



Department
of Health &
Social Care

Mandating calorie labelling in the out-of-home sector

Government response to public consultation

Contents

Executive Summary	3
1. Introduction	4
Background	4
How calorie labelling can help	5
Consultation.....	6
2. Response Summary.....	7
Analysing the responses	7
Which businesses should be required to calorie label?	8
Which food and drink items should be labelled?.....	15
How should calorie labels look?	17
Implementation	23
Enforcement.....	25
3. Additional consultation feedback.....	27
4. Policy summary	32
5. Outcome and next steps	35
References	36

Executive Summary

Our food environment is constantly evolving and offering a growing range of choices of what to eat and when to eat. On-the-go food such as eating out or getting takeaways are forming a growing proportion of people's diets, however there is often a lack of information about the calorie content of these items.

It is important that families are supported to navigate an increasingly complex food environment and make healthier choices for themselves with clear food labelling having an important role to play.

Regular overconsumption of a relatively small number of calories over time leads to weight gain and may result in individuals becoming overweight or obese. Obesity increases an individual's risk of developing type 2 diabetes, heart disease, fatty liver disease and a number of cancers.

Most recently, the COVID-19 pandemic has brought into sharp focus the impact obesity can have on individuals' health, with emerging evidence linking obesity with higher mortality rates from the disease. Most people know that eating a healthy diet whilst keeping active will help to prevent weight gain and reduce their risk of developing ill health, but this can be hard. We therefore need to support people to make healthier choices and build these into their everyday lives.

In 2018, the Government consulted on its intention to introduce mandatory calorie labelling for the out-of-home sector in England - that is any outlet where food or drink is prepared in a way that means it is ready for immediate consumption by the person who buys it.

Following consultation, the Government will legislate to introduce calorie labelling for large businesses (businesses with 250+ employees) in England. Large businesses account for nearly half of the value of all food and drink sold in the out-of-home sector, therefore this approach is anticipated to deliver substantial health benefits.

The exemption of micro, small, and medium businesses does not prevent their inclusion in the requirement at a later date. The Department's impact assessment of the policy highlights the significant benefits of requiring all businesses, irrespective of size, to calorie label. The Government is committed to review the policy within 5 years of its implementation and will consider extending the requirement to include smaller businesses. In the meantime, smaller businesses are encouraged to voluntarily calorie label.

The Government will consult Local Authorities and business representatives on our proposals for how best to enforce the policy in advance of laying legislation.

1. Introduction

Background

In June 2018 the Government published Chapter 2 of the Childhood Obesity Plan. This set a national ambition to halve childhood obesity and significantly reduce the gap in obesity between children from the most and least deprived areas by 2030. Childhood obesity is one of the most significant health problems this country faces and at the heart of the Government's prevention agenda.

Nearly a quarter of children in England are overweight or obese when they start primary school aged five, and this rises to one third by the time they leave aged 11ⁱ. Childhood obesity rates in the UK are among the highest in Western Europeⁱⁱ. Obese children are more likely to become obese adults, and obesity in adulthood increases an individual's risk of developing type 2 diabetes, heart disease, fatty liver disease and a number of cancers^{iii'iv'v}.

The outbreak of COVID-19 has been one of the biggest public health challenges ever faced by the UK and is a catalyst for us to redouble our efforts to reduce obesity levels in the UK. Emerging evidence shows that patients with obesity, and in particular morbid obesity, may be more likely to be admitted to intensive care; require advanced treatment, such as ventilation; and have 37% increased risk of dying from COVID-19 compared to non-obese patients^{vi}.

We know that regular overconsumption of a relatively small number of calories leads to individuals becoming overweight or obese^{vii}. It is likely that eating out frequently, including eating takeaway meals, contributes to this gradual overconsumption of calories. Research suggests that eating out accounts for 20-25% of adult energy intake^{viii}, and that when someone dines out or eats a takeaway meal they consume, on average, 200 more calories per day than if they eat food prepared at home^{ix}. Data also tells us that portions of food or drink that people eat out or eat as takeaway meals contain, on average, twice as many calories as equivalent retailer own-brand or manufacturer-branded products^x.

Eating out or getting a takeaway is common; surveys tell us that 96% of people eat out and 43% do so at least once or twice a week^{xi}. Research also suggests that people are eating out more often; in 2014, 75% of people said they had eaten out or bought takeaway food in the past week, compared to 69% in 2010^{xii}. Consumption of fast food and takeaways is particularly prevalent among families, as evidence from 2016 showed that 68% of households with children under 16 had eaten takeaways in the last month, compared with only 49% of adult-only households^{xiii}.

There is strong public demand for calorie labelling; 79% of respondents to a Public Health England survey said they think that menus should include the number of calories in food and drinks^{xiv}. Another survey from Diabetes UK showed that around 60% of the public said that they would be more likely to eat at an establishment that offered calorie labelling on its menus^{xv}.

Many businesses have led the way in displaying calorie labels, recognising the growing demand for it from their customers. However, given the scale of the obesity challenge, it is important that this practice becomes more widespread and there is consistency in how information is displayed.

How calorie labelling can help

Choosing healthier options is harder for consumers when basic information about calorie content is not provided. Findings from the Cochrane^{xvi} and Sinclair^{xvii} reviews provide evidence that calorie labelling when eating out can help consumers lower their calorie intake, particularly when calorie totals are provided alongside contextual information indicating recommended daily caloric intakes.

The Department of Health and Social Care has previously tried a voluntary approach to encourage more businesses to calorie label through its [Public Health Responsibility Deal](#), launched in 2011. One of the pledges asked food businesses to provide calorie information for customers on menus and/or menu boards; in total, 45 businesses signed the pledge.

Subsequent studies have suggested that, among signatories of the pledge, some did not display calorie labels and many of those who did were not found to meet all the labelling recommendations^{xviii}. Additionally, one study suggested that businesses would sign up to pledges with which they are already compliant; only 4% of signatories providing calorie labelling were judged as motivated by the Responsibility Deal^{xix}.

Taken together, this suggests that a voluntary approach is insufficient to drive action on the scale required to make the substantive change to our food environment to address increasing levels of childhood obesity. Therefore, the Government has consulted on making calorie labelling compulsory for the out-of-home sector. Our impact assessment estimates the policy will provide a net benefit to the economy of £5,568m over the 25-year appraisal period.

Consultation

Childhood Obesity: a plan for action, chapter 2 announced the Government would consult on its intention to introduce legislation to make calorie labelling compulsory in the out-of-home sector – that is, any outlet where food or drink is prepared in a way that means it is ready for immediate consumption by the person who buys it.

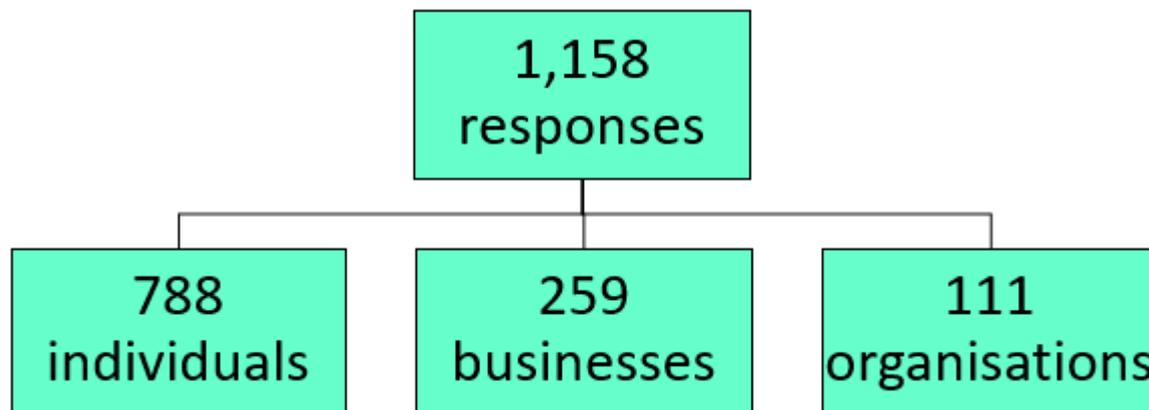
The aim of the policy is to ensure that consumers have access to clear and accurate information about the calorie content of the food and drink that they and their families are purchasing and consuming. Making this information available can help people to make informed and healthy choices for themselves and their families and regulate their energy intake and that of their children effectively.

The consultation ran from 14 September to 7 December 2018 and, among other questions, sought views on:

- (a) Which businesses should be required to calorie label.
- (b) Which food and drink items should be calorie labelled.
- (c) How calorie labels should be displayed.
- (d) How long businesses would need to implement the policy.
- (e) How the policy should be enforced.

2. Response Summary

In total, the consultation received 1,158 responses from a range of individuals, organisations and businesses. 788 (68%) responses were submitted by individuals, 259 (22%) from businesses, and 111 (10%) on behalf of organisations.



To encourage more businesses, particularly smaller businesses, to respond to the consultation the Department reached out to various trade associations and trade press to publicise the consultation more widely.

Of businesses who responded to the consultation, 29 (11%) were large businesses (250+ employees), 9 (3%) were medium businesses (50-249 employees), 52 (20%) were small businesses (10-49 employees), and 164 (64%) were micro businesses (<10 employees). There were 5 businesses (2%) that did not declare their size.

Analysing the responses

1,126 responses were submitted via the online survey, with 32 submitted via email. Responses were analysed by DHSC analytical and policy officials.

All questions were optional, and the majority provided the respondent with the opportunity to give a justification for their answer or provide additional information in a free text box. All free text responses were read by DHSC officials and grouped into discrete themes to give an indication of respondents' thoughts on the questions asked.

Responses to questions have been summarised below. Where appropriate, consultation questions have been grouped to better illustrate the feedback received and decisions taken as a result. Polling data shows there is strong public demand for calorie labelling; therefore, questions were focussed on defining the scope of the policy.

Which businesses should be required to calorie label?

Consultation questions - 1, 3, 10, 12

Question 1: Do you think that calorie labelling should be mandatory for all out-of-home businesses?

Yes - 42%

No - 54%

Don't know - 3%

Not answered - 1%

Question 3: Micro-businesses (those with fewer than 10 employees) may find this requirement harder to implement. Which of the following approaches do you most agree with?

Micro-businesses are covered by the requirement in the same way as other businesses - 17%

Micro-businesses are excluded from the requirement altogether - 40%

Micro-businesses are covered by the requirement, but given a longer implementation period - 21%

Other - 19%

Question 12: Do you think calorie labelling would cause any practical issues for particular businesses?

Yes - 65%

No - 13%

Don't know - 18%

Not answered - 4%

Consultation feedback

The consultation sought feedback on which businesses should be required to display calorie labels. Consultation questions 1, 3, 12 were asked to understand whether there should be any exemptions from calorie labelling for certain businesses. The consultation recognised that the smallest businesses may find the requirement more challenging and therefore asked in particular about their inclusion.

In response to question 1, 42% agreed that calorie labelling should apply to all businesses, 54% disagreed. It should be noted that this question asked whether all businesses should

be required to calorie label, therefore it is not possible to gauge overall support for the concept of introducing mandatory calorie labelling from the results of this question.

Businesses, particularly smaller businesses, were more likely to disagree that calorie labelling should apply to all businesses - 88% of microbusinesses. Large businesses were most likely to be of the view that calorie labelling should apply to everyone, but the majority still disagreed that all businesses should be required to calorie label.

Question 3 asked specifically about whether micro-businesses (businesses with fewer than 10 employees) should be required to calorie label. In response - 17% believed that micro-businesses should be required to calorie label in the same way as other businesses, 40% thought they should be excluded from the requirement altogether, 21% indicated that they should be required to calorie label but given a longer implementation period.

Similar to question 1, views that micro-businesses should be exempt were more common among businesses responding to the consultation; 65% of businesses compared with 40% of all respondents.

It should be noted that while the most popular suggestion was for micro-businesses to be excluded, those of the view that micro-businesses should calorie label were divided between two options; those believing they should be included like other businesses (17%) and those believing they should calorie label but given a longer implementation period (21%). Taken together this suggests that 38% of respondents believed that micro-businesses should be required to calorie label with either the same or a longer implementation period. This compares with 40% who believed they should be excluded.

In response to question 12, 65% believed that calorie labelling would cause practical issues for particular businesses, 13% believed it wouldn't, 18% responded that they didn't know. As with other questions, this view was particularly felt among businesses, 87% of which believed calorie labelling would cause practical issues for some.

Free text feedback to question 1, 3, and 12 was similar and therefore has been grouped for the purposes of this consultation response.

Those in favour of calorie labelling most frequently responded that calorie labelling was important to help consumers make informed decisions and that it is often difficult to know the calorie content of food and drink items in the out-of-home sector. Some expressly suggested that the out-of-home environment should be as accountable as the retail environment, thereby ensuring a level playing field across all food sales. Respondents also highlighted that, even with a good understanding of food and nutrition, it can be very difficult to know how many calories are in food and therefore this information should be disclosed.

In contrast, feedback showed significant concern that smaller businesses would find the requirement particularly challenging and therefore should be exempt from the requirement. Some specifically suggested that calorie labelling should only apply to large businesses who are likely to be better placed to adopt the requirement as even medium-sized businesses may not have the expertise and resources to calorie label without difficulty.

A lack of time, expertise and the cumulative burden of regulations on the sector were cited commonly as reasons why smaller businesses should be exempt. Some smaller businesses indicated they may be required to take on an additional member of staff to comply with the requirement.

Some respondents suggested that calorie labelling could be particularly challenging for certain business models. Businesses with changing or daily menus and those with frequent specials were mentioned in this context as well as businesses that make use of seasonal or local produce. There was concern that requiring such items to be labelled may discourage businesses from innovating or using local produce.

General disagreement with the policy was also expressed. Some suggested that calorie labelling would be ineffective and that it should be an individual's responsibility to manage their weight and food purchases. Others proposed that, instead of regulations, Government should focus on providing better education to individuals and families on nutrition, so they can make better food choices for themselves. It was also suggested that calorie labelling could make the eating out experience less enjoyable either by impacting the aesthetics of menus or reducing customer choice.

Discussion

The consultation received a strong number of responses from businesses and particularly small and microbusinesses, many of which voiced degrees of concern with their capability to adopt the requirement. Some respondents also suggested that calorie labelling should only be mandated for large businesses.

Calorie labelling is an important tool to help consumers make informed, healthier decisions about the food and drink they are purchasing and is an integral part of our childhood obesity strategy. However, we recognise this is a novel requirement for the out-of-home sector and one which smaller businesses, in particular, are concerned with their ability to adopt.

The Government has decided that in the first instance, calorie labelling should only be mandatory for large businesses (businesses with 250+ employees). It is right that larger businesses, who are responsible for nearly half of all food and drink sales, lead the way in helping to create a healthier environment. Evaluation of this option in the Department's impact assessment estimates that this decision will deliver substantial benefits while

keeping business costs low; estimated at a net benefit to the economy of £5,568m over the 25-year appraisal period.

However, we understand the importance of calorie labelling all food and drink items as part of the suite of measures announced as part of our childhood obesity strategy and therefore we will, review and consider extending the requirement to smaller businesses within 5 years. In the meantime, we encourage smaller businesses to voluntarily comply with the requirement.

Question 10: Do you agree with the proposed approach for businesses selling takeaway dishes through third parties?

We propose that, where a business sells takeaway dishes through a third party business, such as an online takeaway platform, the responsibility for calculating the calorie content of the food or drink rests with the business making and selling it, and the responsibility for displaying the calorie information at the point of choice rests with the business through which the consumer buys the food or drink.

Yes - 60%

No - 25%

Don't know - 11%

Not answered - 4%

Consultation feedback

Question 10 discussed responsibilities when selling food through third party takeaway platforms. The majority (60%) agreed that 3rd party platforms should be responsible for displaying calorie content with the business making the food item responsible for providing the calorie content. Of those who disagreed (25%), the most common justification was that this process relies on clear communication between parties and may result in the misreporting of calorie content. Another significant comment was that this approach may make it more challenging to enforce and isolate responsibility for instances of non-compliance.

Discussion

A number of food businesses sell their food or drink items through a third party, such as an online takeaway platform, therefore it is important these businesses are factored into the policy. Consultation feedback generally supported our proposed approach and largely reiterated the importance of including these businesses.

Therefore, calorie labels will also be required on online takeaway platforms. The requirement to display calorie labels would be predicated on the size of the business preparing the food. Online platforms, irrespective of size are required to display calories on

their platforms of any businesses and products in scope of the policy. It will be the responsibility of the business making the food or drink to calculate and provide calorie information and the responsibility of the online platform to ensure the information is displayed appropriately on the platform.

Summary - business scope

The policy will apply to any large business (250+ employees) in England where food or drink is prepared in a way that means it is ready for immediate consumption by the person who buys it. The type of products that will require calorie labelling are summarised in this consultation response and will be outlined in further detail in forthcoming guidance.

Examples of large businesses that will be required to calorie label include restaurants, cafes, takeaways, bakeries and caterers but also supermarkets, entertainment venues e.g. cinemas, or hotels where they serve food in scope of the policy. Workplaces, where the food and drink on sale is provided by a large catering company will also be required to calorie label.

There are a range of operating models in the out-of-home sector with some, such as franchising agreements, commonplace among many of the largest food outlets in the market. We intend to consider businesses operating using a franchise agreement model as the sum of franchisees operating under that brand. For example, where the sum of the number of employees of businesses operating under a franchise agreement is greater than or equal to 250, franchisees will be required to calorie label.

However, we recognise that not all operating models are the same and will vary on an individual basis. Some franchising arrangements, most notably among pub chains, may only influence the drinks on offer across the franchise, with the provision of food at the discretion of individual franchisees. In such cases we believe it would be more appropriate for franchisees to be considered individual food businesses. Therefore, we intend for the above rule to apply where the terms of the franchise agreement determines the food that can be offered by franchisees, thereby resulting in a common, or substantively similar food offer across the franchise. We will engage industry to ensure this can be appropriately reflected in upcoming regulations.

The requirement will also extend to online sales from businesses in scope of the policy including sales from third party takeaway platforms. Third party takeaway platforms, irrespective of the size of their business, will be required to display calorie information on food and drink items sold by businesses in scope of the policy. The responsibility for calculating calorie content lies with the business making the food or drink, and responsibility for displaying calorie information rests with the business through which the food or drink is sold.

In addition to the above points, there will be some specific exemptions:

- Education institutions for pupils below the age of 18.
- In-house workplace canteens where the food and drink on sale is solely for the employees of the workplace.

- Health and social care settings where the food is provided solely for patients or residents.

Which food and drink items should be labelled?

Consultation question 2

Question 2: Do you think that the calorie labelling requirement should apply to all food and drink items an out-of-home business offers?

Yes - 43%

No - 52%

Don't know - 3%

Not answered - 2%

Consultation feedback

In addition to which businesses should be required to calorie label, the consultation sought views on whether calorie labelling should be required on all food and drink items.

Respondents could detail their views on the question in a free text box including what exemptions, if any, they wish to see put in place.

Overall, the majority of consultation respondents (52%) believed that calorie labelling should not be required on all food and drink items that a business may sell, 43% thought that calorie labelling should be required on all food and drink items. Taken together, responses from individuals and organisations were similar and overall in favour of calorie labelling applying to all food and drink items. In contrast, businesses were much more likely to disagree that calorie labelling should apply to all food and drink items - only 10% of businesses thought all food and drink items should be labelled, 83% thought calorie labelling should not apply to all items.

Those in favour of calorie labelling applying to all food and drink items most frequently suggested that the more widespread calorie information was the better, and that uniformity across all products was desirable. Some respondents specifically indicated that sauces, side dishes, and alcohol can be highly calorific and therefore should be included in the policy. There were also concerns that exempting certain items may provide loopholes within the policy that could be exploited by some businesses.

Feedback from those of the view that calorie labels should not be required on all food and drink items often raised concerns with the practicalities and potential unintended consequences of being required to label certain food and drink items.

Specific concerns were raised in relation to the practicalities of labelling non-standard menu items such as those made at the consumers request, specials, and items that may change depending on the availability of certain ingredients (e.g. seasonal produce). Some suggested that requiring to calorie label such items may place a disproportionate burden on certain business with frequently changing menus, in contrast to businesses that use a highly standardised menu which might be impacted to a lesser extent.

Some suggested there may be unintended consequences that may arise as a result of being required to label non-standard menu items. The foremost among these was that it may serve to decrease innovation and variety in the food offer as businesses would be required to calculate calories every time they wish to test a new menu item.

Feedback also suggested that businesses often make use of temporary menu items to use leftover ingredients and thereby minimise food waste; requiring to calorie label such items may discourage this good practice. Some also highlighted that businesses who make use of local and seasonal ingredients may see the content of their meals change on a seasonal or even weekly basis depending on the availability of certain items.

Discussion

Food and drink served in the out-of-home sector can vary significantly in both what it is and how it is presented, therefore it is important we consider the practicalities and consequences of calorie labelling in a variety of circumstances. This is important to ensure that calorie labelling works as a useful tool to make the food environment healthier and support healthier consumer decisions, while not imposing a disproportionate burden on certain businesses or result in undesirable consequences.

Calorie labelling will be required on all items that are prepared and sold for immediate consumption by the final consumer and are not subject to existing pre-packaged labelling requirements; this includes items that are unpackaged (e.g. a meal at a restaurant), prepacked for direct sale (e.g. café sandwich made and packaged on-site), or packaged at the consumers request (e.g. sausage roll on the hot food tray at a bakery). Sides and toppings on a menu will also be required to display calorie labels.

Feedback to the consultation highlighted concern about the impact calorie labelling could have on frequently changing menus, suggesting it may risk negatively impacting innovation in the sector, the variety in the food offer, policies to combat food waste, and the use of local produce. Therefore, temporary items that are on the menu for less than 30 days will be exempt from the requirement; this will provide businesses with flexibility to minimise these risks.

In addition to the above points, there will be some specific exemptions to the policy:

- Items which typically require further preparation e.g. uncooked meat, fish and eggs.
- Drinks with over 1.2% alcohol by volume (ABV)
- Loose fruit or vegetables
- General use condiments where they are added by the consumer

How should calorie labels look?

Consultation questions - 4, 5, 6, 7, 9

The consultation asked a series of questions (questions 4, 5, 6, 7, 9) to determine how calorie labels should look as well as where they should be displayed.

Question 4: As well as the number of calories per portion of the food item, do you think calorie labels should show that number as a proportion of the recommended daily intake?

The consultation proposed that calorie labels should show the number of calories per portion of the menu item, as well as the number of calories in a portion as a proportion of the recommended daily energy intake for an adult woman (2,000 kcal).

Yes - 39%

No - 51%

Don't know - 8%

Not answered - 2%

Consultation feedback

The consultation asked whether calorie labels should show the number of calories per portion of the menu item, as well as the number of calories as a proportion of the recommended daily intake for an adult woman (2,000 kcal). 51% of respondents disagreed with proposal, 39% agreed.

Those in favour of the proposal were most frequently of the view that showing calorie totals as a proportion of recommended daily intake would help make calorie labels more effective, particularly among consumers who may have less knowledge of nutritional recommendations.

Those disagreeing with the proposal highlighted that calorie requirements can vary significantly between individuals and therefore referring to 2,000 kcal per day may not be accurate for some. Others held the view that it would have no benefit and that would be too much information for businesses to include on their menus.

Some specifically indicated that, instead of displaying calories as a proportion of daily intake, calorie labels should instead display the number of calories in a given item along with a description indicating what recommended daily calorie is. It was highlighted that such an approach is used in the United States of America in their menu labelling scheme.

Discussion

Displaying calorie information with reference to recommended daily calorie intake is referred to as contextual labelling. Contextual labelling has been shown to be more

effective at encouraging consumers to purchase fewer calories than displaying calorie totals without contextual information^{xx}.

Contextual labelling can mean either displaying calorie information as a proportion of recommended daily intake or including a reference to recommend daily calorie intakes along with calorie labels. Having considered feedback to the consultation, in addition to displaying the number of calories per portion of food or drink item, businesses will be required to include a declaration referring to recommended daily intake on the menu.

An adult woman's daily reference intake would be used, rather than an adult man's or a child's, in order to keep calorie labelling on menus in line with existing requirements for nutritional labelling on packaged foods. The precise wording will be outlined in regulations and guidance to businesses.

Question 5: Would you find it helpful or unhelpful for information on kilojoule content to be displayed alongside information about calorie content?

Under current labelling legislation, calorie labelling must be accompanied by information about the kilojoule (KJ) content of the food. Kilojoules are the metric equivalent of calories and the unit is often shortened to 'KJ' on energy labels. Kilojoule content can be calculated by multiplying kilocalorie (calorie) content by 4.2.

Helpful - 8%

Unhelpful - 71%

Not sure - 18%

Not answered - 3%

Consultation feedback

Question 5 asked whether it would be helpful or unhelpful for information on kilojoule content to be displayed alongside calorie content. The significant majority (71%) believe it would be unhelpful whereas only 8% thought that including kilojoule information would be helpful.

Although a minority believed that displaying kilojoule content alongside calorie content would be helpful, the significant majority opposed to displaying kilojoules indicated that they aren't used or understood by the public.

Discussion

Under current EU labelling rules, energy content is required to be displayed as both calories (Kcal) and kilojoules (KJ) and therefore businesses will be required to display calorie totals using both units.

Consultation feedback showed that kilojoules is a unit of energy measurement used by only a minority of the population, therefore we believe there is little benefit in requiring kilojoules to be displayed alongside kilocalories. We will introduce primary legislation when parliamentary time allows that enables us to remove the requirement for businesses in the out of home sector to display energy content in kilojoules, thereby giving businesses additional flexibility in how calorie totals are displayed. This change may be made after secondary legislation to mandate calorie labelling in the out-of-home sector has been introduced.

Question 6: Is there any other interpretative information that you think should be displayed on calorie labels, e.g. 'traffic light' ratings for calorie content, or the exercise equivalent of the number of calories?

Calorie labels could display extra information to help people understand the calorie information provided. For example, calorie labels could also give a 'traffic light' rating for the number of calories the food or drink contains, or the exercise equivalent of the number of calories, and so on.

Yes - 36%

No - 47%

Don't know - 13%

Not answered - 4%

Consultation feedback

Question 6 asked whether calorie labels should include any additional interpretive information, examples given included 'traffic light' ratings for calorie content or exercise equivalent of the number of calories.

Among respondents of the view that other interpretative information would be beneficial, around one in four suggested that identifying calorie totals using a traffic light label would be helpful. A significantly smaller number indicated a preference for including labelling which referred to the exercise equivalent of the number of calories.

Some respondents suggested the inclusion of other macronutrients, most notably carbohydrate content, particularly in connection with helping people with diabetes to manage their blood sugar. Including fat, salt and sugar content was also mentioned in similar numbers with a few indicating they would prefer to see full macronutrient labelling in a similar vein to the existing voluntary front of pack traffic light labelling scheme.

Those who did not wish to see any additional interpretative information were most frequently of the view that the additional information would have no benefit and provide too much unnecessary information. A significant number were also concerned about the

additional burden that providing extra information would have on businesses and the design of their menus.

Discussion

There is a careful balance to be struck between making calorie labels as accessible and informative as possible for consumers while not disproportionately impacting businesses and their ability to shape how their menus or menu boards look. Additional forms of expression, such as 'traffic light' ratings would add complexity for businesses, therefore the Government will not require any additional interpretive information in addition to contextual calorie labelling as discussed in question 4.

Question 7: Do you think that calorie information should be displayed in establishments at the point of choice?

By 'point of choice' we mean the place in an establishment where prices are displayed and customers make their meal choices.

Yes - 54%

No - 38%

Don't know - 6%

Not answered - 2%

Consultation feedback

The consultation defined 'point of choice' as the place in an establishment where prices are displayed, and customers make their meal choices. The majority 54% agreed with the proposal, indicating that it promotes transparency and is the most logical place for labels to be displayed as it is where food choices are made.

Those that disagreed, most frequently suggested that instead of being displayed at the point of choice, calorie information should be available upon request for the consumer. Others suggested that the point of choice may not be the best or most practical option for all types of business. Some suggested that the information will not be used by consumers and that calorie information does not necessarily indicate how healthy an option is.

Discussion

Calorie information will need to be provided to consumers at the point of choice; that is, the place in an establishment where customers make their meal choices and the prices are displayed, including online.

Where items are displayed at several points in an outlet, we would expect businesses to provide calorie information at each. Examples of the point of choice would include table menus, menu boards and food labels placed next to food on shelves or display cases. For online businesses, the point of choice would mean any web pages where the customer can select food items and any page where food items are compared with each other prior to purchase.

Question 9: Do you agree with the proposed approach for calculating the number of calories in a standard portion?

In order to calculate the calorie content of menu items, we propose that businesses would calculate the calorie content for what they consider to be a standard portion size for that menu item, as they serve it. The business should make it clear to the consumer what a standard portion of that item is. For example, a delicatessen serving take-away salads might give the calorie count for one scoop of a salad using a standard serving spoon, or for the amount of salad that fits in a certain size of container.

Yes - 51%

No - 35%

Don't know - 10%

Not answered - 4%

Consultation feedback

The consultation suggested that food businesses should calculate the calorie content for what they consider to be a standard portion for that menu item as they serve; 51% of respondents agreed with that position, 35% disagreed.

Respondents agreeing with the approach suggested that displaying calories per portion will make calorie labelling more impactful (as opposed to displaying energy content per 100g / 100ml) although care should be given to guidance to ensure that as consistent of an approach is taken as possible across all businesses.

Those that disagreed with the proposed approach most frequently raised concerns that the information provided would not be accurate and highlighted the potential for inconsistency between businesses. Others also echoed concerns that calorie labelling may be particularly costly and time consuming for small businesses.

Some suggested there may be some practical difficulties such as for those items that are made to order or customised and therefore a need to ensure appropriate guidance is issued that is applicable to the range of different serving methods. There was also concern that some businesses may end up under-representing portion size; which could support that providing calories per 100g, instead of, or as well as the calories per portion would provide less scope for manipulation.

Discussion

Feedback from the consultation showed support for the proposal to display calorie totals per standard portion. Displaying calories per portion allows consumers to compare calorie content of items as they are served, allowing for a better comparison between the choices available to them. This aligns with the approach that is taken in other countries and has been evidenced to be successful.

Therefore, businesses will be required to calculate calorie content per portion of food or drink item sold, making clear to the consumer what a standard portion is. How this is achieved may vary by serving method:

- (a) In the case of restaurant-type food this will be the whole item where it is intended for consumption.
- (b) Buffet-style serving methods may display calories per scoop or per unit e.g. rasher of bacon.
- (c) Build-your-own style serving methods would be required to display calories for the base product with each optional addition also making clear how many calories are contained within it.

The Government will publish guidance setting out clearly how calorie information should be calculated and displayed across a range of serving methods.

Implementation

Question 8: Would 12 months be an appropriate amount of time for businesses to implement calorie labelling?

Yes - 41%

No - 39%

Don't know - 17%

Not answered - 3%

Consultation feedback

Overall, more respondents agreed that 12 months would be sufficient for businesses to implement calorie labelling. However, businesses were significantly of the opinion that 12 months would not be sufficient; considering business-only views: Yes - 17%, No - 59%, Don't know - 22%, Not answered - 3%.

Of those disagreeing with a 12-month implementation, many more suggested that 12 months was too short rather than too long. The most frequent alternative implementation period suggested was 24 months.

Even among those who agreed with the implementation period, respondents most frequently expressed the view that smaller businesses may need longer to implement the policy and that an implementation period of 12 months may only be appropriate for larger chains.

Discussion

The Government believes that it is important businesses are given enough time in which to ensure they are compliant with new policies. However, this must be balanced with the need to take swift action to address high levels of childhood obesity.

Feedback from businesses most frequently indicated that an implementation period of longer than 12 months would be required for businesses to implement calorie labelling. However, feedback frequently linked the length of time required to implement the policy to business size, suggesting that a longer implementation period is particularly required for smaller businesses. Given calorie labelling will only apply to large businesses in the first instance businesses will be given about 12 months to implement the policy.

The policy will be implemented in-line with the Common Commencement Date initiative. The Common Commencement Date initiative aims to increase awareness among businesses of new or changed obligations and thereby improve compliance levels by permitting regulations to be implemented on 6 April or 1 October in a given year.

Question 11: We will provide businesses with written guidance to help them with calorie labelling. Do you think businesses will need any additional support?

Yes - 70%

No - 9%

Don't know - 17%

Not answered - 4%

Consultation feedback

In response to question 11, a majority of respondents indicated that businesses would need support, in addition to guidance, to help them with calorie labelling. Businesses were more likely to indicate that additional support would be required with 80% responding 'yes'.

Those indicating that additional support would be required most frequently referenced their concerns that small and micro businesses would find the requirement particularly challenging.

Access to free nutritional analysis / calculator and financial support were most frequently raised as additional support that would be most helpful for businesses. A significant number also suggested that businesses should be given access to training to calculate calories. Others suggested more hands-on support for businesses such as access to a free individual / company who could calculate calorie totals on their behalf or a helpline for them to receive advice.

Discussion

Comments in response to this question most frequently linked the need for additional support to small and micro businesses. A significant number of large businesses already provide calorie labelling in some form and the majority will have their own resources to implement the policy. For those that don't there are a range of free or paid-for tools that can aid with calorie labelling.

As the policy is only applying to large businesses, we believe the Government's role should be to work closely with local authorities and businesses to set clear guidance for the sector on the requirement.

We are committed to review the policy within 5 years and will use that to consider the case to extend the requirement to smaller businesses. We will reconsider, as part of that process, what additional support smaller businesses may need to implement the policy if a decision is taken that they should do so.

Enforcement

Question 13: If you have any suggestions for how this requirement could be enforced in a way that is fair and not overly burdensome, please provide details.

Consultation feedback

The consultation did not make any proposals about how the policy should be enforced, instead it gave respondents the flexibility to outline their views. The question was entirely a free text response and therefore there is not data as to how many agreed or disagreed with a particular proposal.

Respondents most frequently suggested that the policy should be enforced through local authority checks of food businesses within their areas. In some cases, respondents suggested that these could be conducted as part of existing food hygiene checks whereas others believed that checks should be unannounced or carried out in response to feedback alerting of instances of non-compliance. Where a business is found to be non-compliant, respondents most frequently suggested that these should be discharged using fines and warning notices.

Some raised concerns over whether the policy could be enforced effectively and the practicalities of verifying the calorie content of each menu item. A few specifically questioned the accuracy with which calories could be calculated for each menu item, and therefore an approach which tested for a high degree of accuracy may result in high rates of non-compliance.

Some businesses suggested that enforcement should seek to improve rates of compliance with the policy rather than penalise every instance of non-compliance; a few suggested that sanctions should be reserved for large chains with the resources to ensure a higher degree of accuracy.

Discussion

It is important that any enforcement approach supports the success of the policy and is proportionate to the consequences of non-compliance.

Calorie labelling is an important tool to help individuals make healthier choices for themselves and their families. While the impacts of overweight and obesity are significant and potentially life-threatening over a period of time, there are factors, other than the absence of calorie labelling, at play.

Therefore, the Government believes it would not be proportionate for failure to calorie label or display labels accurately to be a criminal offence. This is in contrast with failure to

comply with food hygiene and allergen labelling requirements where failure to comply poses an immediate threat to human life.

We are intending to legislate for mandatory calorie labelling using secondary legislation under the Food Safety Act 1990 (FSA). The FSA permits the use of improvement notices in instances of non-compliance with its measures. Improvement notices afford a food business the opportunity to undertake corrective measures to ensure their compliance with regulations before a penalty is levied. Any person failing to comply with an improvement notice is guilty of an offence.

Under the FSA non-compliance with an improvement notice results in the issuing of a criminal penalty. There may be a range of circumstances determining a businesses' capability to meet the conditions of an improvement notice, and therefore to ensure penalties are proportionate to the situation, the Department proposes that local authorities should be permitted to issue fixed monetary penalties (a form of civil penalty) as an alternative to the criminal penalties outlined in the FSA.

The Regulatory Enforcement and Sanctions Act 2008 (RESA) enables local authorities to be provided with powers to impose such penalties. Fixed monetary penalties can be imposed when the local authority is satisfied beyond reasonable doubt that an offence has been committed and that a civil penalty is the most appropriate action to take.

A requirement of the RESA is that the Government consults those who will be affected by the policy. Therefore, we will consult local authorities and trade association on our proposed enforcement approach, including specifically on our proposed use of fixed monetary penalties under the RESA. The consultation will run from 30 July to 9 September 2020, if you wish to be consulted on how the policy will be enforced, please contact Childhood.Obesity@dhsc.gov.uk while the consultation is open.

3. Additional consultation feedback

Question 14: If you have any further evidence or data you wish to submit for us to consider for our final impact assessment, please provide it here.

126 respondents gave further evidence or data in response to this question. 63% of responses were anecdotal, commenting on the policy itself or referring to professional experience. Topics include the impacts on those with eating disorders, statements for and against the proposed policy and comments on how labels should be displayed. 25 respondents mentioned further evidence or data to use, mostly in the form of academic journals.

Feedback in response to this question has been considered in producing the revised impact assessment published alongside this consultation. A summary of key academic papers considered is outlined in Annex C of the impact assessment.

Question 15: If you have any further evidence or data that you would like to submit specifically on the likely cost that may occur to your business as a result of the proposal, please provide it here.

13 respondents gave information on the likely cost to business. Similar to question 14, most of the responses were anecdotal, commenting on the policy itself, referring to professional experience, anecdotal estimates to our assumptions, with one respondent citing academic evidence. Responses included the impact on businesses in making changes to menus, the impact on new businesses entering the market, the potential cost of calculating calories and the effectiveness of calorie labelling.

13 attachments were also submitted through the online consultation, including 8 academic articles and reports. Feedback in response to this question has been considered in producing the revised impact assessment published alongside this consultation. A summary of key academic papers considered in outlined in Annex C of the impact assessment.

Question 16: Are there any other potential impacts of introducing calorie labelling, either positive or negative, that you think we should consider?

Yes - 414 (36%)

No - 315 (27%)

Not answered - 429 (37%)

Respondents were asked whether there are any other potential impacts of the policy that should be considered and, where applicable, provide details of that impact in a free text box.

It was most frequently suggested that the policy may be challenging for people with eating disorders. This feedback was echoed in questions 17 and 18 and has been considered in more detail in the Equality Assessment accompanying this consultation response.

Other respondents suggested that providing calorie information may encourage consumers to focus solely on calories instead of a balanced, nutritious diet. Calorie information is a measurement of the energy content of a particular food or drink item however does not indicate the macro or micronutrient content of that item.

In addition to the potential negative impacts highlighted, many respondents also highlighted the potential positive impacts of mandatory calorie labelling such as helping consumers to make informed and healthier choices for themselves and encouraging businesses to reformulate products so they are lower in calories.

Question 17: Do you think that this proposal would be likely to have an impact on people on the basis of any of the following characteristics?

Age - 205 (29%)

Sex - 104 (15%)

Race - 65 (9%)

Religion - 51 (7%)

Sexual orientation - 28 (4%)

Pregnancy and maternity - 85 (12%)

Disability - 126 (18%)

Gender reassignment - 23 (3%)

Marriage / civil partnership - 27 (4%)

Total - 714

The consultation sought views on whether this proposal would be likely to have an impact on people on the basis of a number of protected characteristics. Respondents could select as many characteristics as they believe applied. In total, respondents selected characteristics 714 times.

Respondents could provide a justification to explain their answer in a free text box. Free text answers were analysed to infer whether the respondent believed the policy would have a positive or negative effect on the particular characteristic.

Of the free text responses, the most frequent comment was that the policy may have a detrimental impact on people with eating disorders or may contribute to more people developing eating disorders. A number specifically commented that eating disorders are more prevalent among women and therefore the policy may negatively impact women over men.

Some respondents raised the point that visually impaired and blind people will not benefit from calorie labels unless out-of-home outlets are required to display information in braille or read calorie information to customers.

There were a range of additional, less frequent comments. Some respondents mentioned that there may be a range of educational and language barriers which could make either providing or using calorie labels more challenging for certain individuals. Other respondents mentioned that an individual's calorie needs may vary by gender, age, and activity levels and therefore referring to the recommended daily intake for an adult woman may not be appropriate for many. A proportion of these respondents specifically suggested that calorie needs vary during pregnancy.

The impact of the policy on protected characteristics within the Equality Act have been discussed in greater detail in the Equalities Assessment published alongside this consultation response.

Question 18: Do you think this proposal would help achieve any of the following aims?

Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010 - 43 (4%) respondents

Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it - 59 (5%) respondents

Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it - 46 (4%) respondents

Not answered - 1,010 (87%)

Respondents could provide free text responses to justify their answer. A number of respondents also mentioned in answer to this question that an increased presence of calorie labels may present a challenge for people with eating disorders.

Some respondents also highlighted that while the policy doesn't discriminate against people with diabetes it would be helpful for those with type 2 diabetes if the out-of-home sector also displayed carbohydrate content to help them manage blood sugar levels.

Impact of the policy on protected characteristics within the Equality Act have been discussed in greater detail in the Equality Assessment published alongside this consultation response.

Question 19: Do you think that this proposal would be likely to have any impact on people from lower socio-economic backgrounds?

Yes - 432 (37%)

No - 320 (28%)

Don't know - 195 (17%)

Not answered - 211 (18%)

Respondents were given the option of justifying their answer in a free text box. The most frequent comment discussed the price of food, with many suggesting that calorie-dense, low nutritional value fast-food items are more prevalent in areas of high deprivation and often cheaper than healthier alternatives which could mean they are therefore consumed in higher quantities by those from lower socio-economic backgrounds. While some suggested that this could mean lower socio-economic groups are more likely to benefit from the policy, others commented that requiring businesses to calorie label may result in the cost being passed to the consumer, thereby increasing the price of food.

The second most common theme discussed knowledge of and ability to use calorie information. Some respondents suggested that having calorie information on food and drink items may have a greater impact on those with lower educational status and therefore perhaps less conscious of nutrition. Others commented that calorie labelling should be coupled with greater education of nutrition and calories so that those who are less informed are able to make the most of the information.

Many respondents also pointed out the stark inequalities in obesity rates between higher and lower socio-economic groups, which may mean that lower socio-economic groups may have more to benefit from policies designed to create a healthier food environment.

Question 20: If there are any further matters that you would like to raise or any further information that you would like to provide in relation to this consultation, please give details here.

The majority of responses to this question either reiterated points they made elsewhere in the consultation or made points that were common in the responses of others.

4. Policy summary

Business scope

The policy will apply to any large business (250+ employees) in England where food or drink is prepared in a way that means it is ready for immediate consumption by the person who buys it. Examples of large businesses that will be required to calorie label include restaurants, cafes, takeaways, bakeries and caterers but also supermarkets, entertainment venues e.g. cinemas, or hotels where they serve food in scope of the policy. Workplaces, where the food and drink on sale is provided by a large catering company will also be required to calorie label.

There are a range of operating models in the out-of-home sector with some, such as franchising agreements, commonplace among many of the largest food outlets in the market. We intend to consider businesses operating using a franchise agreement model as the sum of franchisees operating under that brand. For example, where the sum of the number of employees of businesses operating under a franchise agreement is greater than or equal to 250, franchisees will be required to calorie label. We intend for the above rule to apply where the terms of the franchise agreement determines the food that can be offered by franchisees, thereby resulting in a common, or substantively similar food offer across the franchise.

The requirement will also extend to online sales from businesses in scope of the policy including sales from third party takeaway platforms. Third party takeaway platforms, irrespective of the size of their business, will be required to display calorie information on food and drink items sold by businesses in scope of the policy. The responsibility for calculating calorie content lies with the business making the food or drink, and responsibility for displaying calorie information rests with the business through which the food or drink is sold.

In addition to the above points, there will be some specific exemptions:

- Education institutions for pupils below the age of 18.
- In-house workplace canteens where the food and drink on sale is solely for the employees of the workplace.
- Health and social care settings where the food is provided solely for patients or residents.

Products affected

Calorie labelling will be required on all items a business offers that are prepared for immediate consumption by the final consumer and are not subject to existing pre-packaged labelling requirements. This includes items that are unpackaged (e.g. a meal at a restaurant), prepacked for direct sale (e.g. sandwiches made and packaged on-site), or packaged at the consumers request (e.g. a sausage roll on the hot food tray at a bakery).

There will be certain exemptions which include:

- Temporary items on the menu for less than 30 days.
- Items that typically require further preparation before consumption e.g. uncooked meat, fish and eggs.
- Drinks with over 1.2% alcohol by volume (ABV).
- Loose fruit or vegetables.
- General use condiments where they are added by the consumer.

How labels should look

Calorie information will be required at the point of choice; that is the place in an establishment where customers make their meal choices and prices are displayed. Where menu information is located at several points in an outlet, we would expect businesses to provide calorie information at each. Examples of the point of choice would include table menus, menu boards and food labels placed next to food on shelves or display cases. For online businesses, the point of choice would mean any webpage where customers can select the food items they want.

Calorie labels are required to show the number of calories along with a visible declaration referring to the recommended daily intake for an adult woman (2,000 kcal). The precise wording of the declaration will be set out in regulations and Government guidance to support businesses with implementing the policy.

Under current EU labelling legislation, calorie labelling must refer to energy content as both kilojoules (KJ) and calories. Kilojoules are the metric equivalent of calories and the unit is calculated by multiplying the number of calories in a given item by 4.2.

Calculating calorie content

In order to calculate the calorie content of menu items, we propose that businesses would calculate the calorie content for what they consider to be a standard portion size for that menu item, as they serve it.

How this is achieved may vary by serving method:

- In the case of restaurant-type food this will be the whole item.
- Buffet-style serving methods may display calories per scoop or per unit e.g. rasher of bacon.
- Build-your-own style serving methods would be required to display calories for the base product with each optional addition also making clear how many calories are contained within it.

5. Outcome and next steps

Following consultation, the Government will introduce mandatory calorie labelling for large businesses as a valuable tool to help consumers navigate a growing food environment with greater choice. Calorie labelling has been shown to be effective in helping consumers make informed and healthier choices where it has been tested.

We intend to use powers in the Food Safety Act 1990 to lay legislation before Parliament in 2020. We intend for the policy to come into force around 12 months following legislation, in-line with the Common Commencement Date initiative.

We will work with trade associations and local authorities to develop guidance for businesses to ensure they are supported to implement the policy in advance of it coming into force.

The Government is committed to ensure enforcement of regulatory policies is proportionate and fair. We believe that improvement notices serve as a means to facilitate this by providing businesses with the ability to take corrective steps before any penalty is levied. Therefore, in advance of laying legislation we will consult local authorities and trade associations of our intended use of fixed monetary penalties under the Regulatory Enforcement and Sanctions Act 2008 to provide alternatives to those under the Food Safety Act.

Consultation thus far has not made proposals for how the policy is enforced, therefore we will use this opportunity to test our proposed enforcement approach with the organisations and businesses who will be affected by the change. The consultation will run from 30 July to 9 September 2020. If you wish to be consulted on how the policy will be enforced, please contact: Childhood.Obesity@dhsc.gov.uk while the consultation is open.

References

- ⁱ NHS Digital. (2017). National Child Measurement Programme 2017/18
- ⁱⁱ OECD. (2017). Health at a glance 2017: OECD Indicators. Paris: OECD Publishing.
- ⁱⁱⁱ Simmonds, M, Llewellyn et al. (2016). Predicting adult obesity from childhood obesity: a systematic review and meta analysis. *Obesity reviews*, 17(2), 95-107
- ^{iv} Guh et al. (2009). The incidence of co-morbidities related to obesity and overweight: a systematic review and meta- analysis. *BMC Public Health*, 9(1), 88
- ^v Scheen, A J. (2002). Obesity and liver disease. *Best Practice & Research Clinical Endocrinology and Metabolism*, 14(4), 703- 716.
- ^{vi} Docherty, A.B., Harrison, E.M., Green, C.A., Hardwick, H.E., Pius, R., Norman, L., Holden, K.A., Read, J.M., Dondelinger, F., Carson, G. and Merson, L., 2020. Features of 16,749 hospitalised UK patients with COVID-19 using the ISARIC WHO Clinical Characterisation Protocol. medRxiv.
- ^{vii} Public Health England. (2018). Calorie reduction: The scope and ambition for action.
- ^{viii} NatCen Social Research. National Diet and Nutrition Survey Years 1-6, 2008/09-2013/14 [data collection]. MRC Elsie Widdowson Laboratory, University College London. Medical School; 2017, 8th Edition
- ^{ix} Nguyen and Powell. (2014). The impact of restaurant composition among US adults: effects on energy and nutrient intakes. *Public Health Nutrition* 17(11) 2445-52
- ^x Public Health England (2018). Sugar reduction and wider reformulation programme: report on progress towards the first 5% reduction and next steps.
- ^{xi} Food Standards Agency. (2016). Food and You survey.
- ^{xii} Food Standards Agency. (2010). Food and You survey and Food Standards Agency (2014). Food and You survey.
- ^{xiii} Food Standards Agency. (2016). Food and You survey.
- ^{xiv} Public Health England. (2018). Calorie reduction: The scope and ambition for action.
- ^{xv} Diabetes UK. (2018). Public Views on food labelling survey.
- ^{xvi} Crockett RA et al. (2018). Nutritional labelling for healthier food or non-alcoholic drink purchasing and consumption. *Cochrane Database of Systematic Reviews*.
- ^{xvii} Sinclair et al. (2014). The influence of menu labeling on calories selected or consumed: a systematic review and meta-analysis. *Journal of the Academy of Nutrition and Dietetics*, 114(9), 1375-1388.
- ^{xviii} Robinson et al. (2019) "Point of choice kilocalorie labelling in the UK eating out of home sector: a descriptive study of major chains"
- ^{xix} Durand, M. A. et al. (2015). An evaluation of the Public Health Responsibility Deal: Informants' experiences and views of the development, implementation and achievements of a pledge-based, public-private partnership to improve population health in England. *Health Policy*, 119(11), 1506-1514.
- ^{xx} Sinclair et al. (2014). The influence of menu labeling on calories selected or consumed: a systematic review and meta-analysis. *Journal of the Academy of Nutrition and Dietetics*, 114(9), 1375-1388.

© Crown copyright 2020

Published to GOV.UK in pdf format only.

Population Health / Obesity, Food and Nutrition

www.gov.uk/dhsc

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

