EXPLANATORY MEMORANDUM TO

THE COMMUNICATIONS ACT 2003 (RESTRICTIONS ON THE ADVERTISING OF LESS HEALTHY FOOD) (EFFECTIVE DATE) (AMENDMENT) REGULATIONS 2025

2025 No. 641

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 change the coming into force date of the advertising restrictions for less healthy food or drink on television (TV) and online ("the restrictions") set out in sections 321A(2), 368FA(1) and 368Z14 (subsections 1, 11(a) and (b) and 12(a)) of the Communications Act 2003 (as amended by the Health and Care Act 2022). This instrument will amend the coming into force date of the restrictions from 1 October 2025 to 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 instrument is being made to change the coming into force date of the restrictions from 1 October 2025 to 5 January 2026. This is to allow the Government time to lay regulations that will provide explicit clarity on how the restrictions apply to brand advertising, in response to stakeholder concerns about the Advertising Standards Authority's (ASA) implementation guidance on this point. The making of this

instrument follows the Written Ministerial Statement by Minister Dalton on 22 May 2025[1] which announced this approach.

5.2 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.

5.3 The restrictions were set out in primary legislation in 2022 via the Health and Care Act 2022 which amended the Communications Act 2003. This legislation[2] states that the restrictions will apply to "advertisements for an identifiable less healthy food or drink product" and defines "identifiable" as: "*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'.

5.4 The legislation[3] 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[4]; and (ii) if it is shown to be high in saturated fat, salt or sugar (HFSS) when applying the 2004/5 Nutrient Profiling Model using the 2011 Technical Guidance[5]. 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[6]. The judgement of whether an advert is for an 'identifiable' less healthy product is a matter for the regulators.

5.5 Ofcom is the statutory authority responsible for enforcing the advertising restrictions and has appointed the 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. The

[1] 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%20designed%20to,create%20a%20healthier%20food%20environment.

[2] The Communications Act 2003 (as amended by the Health and Care Act 2022) Sections 321A(1) and (4)(b), 368FA(1) and (4)(b), and 368Z14(1) and (4)(d): https://www.legislation.gov.uk/ukpga/2003/21/contents

[3] The Communications Act 2003 (as amended by the Health and Care Act 2022) Sections 321A(4)(c), 368FA(4)(c) and 368Z14(5)(e): https://www.legislation.gov.uk/ukpga/2003/21/contents

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

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

[6] Department of Health and Social Care (20240 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

Government's policy goes further than the existing non-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[7].

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[8]. In January 2025, the ASA announced[9] that, after considering the feedback to its consultation and obtaining further legal advice, some parts of its guidance required revision, particularly those relating to brand advertising.

5.7 While 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, the ASA revised its position[9] to mean that adverts which do not explicitly refer to or feature a less healthy product could be restricted if they met the 'identifiability test'. The ASA stated[9] that its guidance needed to become "more circumspect" regarding brand advertising and that adverts would need to be assessed on a case-by-case basis with regard to a wider range of factors, such as a brand's association with less healthy products. The ASA subsequently published its revised guidance on 18 February 2025 for a 4-week public consultation[11].

5.8 The ASA revising its guidance at a late stage before the restrictions were due to come into force 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 for 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[12] to re-confirm the Government's intention for brand advertising to be out scope of the restrictions where it does not identify a less healthy product. This is the consistent view of this Government, the previous government and Parliament during the passage of the Health and Care Bill.

5.10 The decision to exempt brand advertising which does not identify a less healthy product was made in 2021 following extensive consultation. It was based on evidence

[7] 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

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

[9] 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

[10] Advertising Standards Authority (2023) Consultation on restrictions on ads for "less healthy" foods – Annex A: https://www.asa.org.uk/resource/annex-a-proposed-guidance.html

[11] 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

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

that the impact of advertising to children was centred on product-specific adverts[13]. 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[13]. This position was clearly communicated to Parliament during the passage of the Health and Care Bill.

5.11 Minister Dalton's statement on 7 April 2025[12] was generally welcomed by stakeholders for providing clarity on the Government's position. However, there remained significant concern about the ASA's final guidance, which had not yet been published, and the financial impact that prolonged uncertainty would have for the advertising sector and the services it supports.

5.12 The Government has decided to take action to respond to stakeholder 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, and also protecting children from advertising of less healthy products. To that end, Minister Dalton announced via a statement[1] on 22 May 2025 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 reflect this in its guidance, the Government also decided to change the coming into force date of the restrictions 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 come into force on that date[14].

5.13 This instrument is the first of two instruments required to enact the Government's revised approach to implementing the restrictions. It is made using the powers conferred by sections 321A(6), 368FA(6) and 368Z14(7) of the Communications Act 2003. The second instrument is required to provide an explicit exemption for brand advertising and will be laid at a later date following consultation. Together, these instruments will provide certainty to industry and enable the regulators to deliver clear implementation guidance. This will ensure that the restrictions are delivered effectively in line with Government and Parliament's policy intentions. Over the coming years, the policy is estimated to remove up to 7.2 billion calories from UK children's diets per year in the UK[13] and deliver £2billion in health benefits[7].

What was the previous policy, how is this different?

5.14 The advertising restrictions policy has been set out in legislation since 2022. While the policy content has remained the same since then, there have been several amendments to the coming into force date. The restrictions were originally due to come into force on 1 January 2023, but implementation was delayed by the previous government.

5.15 This instrument will change the coming into force date of the restrictions from 1 October to 5 January 2026.

[13] 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: 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

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

5.16 The Government does not expect this instrument to have a material impact on the policy outcomes because key industry stakeholders have committed to voluntarily comply with the restrictions from 1 October 2025[14]. This means that, in line with Government's policy intentions, adverts for specific identifiable less healthy products would not be expected to be shown on TV between 5:30am and 9pm or at any time online from 1 October 2025. The intention to provide an explicit legal exemption for brand advertising would not change the policy but would provide clarity in legislation of the existing policy intention.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument will change the coming into force date of the restrictions set out in the Communications Act 2003 from 1 October 2025 to 5 January 2026.

Why was this approach taken to change the law?

6.2 This instrument is required because the coming into force date of the restrictions is set out in the primary legislation. Without this instrument, the restrictions would come into force on 1 October 2025 which the Government has stated publicly that it does not intend to happen. This instrument will amend the coming into force date of the law.

6.3 The Government fully explored non-legislative options prior to the announcement on 22 May 2025. Minister Dalton made a statement[12] on 7 April 2022 to provide clarity for industry on the Government's policy intentions in relation to brand advertising, however, the certainty required by businesses and the regulators can only be provided in legislation. To allow time for the draft regulations to be consulted on and made and reflected in the regulators' guidance, the coming into force date needs to be delayed, which is the purpose of this instrument.

7. Consultation

Summary of consultation outcome and methodology

7.1 There is no legal duty under the Communications Act 2003 to consult before exercising powers to change the coming into force date of the advertising restrictions. We have therefore not consulted on this instrument which changes the coming into force date from 1 October 2025 to 5 January 2026 but have engaged with the relevant stakeholders.

8. Applicable Guidance

8.1 As stated in paragraph 5.6, the ASA is the frontline regulator and therefore needs to produce guidance on how the advertising restrictions will be enforced. Amending the coming into force date of the restrictions allows time for Government to make legislation (including consultation) providing legal clarity on brand advertising and to give the regulators sufficient time to finalise the implementation guidance before the restrictions come into force on 5 January 2026. The Government will work closely with the ASA and Ofcom throughout this process to ensure successful delivery of the legislation and guidance.

8.2 The Government has already published guidance on the food and drink products in scope of the restrictions and this is available on GOV.UK[6].

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 enacting a very short, three month delay to the coming into force of the restrictions which the Government expects will not have a material impact on the policy outcomes. Advertisers and broadcasters, with support from online platforms and online publishers, have committed to voluntarily comply with the restrictions from 1 October 2025 in line with Government's intentions, as if they would still come into force on that date[14]. Furthermore, as the health benefits of this policy are appraised over a 100-year period, a very short three month delay to enforcement is expected to have a negligible impact on the estimated health impacts.

9.2 A full Impact Assessment for the policy was published in 2021[7] and this remains fit-for-purpose as the policy has not changed.

Impact on businesses, charities and voluntary bodies

9.3 Businesses affected by this instrument, namely food and drink advertisers, broadcasters, online platforms and publishers, have publicly confirmed their support for the Government's revised approach to implementing the restrictions[14], which includes changing the coming into force date.

9.4 There is no, or no significant, impact on charities, voluntary bodies or the public sector. This instrument is not expected to have a material impact on the policy outcomes because advertisers and broadcasters, with support from online platforms and online publishers, have made a clear and public commitment to comply with the restrictions in line with Government's policy intentions from 1 October 2025[14].

9.5 This instrument does not impact food or drink small or medium-sized enterprises (SMEs) because they are exempt from the advertising restrictions.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This instrument does not require a statutory review clause because it only changes the coming into force date of the restrictions. In line with the requirements of the Small Business, Enterprise and Employment Act 2015, Ashley Dalton, Parliamentary Under-Secretary of State for Public Health and Prevention at the DHSC, has made the following statement: "It is not appropriate in the circumstances to make provision for review in this instrument as the purpose of the instrument is to simply change the coming into force date of the restrictions". The advertising restrictions policy as a whole will be subject to a Post-Implementation Review within five years of implementation.

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 Ashley Dalton, Parliamentary Under-Secretary of State for Public Health and Prevention at the DHSC, has made the following statement regarding Human Rights: "In my view, the provisions of The Communications Act 2003 (Restrictions on the

Advertising of Less Healthy Food) (Effective Date) (Amendment) (Regulations 2025 are compatible with the Convention rights".

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").