

2025 No. ****

BROADCASTING
ELECTRONIC COMMUNICATIONS
FOOD
PUBLIC HEALTH

**The Advertising (Less Healthy Food) (Brand Advertising
Exemption) Regulations 2025**

Made - - - -

Laid before Parliament

Coming into force

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 321A(3)(b), 368FA(3), 368Z14(4) and 402(3) of the Communications Act 2003(a).

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

Citation, extent, application and commencement

1.—(1) These Regulations may be cited as the Advertising (Less Healthy Food) (Brand Advertising Exemption) Regulations 2025.

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

(3) These Regulations come into force on [TBC].

Exemption to prohibitions for brand advertising

2.—(1) The standards set by virtue of section 321A(1), and the prohibitions set out in sections 368FA(1) and 368Z14(1), of the Communications Act 2003 (“the Act”) do not apply to brand advertisements.

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

(2) In paragraph (1), “brand advertisement” means an advertisement that promotes a brand, including the brand of a range of products, but does not include an advertisement to which any of paragraphs (3), (4) or (5) apply.

(3) This paragraph applies to an advertisement the content of which depicts a specific less healthy food or drink product, unless such depiction is only by way of name and that product’s name falls within paragraph (6).

(4) This paragraph applies to an advertisement that promotes a brand the name of which is the name of a specific less healthy food or drink product, unless that product’s name falls within paragraph (6).

(5) This paragraph applies to an advertisement the content of which includes a photographic image of a food or drink product where—

- (a) the photographic image is of the food or drink itself and is not only of the product’s packaging, and
 - (b) the food or drink product is visually indistinguishable from a specific less healthy food or drink product.
- (6) A product’s name falls within this paragraph if the full name of that product—
- (a) is the name,
 - (b) is part of the name, or
 - (c) is included in the name,

of a company, franchise or other commercial entity which was established before 16 July 2025 and which is the producer of that product.

(7) In these regulations—

- (a) “depict” means depictions by way of name, text, imagery, audio cue, jingle or other branding technique or combination of branding techniques;
- (b) “less healthy” has the same meaning as sections 321A(4)(c), 368FA(4)(c) and 368Z14(5)(e) of the Act;
- (c) “range of products” means a group of related food or drink products (whether or not those products are less healthy) and such group—
 - (i) includes a group of products composed of variants of a product, such as different flavours, but
 - (ii) does not include a group of products where such products are distinguished only by pack sizes or packaging format, such as carton, tin, block or bag;
- (d) “specific”, in relation to a food or drink product means a food or drink product which—
 - (i) is capable of being purchased;
 - (ii) is uniquely distinguished from other products capable of being purchased, unless it is only distinguished from such other products by pack size or packaging format such as carton, tin, block or bag;
- (e) “photographic image”, in relation to a food or drink product, means an image of such a product where the image is either of the following—
 - (i) a photograph, or
 - (ii) an image, whether made or altered by computer graphics or in any other way, which appears to be a photograph.

DATE

[Name]
[Minister]
Department of Health and Social Care

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide an exemption to the restrictions on the advertising of less healthy food and drink products set out in sections 321A, 368FA and 368Z14 of the Communications Act ("the 2003 Act"), as inserted by the Health and Care Act 2022. The exemption is for brand advertisements, which are defined in these Regulations.

A full impact assessment of the effect that restrictions on the advertising of less healthy food and drink products will have on the costs of business, the voluntary sector and the public sector is available from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/996232/impact-assessment-hfss-advertising.pdf. It is also available from the Department of Health and Social Care at 39 Victoria Street, London SW1H 0EU. This instrument provides clarification that brand advertisements are exempt from these restrictions, in line with the original policy intention as set out in the 2003 Act. For that reason, no impact assessment has been produced for this instrument.