

PPA response to DHSC consultation on Brand advertising exemption from advertising restrictions for less healthy food or drink

Introduction

The Potato Processors' Association Ltd (PPA) is the trade association for UK manufacturers of frozen and chilled chips/French fries and potato products, potato crisps, potato-based snack products and dehydrated potatoes. PPA incorporates both the Frozen and Chilled Potato Processors' Association (FCPPA) and the Snack, Nut and Crisp Manufacturers' Association (SNACMA).

Collectively PPA members are the largest customer for GB potatoes, purchasing around 1.47 million tonnes annuallyⁱ (approximately 46% of the estimated GB potato volume in 2022ⁱⁱ), and accounting for circa 94% of all potatoes processed into frozen chips and potato products, potato crisps and snacks within the UK.

Over 13,000 people are directly employed by the potato processing sector and other dependent jobs, including those in the farming sector, more than double this total.

The sector also makes a significant contribution to the country's manufacturing base. The value of the UK processed and prepared potatoes market was estimated at more than £2.7 billion (not including food service), and the sliced potato crisps market was estimated to be worth an additional £1.47 billion in 2022ⁱⁱⁱ. Furthermore, the value of the entire savoury snacks sector (which in addition to potato crisps includes cereal, nut, popcorn and meat-based snacks) was estimated to have a combined retail value of £4.05 billion in 2023^{iv}.

Please see below our response to Department of Health and Social Care (DHSC) consultation on brand advertising exemption from advertising restrictions for less healthy food (LHF) or drink. We are pleased that the Government has intervened to ensure the legislation reflects the intent of the legislation, and we are also grateful for the opportunity to respond to this consultation. Clarity of the text and definitions within the new Regulation is key to ensuring compliance and proportionate enforcement of the rules.

Our members remain committed to upholding the new advertising restrictions from 1 October 2025 and are keen to continue working with the Government, the Advertising Standards Authority (ASA), the Committee of Advertising Practice (CAP), advertising bodies and the wider food industry to help raise awareness of the upcoming advertising restrictions. However, we urge the Government to give due consideration to our questions and proposals. Given the complexity of the legislation and the subjective nature of interpreting the rules, we also encourage the Government to collaborate closely with the ASA and CAP. This partnership is essential to ensure that the resulting guidance is clear, comprehensive, and published in a timely manner, thereby supporting industry compliance and effective enforcement.

Consultation questions

About you

In what capacity are you responding to this survey?

- On behalf of an organisation

Questions for organisations

What is the name of your organisation? (Optional)

Potato Processors' Association (PPA)

Which sector does your organisation work in?

- Third sector

How would you describe the work of your organisation?

- Trade association

Where does your organisation operate or provide services?

- The whole of the UK

Questions on the draft regulations for all respondents

1) Do you agree or disagree that the draft regulations make clear how brand advertisements will be treated by the advertising restrictions?

Disagree, it is not clear. Please find below our responses to the consultation questions, which reflect our concerns regarding specific points raised. However, we would like to emphasise that there is widespread confusion around definitions and varying interpretations of the Regulations. Through engagement with members and other stakeholders, we have encountered a broad range of differing views on several aspects of this consultation, suggesting the draft text is unclear. With less than six months until the Regulations come into force, and implementation guidance relying directly on the wording and definitions within the Regulation, it is crucial that the entire text, including specific definitions, is unambiguous and clearly understood by the various sectors involved.

Moreover, it is not clear to us that the text, as written, will extend the brand advertising exemption to Ofcom-regulated and unregulated Internet Protocol TV (IPTV) services, as the Regulations only exempt 'brand advertising' of food and drink set out in sections 321A (TV advertising), 368FA (On-Demand Programme Services – ODPS) and 368Z14 (paid-for online advertising). To avoid ambiguity and ensure consistent application, it is important that brand advertising on IPTV, whether Ofcom-regulated or not, is explicitly exempted. This must also be covered in the implementation guidance.

2) Do you agree or disagree that the draft regulations provide a clear definition of a ‘brand advertisement’?

Disagree, it is not clear. The [draft 2023 CAP guidance](#) specifically addressed a number of instances where the advertising restrictions would not apply as long as adverts did not include an identifiable LHF product. It would be helpful if the Regulations captured these exemptions in relation to brand advertising:

- The promotion of sustainability-related or social initiatives content, e.g. Corporate Social Responsibility (CSR) commitments.
- Adverts related to customer service experiences or loyalty schemes.
- Adverts depicting ingredients or products being processed, which cannot be identified as a finished LHF product, e.g. crisps being baked, or products on a production line.
- Adverts not intended to target specific LHF products, or where products appear in the background e.g. a supermarket shelf, basket or a table scene (Christmas lunch).

3) Do you agree or disagree that the draft regulations provide a clear definition of ‘depict’?

Disagree, it is not clear. The definition of ‘depict’ includes “depictions by way of name”, however, it is unclear what is specifically meant by ‘name’ in this context.

Assimilated Regulation (EU) 1169/2011 provides several definitions related to the ‘name of the food’, i.e. ‘legal name’, ‘customary name’ and ‘descriptive name’, and it also refers to the ‘brand name’ and the ‘fancy name’. Clarity is needed regarding which specific types of ‘name’ would fall within the scope of the depiction concept, and how the use or presentation of a ‘name’ in an advert could result in it being subject to the LHF advertising restrictions. Each type of name referred to in the Regulations must also be defined for clarity. We understand that a ‘brand name’ would often refer to a ‘registered trademark’, but this may not always be the case, and therefore clarification in the Regulations is essential.

Furthermore, the meaning of ‘other branding techniques’ remains unclear. The term is overly broad and would benefit from further clarification, ideally through a list of illustrative examples or defining characteristics.

4) Do you agree or disagree that the draft regulations are clear on how the exemption will apply to a brand for a ‘range of products’?

Agree, it is clear.

5) Do you agree or disagree that the draft regulations provide a clear definition of a ‘specific’ less healthy food or drink product?

Agree, it is clear. We are grateful for the clarification that a specific product is one that “is capable of being purchased”. However, it would be helpful if the Regulation confirmed that generic product depictions, i.e. those not linked to a purchasable item, are permitted.

6) Do you agree or disagree that the draft regulations provide a clear definition of a ‘photographic image’ of a food or drink product?

Disagree, it is not clear. It is unclear what is meant by ‘photographic image’ within the Regulations, and whether this term extends to video content (as referenced in the consultation document), or includes other visual formats such as stylised or digitally rendered images. Greater clarity on the scope of this definition would be helpful.

Also, please see our comments in Q2 above in relation to depiction that should be excluded from the restrictions where they are not the target of the advert, e.g. supermarket shelf, basket.

7) Do you agree or disagree that the draft regulations are clear that a company, franchise or other commercial entity whose name includes the full name of a specific less healthy food or drink product can still advertise its brand, as long as it was established before 16 July 2025?

Disagree, it is not clear. We have several concerns with paragraph 2(6):

- This newly introduced concept appears to conflict with the policy intent outlined in the [consultation document](#), which aimed to exempt brand advertising by avoiding an automatic association between brands and LHF. Our understanding of the text as written is that the brand advertising exemption does not apply to an “advertisement that promotes a brand, the name of which is the same name as a specific less-healthy product...” unless that ‘product name’ is the ‘full name’, or is part of, or is included in, the name of a company, franchise or commercial entity. Based on this interpretation, even if a brand encompasses both LHF and non-LHF products, advertising for that brand may still be restricted if its name matches that of a LHF product and is not also the name of the company, franchise or commercial entity. As per our response to Q3, ‘product name’, ‘full name’ and ‘brand name’ need to be clearly defined, as does the meaning of ‘other commercial entity’.
- The proposed approach risks jeopardising a company’s ability to advertise a non-LHF product in the future, thus being a blocker to product innovation and reformulation. For example, if a crisps company is established after the 16 July 2025 and only produce one LHF product with the same name, then this same company would be unable to advertise a future non-LHF product. This is particularly concerning for SMEs that may grow to over 250 employees and become caught by the restrictions.
- The cut-off date of 16 July 2025 is problematic. Whilst we appreciate that this is to prevent brands trying to circumvent the regulations by registering brands as companies, we perceive this practice as anti-competitive, as it prevents new companies and brands that are created in the future from being able to operate on a level playing field to brands/companies that existed prior to the date.

ⁱ Source: PPA own data, collected from members annually. Latest data May 2022. Covers period 1/06/21 -31/05/22.

ⁱⁱ Source: Calculation based on PPA own data (above) and Defra. Agriculture in the United Kingdom 2022. Chapter 7 Data set, which includes “Table 7.11a Potatoes; production, value, supply and use (a)” and “Table 7.11b Potatoes”. <https://www.gov.uk/government/statistical-data-sets/agriculture-in-the-united-kingdom>

ⁱⁱⁱ Source: Kantar 52 w/e 22 January 2023.

^{iv} Source: Nielsen 52 w/e 20 May 2023.