ratio" means—

(a) the dilution ratio stated on, or calculated by reference to information stated on, the packaging of the soft drink, or

(b) where no such dilution ratio or information is stated, the dilution ratio of similar drinks on the market.

**4.**—(1) A soft drink contains "added sugar ingredients" if any of the following are combined with other ingredients at any stage in the production of the soft drink—

(a) calorific mono-saccharides or di-saccharides;

(b) a substance containing calorific mono-saccharides or di-saccharides.

(2) But a soft drink does not contain "added sugar ingredients" only by reason of containing fruit juice, vegetable juice or milk (or any combination of them).

(3) For the purposes of sub-paragraph (2)—

(a) "fruit juice" is to be construed in accordance with regulation 5 (sugar content condition: fruit juice) of the SDIL Regulations;

(b) "vegetable juice" is to be construed in accordance with regulation 6 (sugar content condition: vegetable juice) of the SDIL Regulations;

(c) "milk" is to be construed in accordance with regulation 7 (sugar content condition and exempt soft drinks: milk and milk-based drinks) of the SDIL Regulations.

**5.**—(1) An item is an "exempt soft drink" if it is an alcohol substitute drink which meets the specified conditions.

(2) For the purposes of sub-paragraph (1), the specified conditions are—

(a) condition 1 provided for by paragraph (2) of regulation 9 (exempt soft drinks: alcohol substitute drinks) of the SDIL Regulations, and

(b) one or more of conditions 2, 3 and 4 provided for by paragraphs (3) to (5) of regulation 9 of the SDIL Regulations.

**Category 2**

**6.** Savoury snacks whether intended to be consumed alone or as part of a complete meal, such as crisps, pitta bread based snacks, pretzels, poppadums, salted popcorn and prawn crackers (but not raw, roasted, coated or flavoured nuts), including—

(a) products made from potato, other vegetables, grain or pulses;

(b) extruded, sheeted and pelleted products;

(c) savoury crackers, rice cakes or biscuits;

(d) pork rind-based snacks.

**Category 3**

**7.** Breakfast cereals including ready-to-eat cereals, granola, muesli, porridge oats and other oat-based cereals.

**Category 4**

**8.** Confectionery including chocolates and sweets.

**Category 5**

**9.** Ice cream, ice lollies, frozen yoghurt, water ices and similar frozen products.

**Category 6**

**10.** Cakes and cupcakes.

**Category 7**

**11.** Sweet biscuits and bars of any shape based on one or more of nuts, seeds or cereal.

**Category 8**

**12.** Morning goods, including croissants, pains au chocolat and similar pastries, crumpets, pancakes, buns, teacakes, scones, waffles, Danish pastries and fruit loaves.

**Category 9**

**13.** Desserts and puddings, including pies, tarts and flans, cheesecake, gateaux, dairy desserts, sponge puddings, rice pudding, crumbles, fruit fillings, powdered desserts, custards, jellies and meringues.

**Category 10**

**14.** Sweetened (whether with sugar or otherwise) yoghurt and fromage frais.

**Category 11**

**15.** Pizza (except plain pizza bases).

**Category 12**

**16.** Roast potatoes, potato and sweet potato chips, fries and wedges, potato waffles, novelty potato shapes (such as smiley faces), hash browns, rostis, crispy potato slices, potato croquettes.

**Category 13**

**17.** Any of the following which is not an exempt product within the meaning of paragraph 1—

(a) products, such as ready meals, that are marketed as ready for cooking or reheating without requiring further preparation and intended to be consumed as a complete meal;

(b) products ordered from a menu, which by themselves, or together with other products ordered from the same menu, are intended to be consumed as a complete meal;

(c) products, other than products that contain pastry, in or with a sauce (but not a marinade, glaze, dressing, seasoning or similar accompaniment) that are marketed as ready for cooking or reheating without requiring further preparation and intended to be consumed as the main element of a meal;

(d) breaded or battered—

(i) vegetable, fish, shellfish, meat, or poultry products;

(ii) substitute fish, shellfish, meat or poultry products,

including fish fingers, fish cakes, chicken nuggets and breaded meat substitutes;

(e) sandwiches of any kind, including baguettes, ciabattas, wraps, bagels, filled muffins, filled buns or baps, filled croissants, toasties or paninis.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations define "less healthy food or drink products", "food or drink SMEs" and "services connected to regulated radio services" for the purposes of the restrictions on advertising less healthy food set out in sections 321A, 368FA and 368Z14 of the Communications Act 2003 ("the 2003 Act"), as inserted by the Health and Care Act 2022.

The Regulations also exempt from the prohibition in section 368Z14 of the 2003 Act on paid-for advertising of less healthy food or drink, those advertisements included—

(a) in an audio service (other than visual advertisements),

(b) in television licensable content services regulated under the 2003 Act ("a regulated TV service"), or

(c) in a television licensable content service which is not regulated under the 2003 Act, provided all programmes and advertisements shown on the unregulated service are the same as those shown on a regulated TV service.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/996232/impact-assessment-hfss-advertising.pdf and from the Department of Health and Social Care at 39 Victoria Street, London SW1H 0EU.