**EXPLANATORY MEMORANDUM TO**

# THE ADVERTISING (LESS HEALTHY FOOD AND DRINK) (BRAND ADVERTISING EXEMPTION) REGULATIONS 2025

**2025 No. 1011**

## 1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Health and Social Care (DHSC) and is laid before Parliament by Command of His Majesty.

## 2. Declaration

2.1 Ashley Dalton MP, Parliamentary Under-Secretary of State for Public Health and Prevention at the DHSC, confirms that this Explanatory Memorandum meets the required standard.

2.2 Kevin Dodds, Deputy Director for Healthy Weight and Nutrition at the DHSC, confirms that this Explanatory Memorandum meets the required standard.

## 3. Contact

3.1 Amy Rodd, Obesity Policy Lead at the DHSC, telephone: 020 7210 4860 or email: Amy.Rodd@dhsc.gov.uk, can be contacted with any queries regarding the instrument.

## Part One: Explanation, and context, of the Instrument

## 4. Overview of the Instrument

***What does the legislation do?***

4.1 The purpose of this instrument is to provide an explicit exemption for 'brand advertisements' from the advertising restrictions for less healthy food or drink products on television (TV), on-demand programme services and online ("the restrictions"), as set out in sections 321A, 368FA and 368Z14 of the Communications Act 2003 (as amended by the Health and Care Act 2022). The Government is making this instrument to provide legal clarity on the existing policy regarding brand advertising, as it was understood by Parliament during the passage of the Health and Care Act in 2021-22, to enable effective implementation of the restrictions from 5 January 2026.

***Where does the legislation extend to, and apply?***

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, Scotland and Northern Ireland.

## 5. Policy Context

***What is being done and why?***

5.1 This Government has committed to raising the healthiest generation of children ever which includes taking bold action on the childhood obesity crisis. As part of this, the Government committed in its Manifesto to implementing restrictions on advertising for less healthy food or drink products on TV and online. These restrictions comprise

a 9pm watershed for advertising of identifiable less healthy food or drink products on TV and a 24-hour restriction on paid-for advertising of these products online. The policy aims to reduce children's exposure to advertising of less healthy products, which evidence shows contributes to childhood obesity, and to incentivise businesses to reformulate their products and help create a healthier food environment. Alongside this, and in support of the mission on economic growth, the Government intends to deliver proportionate regulation that balances the health benefits of tackling childhood obesity with the impacts on businesses.

5.2 The restrictions were set out in primary legislation in 2022 via the Health and Care Act 2022 which amended the Communications Act 2003[1]. This legislation states that the restrictions will apply to "advertisements for an identifiable less healthy food or drink product" and defines a product as "identifiable": "if persons in the United Kingdom (or any part of the United Kingdom) could reasonably be expected to be able to identify the advertisements as being for that product"; this is referred to as the 'identifiability test'.

5.3 The legislation explains that a food or drink product is 'less healthy' if it meets two criteria: (i) if it falls within one of the specified food or drink categories in the Schedule to The Advertising (Less Healthy Food Definitions and Exemptions) Regulations 2024[2]; and (ii) if it is shown to be high in saturated fat, salt or sugar (HFSS) when applying the 2004/5 Nutrient Profiling Model (NPM) using the 2011 Technical Guidance[3]. Further information on the products in scope of the restrictions is available in the guidance that the DHSC published on GOV.UK in December 2024[4]. The judgement of whether an advertisement is for an 'identifiable' less healthy product is a matter for the regulators.

5.4 Ofcom is the statutory authority responsible for enforcing the advertising restrictions and has appointed the Advertising Standards Authority (ASA) as the body responsible for frontline enforcement. The ASA is an experienced regulator and has enforced a non-statutory framework of rules on HFSS advertising around children's media as part of the UK Code of Broadcast Advertising (BCAP Code) since 2007 and as part of the UK Code of Non-broadcast Advertising Sales Promotion and Direct Marketing (CAP Code) since 2017. Government's policy goes further than the existing self-regulatory approach by introducing greater restrictions on when and where adverts for less healthy products can appear. It is underpinned by evidence that children watch TV that is not captured by the existing rules and that children are spending an increasing amount of time online[5].

[1] The Communications Act 2003 (as amended by the Health and Care Act 2022): https://www.legislation.gov.uk/ukpga/2003/21/contents

[2] The Advertising (Less Healthy Food Definitions and Exemptions) Regulations 2024: https://www.legislation.gov.uk/uksi/2024/1266/contents/made

[3] Department of Health (2011) Nutrient Profiling Technical Guidance: https://assets.publishing.service.gov.uk/media/5a7cdac7e5274a2c9a484867/dh_123492.pdf

[4] Department of Health and Social Care (2024) Restricting advertising of less healthy food or drink on TV and Online – products in scope: https://www.gov.uk/government/publications/restricting-advertising-of-less-healthy-food-or-drink-on-tv-and-online-products-in-scope/restricting-advertising-of-less-healthy-food-or-drink-on-tv-and-online-products-in-scope

[5] Department of Health and Social Care and Department for Digital, Culture, Media and Sport (2021) Impact assessment: introducing a 2100 to 0530 watershed on TV and online restriction for paid advertising of food and drink that are high in fat, salt and sugar (HFSS) products: https://assets.publishing.service.gov.uk/media/60d35279e90e0743934f6c3a/impact-assessment-hfss-advertising.pdf

5.5 The advertising restrictions are estimated to remove up to 7.2 billion calories from UK children's diets per year and deliver around £2 billion in health benefits[5]. They are intended to work alongside other regulatory interventions, including the Food (Promotion and Placement) (England) Regulations 2021[6], The Calorie Labelling (Out of Home Sector) (England) Regulations 2021[7] as well as the sugar, salt and calorie reduction and reformulation programmes[8] to encourage businesses to reformulate their products and create a healthier food environment. As set out in the Prevention Chapter of the 10 Year Health Plan published on 3 July 2025[9], the Government has committed to taking decisive action on the obesity crisis, easing the strain on the NHS and creating the healthiest generation of children ever. This includes, a world first, by introducing mandatory healthy food sales reporting for large food businesses which will then be used to set new targets to increase the healthiness of sales in all communities. The 10 Year Health Plan announced the Government's intention to consult on applying an updated NPM to the advertising restrictions and promotions restrictions on less healthy food or drink products, and confirmed that the volume price promotions restrictions on less healthy food or drink products, as set out in The Food (Promotion and Placement) (England) Regulations 2021[6], would take effect on 1 October 2025.

*Issue with implementation*

5.6 The primary legislation imposes a duty on the regulators to produce guidance to set out how the restrictions will be enforced. The ASA consulted on a draft version of its guidance between December 2023 and February 2024[10]. In January 2025, the ASA announced[11] that, after considering the feedback to its consultation, some parts of its guidance required revision, particularly those relating to brand advertising.

5.7 The ASA's original draft guidance[10] had advised more definitively that brand advertising which does not identify a specific less healthy product would be out of scope of the restrictions, however, the ASA revised its position to mean that advertisements which do not explicitly refer to or feature a less healthy product could be restricted if they met the 'identifiability test'. The ASA stated[11] that its guidance needed to become "more circumspect" regarding brand advertising and that advertisements would need to be assessed on a case-by-case basis with regard to a wider range of factors, such as a brand's perception and association with less healthy products. The ASA subsequently published its revised guidance on 18 February 2025 for a 4-week public consultation[12].

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[6] The Food (Promotion and Placement) (England) Regulations 2021: https://www.legislation.gov.uk/uksi/2021/1368/made

[7] The Calorie Labelling (Out of Home Sector) (England) Regulations 2021: https://www.legislation.gov.uk/uksi/2021/909/introduction/made

[8] Office for Health Improvement and Disparities (2024) Sugar, salt and calorie reduction and reformulation: https://www.gov.uk/government/collections/sugar-reduction

[9] Department of Health and Social Care (2025) 10 Year Health Plan for England – Fit for the future: https://www.gov.uk/government/publications/10-year-health-plan-for-england-fit-for-the-future

[10] Advertising Standards Authority (2023) Consultation on restrictions on ads for "less healthy" foods: https://www.asa.org.uk/resource/lhf-consultation.html

[11] Advertising Standards Authority (2025) Media restrictions on advertisements for "less healthy" food and drink products: consultation update: https://www.asa.org.uk/news/media-restrictions-on-advertisements-for-less-healthy-food-and-drink-products-consultation-update.html

[12] Advertising Standards Authority (2025) Further consultation on the implementation of new rules on ads for "less healthy" food and drink products: https://www.asa.org.uk/news/further-consultation-on-the-implementation-of-new-rules-on-ads-for-less-healthy-food-and-drink-products.html

5.8 The revision by the ASA of its guidance at a late stage before the restrictions were due to take effect on 1 October 2025 raised significant concerns for a wide range of stakeholders. Advertising campaigns are typically secured 12 to 18 months in advance so many businesses had already invested in and secured advertising campaigns for beyond October 2025. Many had done so in good faith on the basis of the ASA's original draft guidance and were concerned about how they would be affected by the ASA's revised approach to implementation.

5.9 Having carefully listened to stakeholder concerns, Minister Dalton made a statement on 7 April 2025[13] to re-confirm the Government's intention for brand advertising to be out of scope of the restrictions where it does not identify a less healthy food or drink product(s). This statement was generally welcomed by stakeholders for providing clarity on the Government's position. However, there remained significant concern about the ambiguity of the ASA's guidance and the impact on industry of the lack of clarity on their ability to ensure their advertisements would be compliant.

*The Government's revised approach to implementation*

5.10 The Government decided to take action to respond to these concerns. The DHSC and the Department for Culture, Media and Sport (DCMS) worked to find a solution which would support economic growth by ensuring that industry has confidence to invest in advertising that complies with the restrictions, while also protecting children from advertising of less healthy products. To that end, Minister Dalton announced via a statement on 22 May 2025[14] that the Government would lay legislation to explicitly exempt brand advertising from the restrictions. The brand exemption would not change the policy but would provide clarity in legislation of the existing policy intention. To allow time to develop and consult on the draft regulations and bring them before Parliament, and for the ASA to consult on revised guidance, the Government also decided to change the date on which the restrictions take effect from 1 October 2025 to 5 January 2026. The Government agreed to take this action on the basis that advertisers and broadcasters, with the support of online platforms and publishers, had made a clear and public commitment to voluntarily comply with the restrictions from 1 October 2025, as though they would still take effect on that date[15].

5.11 The first instrument required to change the date the restrictions would take effect from 1 October 2025 to 5 January 2026 was laid before Parliament on 3 June 2025[16] . This Explanatory Memorandum accompanies the second instrument which provides the explicit exemption for 'brand advertisements' from the restrictions.

***What was the previous policy, how is this different?***

5.12 This instrument gives effect to the pre-existing policy intention that brand advertising which does not identify a less healthy product is out of scope of the restrictions. This policy intention was made clear in 2021 following extensive consultation[17]. It was

[13] Written Ministerial Statement – Childhood Obesity, 7 April 2025: https://questions-statements.parliament.uk/written-statements/detail/2025-04-07/hcws579

[14] Written Ministerial Statement – Childhood Obesity, 22 May 2025: https://questions-statements.parliament.uk/written-statements/detail/2025-05-22/hcws652#:~:text=Statement%20made%20on%2022%20May%202025&text=These%20restrictions%20are%

[15] Advertising Association (2025) Voluntary industry agreement on less healthy foods: https://adassoc.org.uk/our-work/voluntary-industry-agreement-on-less-healthy-foods/

[16] The Communications Act 2003 (Restrictions on the Advertising of Less Healthy Food) (Effective Date) (Amendment) Regulations 2025: https://www.legislation.gov.uk/uksi/2025/641/contents/made

[17] Department of Health and Social Care (2021) Introducing further advertising restrictions on TV and online for products high in fat, salt and sugar: government response:

based on evidence that the impact of advertising to children was centred on product-specific adverts. It was also to make sure that brands are not pigeon-holed as 'less healthy' and have the freedom to reformulate and create healthier products. This position was clearly communicated to Parliament during the passage of the Health and Care Act 2022 and in the consultation response published in 2021.

5.13 While interpretation is ultimately for a court, the previous Government was clear in its policy intention that brand advertising is not in scope of this policy under the primary legislation. This is because the legislation only restricts advertisements that could reasonably be considered to be for identifiable less healthy products, and not advertisements that could be reasonably understood to be advertising brands. Ministers said during parliamentary scrutiny of the primary legislation that an explicit exemption in legislation was not required because brand advertising was out of scope of the restrictions by means of the wording of the 'identifiability test'. This position was reiterated by this Government in September 2024 when responding to the consultation on draft secondary legislation for the products, businesses and services in scope of the restrictions[18], as well as the Written Ministerial Statements on 7 April 2025[13] and 22 May 2025[14].

5.14 An explicit exemption is being taken forward now by means of this instrument to provide legal clarity on the Government's position on brand advertising. This is to ensure that the regulators can deliver clear implementation guidance and businesses can invest in advertising campaigns with confidence of their compliance with the restrictions, while still ensuring that advertisements for less healthy products are restricted in line with the original policy intention.

## 6. Legislative and Legal Context

***How has the law changed?***

6.1 This instrument uses powers conferred by sections 321A(1), 368FA(1) and 368Z14(1) of the Communications Act 2003 (as amended by the Health and Care Act 2022) to exempt 'brand advertisements' from the restrictions. The instrument should be read in conjunction with sections 321A, 368FA and 368Z14 of the Communications Act 2003.

6.2 The instrument does not change the policy as set out in the primary legislation. As a first step, advertisements will be assessed in line with the 'identifiability test' in the primary legislation. If an advertisement might be considered by the regulator to be for an identifiable less healthy food or drink product, it would potentially be restricted. If it is not considered to be an advertisement for an identifiable less healthy food or drink product, it would not be restricted. It is therefore expected that the majority of brand advertisements will already be out of scope of the restrictions under the primary legislation. However, as a second step, if the regulator considers that an advertisement may have the effect of leading a person in the UK to reasonably identify the advertisement as being for a less healthy food or drink product, it will then consider whether the advertisement falls under the definition of a 'brand advertisement' set out

https://www.gov.uk/government/consultations/further-advertising-restrictions-for-products-high-in-fat-salt-and-sugar/outcome/introducing-further-advertising-restrictions-on-tv-and-online-for-products-high-in-fat-salt-and-sugar-government-response

[18] Department of Health and Social Care (2024) Introducing further advertising restrictions on TV and online for products high in fat, salt or sugar: government response to consultation on secondary legislation: https://www.gov.uk/government/consultations/introducing-further-advertising-restrictions-on-tv-and-online-for-products-high-in-fat-salt-or-sugar-secondary-legislation/outcome/introducing-further-advertising-restrictions-on-tv-and-online-for-products-high-in-fat-salt-or-sugar-government-response-to-consultation-on-secondar

in this instrument. It should only be used as the second test and never on its own, meaning there cannot be a scenario where an advertisement is permitted by the primary legislation but then becomes restricted under this instrument. As the instrument is providing an exemption from the restrictions set out in the primary legislation, it can only rule advertisements out of scope of the restrictions and cannot expand the scope of the restrictions.

***Why was this approach taken to change the law?***

6.3 As explained in the Explanatory Memorandum to The Communications Act 2003 (Restrictions on the Advertising of Less Healthy Food) (Effective Date) (Amendment) Regulations 2025[16] which were laid before Parliament on 3 June 2025, the Government fully explored non-legislative options prior to announcing the revised approach to implementation on 22 May 2025. However, the certainty required by businesses and the regulators regarding brand advertising could only be provided in legislation.

6.4 This instrument provides the explicit exemption for brand advertisements and delivers the original policy objectives of exempting advertisements for brands which do not identify a less healthy product(s).

6.5 There are two parts to the definition of a "brand advertisement". The instrument first defines what a brand advertisement *is* (paragraph 2 of regulation 2) and then defines what a brand advertisement *is not* (paragraphs 3, 4 and 5 of regulation 2). An advertisement that meets any of paragraphs 3, 4 or 5 of regulation 2 is not a 'brand advertisement' and does not qualify for the exemption unless, where stated, the advertisement falls within paragraph 6.

6.6 A "brand advertisement" is defined as an advertisement that promotes a brand, including the brand of a range of products. The term "range of products" is defined in paragraph 7(c) of regulation 2 and means a group of products composed of variants of a product, such as different flavours, but does not include a group of products where such products are differentiated only by pack sizes or packaging format.

6.7 Firstly, as set out in paragraph 3 of regulation 2, an advertisement is *not* a brand advertisement if its content "depicts" a specific less healthy food or drink product(s). By focusing only on the content of the advertisement, this instrument applies objective criteria and does not consider the perception or associations that a person seeing an advertisement might have of the advertising brand, including whether its product offer is made up primarily of less healthy food or drink products. "Less healthy" as defined in paragraph 7(b) of regulation 2 holds the same meaning as sections 321A(4)(c), 368FA(4)(c) and 368Z14(5)(e) of the primary legislation.

6.8 As defined at paragraph 7(a) of regulation 2, "depict" means "to represent by way of name, text, imagery, logo, audio cue, jingle, brand character or other branding technique or combination of branding techniques". The list of techniques included in the definition of "depict" is not exhaustive so that the regulators have the discretion to respond to any new branding techniques that may be developed to depict less healthy food or drink products. This provision places significant constraints on an advertiser's ability to promote less healthy products to children, in line with the policy intention. By contrast, an advertiser for a non-less healthy product would be able to showcase the product and promote it by means of any promotional offers and branding techniques, online or during prime-time TV programming. This incentivises businesses to reformulate and create healthier products, in line with the policy intent.

6.9 A definition of "specific" is provided at paragraph 7(d) of regulation 2. As explained above, the 'identifiability test' in the primary legislation remains the first test when assessing an advertisement. This instrument is only considered when the regulators determine that an advertisement is for an 'identifiable' less healthy food or drink product(s). The term "specific" in the regulations is used to set objective criteria for what is being depicted in the content of the advertisement. It means a food or drink product that is capable of being purchased and has characteristics that make it identifiable as that product and no other product by brand and composition. If the only difference between the products is the size or packaging format, they would constitute the same single specific product and not a range of products. The primary legislation states that a 'less healthy' food or drink product is in part determined by its NPM score. Focusing on a specific purchasable food or drink product will mean the nutritional information will be available to determine if it is 'less healthy'.

6.10 Secondly, as set out in paragraph 4 of regulation 2, an advertisement is *not* a brand advertisement if it "promotes a brand the name of which is the name of a specific less healthy food or drink product". While this is addressed under "depict" at paragraph 3 of regulation 2, this provision makes clear that the brand of a specific less healthy food or drink product(s) cannot be advertised and prevents a loophole in the future for brands to advertise where it is deliberately unclear whether they are advertising the brand of a range of products or the brand of a specific less healthy food or drink product.

6.11 Paragraph 6 of regulation 2 sets out two exceptions to avoid unintended consequences of 'naming' a specific less healthy food or drink product in paragraphs 3 and 4 of regulation 2. Paragraph 6(a) of regulation 2 clarifies that a company, franchise or other commercial entity whose name includes the full name of a specific less healthy food or drink product and which was established and held that name immediately before 16 July 2025 (the date on which the draft instrument was published for consultation) is permitted to advertise their company name and logo, provided that the content of their advertisement does not depict a specific less healthy food or drink product(s) in any other way. This ensures that advertisements that would otherwise meet the definition of a brand advertisement, including those that promote non-product attributes such as corporate and social responsibility or customer experience, are not automatically restricted under the definition of "depict" in paragraph 3 of regulation 2 just because of the company name.

6.12 Paragraph 6(b) of regulation 2 clarifies that a brand of a range of products that shares its name with a specific less healthy food or drink product is permitted to advertise their range brand name and/or logo, provided that the brand of the range of products was in use for the purposes of marketing, advertising or retail sale and held its name immediately before 16 July 2025, and the content of their advertisement does not depict a specific less healthy food or drink product(s) in any other way. This responds to consultation feedback that the draft paragraph 4 of regulation 2 could have had the unintended effect of banning all advertising, including brand advertising such as corporate social responsibility, by existing brands of ranges of products that shared their name with a specific less healthy food or drink product. This is usually for historical reasons because the brand in question developed from an original product. The date of 16 July 2025 is included in both 6(a) and 6(b) of regulation 2 because existing companies and ranges should not be disadvantaged because of the historical evolution of their brands. Persons making naming decisions for companies and brands of ranges of products in the future will be able to take this legislation into account. The provision for historical brands aside, it is not the Government's intention that a

specific less healthy food or drink product should be able to be named in an advertisement and this is made clear in paragraph 3 of regulation 2.

6.13 Thirdly, an advertisement is *not* a brand advertisement if it includes a 'realistic image' which shows a photograph or video recording of a food or drink product (paragraph 5 of regulation 2) or other image, whether still or moving, and however created or altered, which is so realistic as to make it indistinguishable, for all practical purposes, from a photograph or video recording of a specific less healthy food or drink product. The purpose of this provision is to prevent advertisers from showing realistic images of less healthy food or drink products and arguing that it should be exempt from the restrictions because it is not definitively a "specific" less healthy food or drink product (e.g. it could be one of two or more products which are different in flavour, but in a way that is not visually apparent). Paragraph 5(a) of regulation 2 clarifies that where the image is only of packaging and does not show the food or drink itself, the provision will not apply. However, this would have to be generic packaging common to a range as packaging which depicts a specific less healthy food or drink product is not permitted under paragraph 3 of regulation 2.

6.14 It is the Government's view that this instrument provides the regulators with objective criteria to determine whether an advertisement is a 'brand advertisement' or not and apply the restrictions appropriately. Further detail on how this instrument will be implemented in practice in conjunction with the primary legislation will be provided in the ASA's final implementation guidance.

## 7. Consultation

***Summary of consultation outcome and methodology***

7.1 The Government has a statutory duty to consult when using the powers in the Communications Act 2003 to provide further exemptions from the restrictions. The Government published on GOV.UK a draft version of the instrument on 16 July 2025 for a three-week public consultation[19]. The consultation was focused solely on the nature of the brand advertising exemption set out in the draft instrument, and the clarity of the drafting. It did not invite feedback on other aspects of the policy which are confirmed and enshrined in law following previous consultations. The consultation was brought to the attention of Parliament via a Written Ministerial Statement on 16 July 2025[20] and officials in the DHSC and DCMS engaged with key stakeholders, including the regulators and the Devolved Governments during the consultation period.

7.2 The Government's response to the consultation was published on GOV.UK in September 2025[21]. In summary, the consultation received a total of 65 responses. 13 respondents shared their personal views and experiences while 5 shared their professional views. 47 responses were from organisations, of which 19 were from food and drink industry businesses (including trade associations), 15 were from advertisers, broadcasters and news outlets (including trade associations), 10 were from

[19] Department of Health and Social Care (2025) Brand advertising exemption from advertising restrictions for less healthy food or drink: https://www.gov.uk/government/consultations/brand-advertising-exemption-from-advertising-restrictions-for-less-healthy-food-or-drink

[20] Written Ministerial Statement - Consultation on draft regulations for TV and online advertising restrictions for less healthy food or drink, 16 July 2025: https://questions-statements.parliament.uk/written-statements/detail/2025-07-16/hcws833

[21] Department of Health and Social Care (2025) Less healthy food or drink: advertising and promotions restrictions: https://www.gov.uk/government/collections/less-healthy-food-or-drink-advertising-and-promotions-restrictions

non-governmental organisations/charity organisations and 3 were from Local Government. The most prominent theme from the feedback in scope of the consultation was around the scope, clarity or specificity of the draft instrument, including definitions, and ensuring consistent and robust enforcement.

7.3 The feedback was considered carefully by the DHSC and DCMS and, following discussions internally and with the regulators, the following amendments were made to the draft instrument. These drafting changes are reflected in the final instrument and are explained further in the published consultation response[21].

- Providing clarification in paragraph 3 of regulation 2 that the exception for naming a specific less healthy product relates only to the name appearing in the logo of a company, franchise or other commercial entity, and the name appearing in the logo of a brand of a range of products.
- As explained in paragraph 6.11 and 6.12 above, paragraph 6 of regulation 2 has been amended to clarify that the exemption applies to advertisements for brands of ranges of products (in addition to names of companies, franchises and commercial entities which was already in the previous draft) which for historical reasons share their names with a specific less healthy food or drink product. To be exempt, an advertisement must not depict a specific less healthy food or drink product in any way apart from using the shared name. This protects the policy intention.
- The terms "logo" and "brand character" have been added to the list of branding techniques included in the definition of "depict" at paragraph 7(a) of regulation 2. These techniques were included in the description of "depict" in the consultation document and are now included in the instrument for clarity.
- The terms "distinguished" and "uniquely distinguished" in paragraphs 7(c)(ii) and 7(d)(ii) of regulation 2 have been amended to "differentiated" to avoid any potential confusion with the term "visually indistinguishable" that is used in paragraph 5(b) of regulation 2.
- The definition of "realistic image" at paragraph 7(e) of regulation 2 has been amended to make clear that it means a photograph, video recording or image, whether the image is still or moving, and however created or altered, that is so realistic as to make it indistinguishable, for all practical purposes, from a photograph or video of a specific less healthy product, as stated in the consultation document.
- The phrase, "…and which is the producer of that product" has been removed from paragraph 6 of regulation 2 in response to consultation feedback that it is an unnecessary qualifier. It has been replaced with "…and which held that name immediately before that date" to ensure there is a link between the product mentioned in the opening phrase of paragraph 6 of regulation 2 and the company, franchise or commercial entity, and to prevent companies from changing their name to get around the provision. Paragraph 6 of regulation 2 also clarifies that the exception for names of brands of a range of products which were used for the purposes of marketing, advertising or retail sale and held that name immediately before 16th July 2025.

## 8. Applicable Guidance

8.1 The DHSC published guidance[4] on the food and drink products in scope of the restrictions in December 2024 alongside the laying of The Advertising (Less Healthy

Food Definitions and Exemptions) Regulations 2024[2]. This guidance is available on GOV.UK[4] and the content is unaffected by this instrument.

8.2 The ASA will update its draft implementation guidance to reflect this instrument. The guidance is a matter for the ASA as an independent regulator but, as required by the primary legislation, it must consult with the DHSC and DCMS Secretaries of State before publishing the final version. Officials in the DHSC and DCMS continue to closely engage with the ASA and Ofcom on this.

## Part Two: Impact and the Better Regulation Framework

## 9. Impact Assessment

9.1 An impact assessment has not been prepared for this instrument because it is providing legal clarification on the existing policy. An impact assessment was published in 2021 alongside the Health and Care Act 2022[5]. This was reviewed and the DHSC and DCMS are of the view that this remains fit-for-purpose as the policy has not changed.

***Impact on businesses, charities and voluntary bodies***

9.2 The impact of a brand advertising exemption on businesses, was considered in the impact assessment that was published in 2021[5]. This estimated that to be £199m annually. Over 25 years, advertisers are expected to lose £659m in returns to advertising spending. Transition costs are estimated at £5m and fall mainly to manufacturers and advertising agencies, with £1m in enforcement set-up. There is no, or no significant, impact on charities or voluntary bodies.

9.3 This instrument does not impact food or drink small or medium-sized enterprises (SMEs), as defined in The Advertising (Less Healthy Food Definitions and Exemptions) Regulations 2024, because they are exempt from the restrictions.

9.4 The impact on the public sector is the costs for enforcement of the policy as a whole, which are estimated to be £10m per year[5]. However, the economic benefits of the policy over a 100-year appraisal period are estimated to be around £2bn[5]. In addition, it is estimated to provide NHS savings of £50m, social care savings of £40m, and reduced premature mortality is expected to deliver an additional £119m of economic output[5]. The costs of obesity to individuals, society and the NHS are significant and the benefits of reducing children's exposure to advertising for less healthy food or drink and preventing childhood obesity are therefore substantial. Over the coming years, the policy is estimated to remove up to 7.2 billion calories from UK children's diets per year[17].

## 10. Monitoring and review

***What is the approach to monitoring and reviewing this legislation?***

10.1 The approach to monitoring this legislation is to evaluate its effectiveness as part of a wider review of the policy that will be carried out before 1st October 2030 in line with the Secretary of State's duty under the Small Business, Enterprise and Employment Act 2015 to carry out a review of The Advertising (Less Healthy Food Definitions and Exemptions) Regulations 2024[2].

## Part Three: Statements and Matters of Particular Interest to Parliament

### 11. Matters of special interest to Parliament

11.1 None.

### 12. European Convention on Human Rights

12.1 As this instrument is subject to negative resolution procedure and does not amend the primary legislation, no statement is required.

### 13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").