

PPA response to CAP/BCAP consultation on the implementation of “less healthy” food and drink products advertising restrictions

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 1.52 million tonnes annuallyⁱ (approximately 37% of the estimated GB potato volume in 2024ⁱⁱ).

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. Frozen chips are currently worth £842 million and is the biggest segment in savoury frozen foodⁱⁱⁱ. The sliced potato crisps market is estimated to be worth £1.83 billion in 2025^{iv}. 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 £5.25 billion in 2025^v.

Please see below our response to the recent CAP/BCAP consultation on the implementation of “less healthy” food and drink products advertising restrictions. We are really grateful for all the work done by CAP and the ASA on the many revisions of the guidance and are thankful for the opportunity to respond to this new consultation. PPA have worked with the Advertising Association (AA) and the Food and Drink Federation (FDF) and have been keen supporters of the voluntary Industry Agreement. Our members from all sectors are responsible advertisers and have agreed to adhere to the Industry Agreement as of 1 October 2025.

Timely implementation guidance is essential for ensuring compliance with the LHF advertising restrictions, and the draft guidance represents a welcome step forward. The sector recognises the complexity and subjectivity of these restrictions and is acutely aware that publication of the guidance is long overdue. As such, there is a strong desire to see it released without further delay.

To enhance its practical value, we recommend including illustrative examples and a decision tree, either now or in future iterations, to better support compliance. It is also important that the guidance is reviewed regularly to ensure it remains current as advertisers adapt to the legal requirements and gain experience through implementation.

Consultation questions

Question (i) – Do you agree that the proposed wording of the TV rule (32.21) set out in 3.4 above and as it appears in Annex A adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective. If not, please state explain why, with reference to the relevant legislative provisions.

Yes. We have no objections to the proposed wording.

Question (ii) – Do you agree that the proposed wording of the ODPS rule (30.16) set out in 3.5 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective. If not, please state why, including details of any alternative approach you consider more effective.

Yes. We have no objections to the proposed wording.

Question (iii) – Do you agree that the proposed wording of the online rule (15.19) set out in 3.6 above and as it appears in Annex B adequately reflects the relevant legislation? If not, please state why including details of any alternative approach you consider more effective.

Yes, we have no objections to the proposed wording. However, it is essential that the guidance explicitly references the regulatory framework applicable to Internet Protocol TV (IPTV) services, including both Ofcom-regulated and unregulated services. Whilst we understand that Ofcom-regulated IPTV services fall under the rules for television services (as outlined in section 321A of the Communications Act 2013), and unregulated IPTV services are subject to the online restrictions (section 368Z14 of the Communications Act 2013), this distinction must be clearly stated in the implementation guidance. In addition, section 3 should ideally reiterate the exemption from online rules when IPTV services are broadcast simultaneously across both media (stated under 6.3.9), so all rules applicable to IPTV are listed together.

Question (iv) – Do you agree that the guidance set out in part 3 (Background) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Yes. We have no objections to the proposed wording. However, we strongly recommend including a decision tree within the guidance to clarify the steps and rationale the ASA will follow when assessing compliance. This should cover the full scope of the TV and online restrictions, from identifying relevant products, businesses, and media, through to the application of the identifiability test, to support consistent interpretation and implementation.

Question (v) – Do you agree that the guidance set out in part 4 (Determining products in scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Yes. We have no objections to the proposed wording.

Question (vi) – Do you agree that the guidance set out in part 5 (Nature of the advertiser) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Yes. We have no objections to the proposed wording. However, we would suggest that information about liability of third parties involved in advertising, such as agencies and influencers (as outlined in 6.3.4) is included under part 5. Furthermore, a definition of 'influencer' would be helpful (see also our comments re. influencer marketing under Question (vii)).

Question (vii) – Do you agree that the guidance set out in part 6 (Media and scope) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

Not entirely. Although part 6 is mostly clear, it does not address the interaction between the LHF advertising restrictions and the online promotion restrictions of food high in fat, sugar and salt (HFSS) (currently applicable in England under the Food (Promotion and Placement) (England) Regulations 2021, as amended). The implementation guidance issued by the Department of Health and Social Care (DHSC) on the England Regulations on HFSS promotion restrictions, specifies the following:

Banners or headers

If a header on a website is owned and controlled by the qualifying business, and does not show specified foods within a different schedule 1 category to the one the consumer is searching for or browsing, then the header is permitted. For example, if a customer is on a cakes page, banners of other cakes or indeed fresh fruit and vegetables (non-specified foods) on that page are allowed.

However, headers or banners are not permitted to show specified foods from other categories – such as yoghurts or pizzas – on that page, unless they are not offered for sale but merely advertisements linking through to third-party websites.

A banner on a home page can feature images of specified food if the banner is not offering the food for sale but only signposting to a taxonomy page. The taxonomy page can feature a mix of specified and non-specified food if the consumer is searching or browsing the category of specified food that is shown.

It is our understanding that such a representation (as highlighted/underlined above) would now fall foul of the LHF advertising restrictions, but it would be helpful if the guidance document included examples of when online marketing displays would constitute advertising. As a minimum, we ask CAP to include a link to the DHSC implementation guidance, directing users to refer to the section on online promotion and placement restrictions.

In addition, paragraph 6.3.6 addresses influencer marketing. It is our understanding that payment alone would bring an online ad in scope of the LHF advertising regulations. Editorial control does not play a part in determining compliance against the LHF advertising regulations, and therefore this should be explicitly stated in this implementation guidance.

With regards to paragraph 6.3.9 (covering exemptions to the online rule), it would be helpful if the guidance included examples to illustrate the exemptions in practice.

And finally, the guidance should expand on the nature of underlying contractual arrangements when determining whether an advertisement qualifies as ‘paid-for’. We would appreciate further clarification on how different types of commercial relationships will be evaluated (e.g. general sponsorship, manufacturer/supplier vs. retailer), and examples of what would constitute payment, particularly in cases where promotional content is shared by a sponsored entity, or a retailer promotes a supplier's products in ways other than via product listings on their website. In such instances, it would be helpful to understand where liability would lie.

Question (viii) – Do you agree that the guidance set out in part 7 (The brand advertisement exemption) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We are grateful for the clarity provided by part 7 of the draft document. However, the guidance does not expand much from the requirements set in the legislation and therefore would highly benefit from the inclusion of additional practical examples/scenarios, such as those included in the 2023 draft guidance. For example:

- When a brand of crisps (that has many different flavour variants) advertises their brand by showing crisps being produced, and depicts potatoes, together with images of cheese and onion, would such an advert be considered for their cheese and onion variant, and therefore be caught under the Regulations? How about if the same advert depicted potatoes, together with many ingredients that are used in the many different products made under the same brand, e.g. cheese and onion, but also salt and vinegar, and chillies (that will not necessarily be used in combination in any of their flavour variants)? And if the advert only depicted potatoes being fried in oil? We understand that the latter two examples would not be caught by the advertising restrictions, but the lack of examples in the guidance leads to uncertainty.
- Paragraph 7.2.5 refers to the use of a ‘unique colour scheme’ as part of a combination of brand techniques that may bring an advert within scope of the restrictions. In the snacks sector, colour is commonly used to differentiate flavour variants (e.g. red for salted, blue/green for salt & vinegar) within product ranges that may include both LHF and non-LHF products. Where an advert features the brand logo alongside a colour associated with a specific flavour, it is unlikely that consumers would be able to identify a particular LHF product. Greater clarity on how such use of colour is assessed under the guidance would be appreciated.

Additionally, we draw your attention to the paragraph below, which may need to be re-worded (the 3rd paragraph, in particular), as it is currently unclear:

7.3.1 – The brand advertising exemption does not apply to “an advertisement that promotes a brand the name of which is the name of a specific less healthy food or drink product” (regulation 2(4)). For example, an advertisement including:

- *the name of a brand that is exactly the same as the full name of a specific less healthy product will not fall under the brand advertising exemption.*
- *the name of a brand of a range that is exactly the same as the full name of a specific less healthy product is unlikely to fall under the brand advertising exemption.*
- *the name of a range that is a common part of the names of all product variants supplied under it, but is not the full name of a specific less healthy product (for instance, each product variant has a further named descriptor, like a flavour), **is will** fall under the brand advertising exemption.*

Furthermore, because the guidance is so close to the legislation, it is difficult to differentiate legal requirements to interpretation and best practice. For example, paragraph 7.4.3 states that:

7.4.3 – If an advertisement includes a picture of a product without packaging that is from a range of products that includes both in and out of scope variants that are visually indistinguishable from a specific less healthy product, the advertisement should include additional information to make clear that the product shown is a non-less healthy variant.

We understand this is guidance/good practice to support the assessment of an advert against the identifiability test (set out in part 8 of the document), but this is not clearly differentiated from other (i.e. legal) text in the guidance. We really appreciate this type of guidance and would encourage further similar examples supporting compliance to be provided.

Question (ix) – Do you agree that the guidance set out in part 8 (The identifiability test) of Annex C is clear and properly reflects the relevant legislation? If not, please state why, including details of any alternative approach you consider more effective.

We appreciate the inclusion of guidance on the ‘Identifiability test’ and welcome the effort to clarify this important area. To further support understanding and implementation, it would be helpful to expand on how the assessment will be conducted and the relative weighting of the elements considered. A flow chart or structured list outlining the components of the assessment, including ‘content’ and ‘context’, and their respective weightings would be particularly useful.

Additionally, as noted earlier in our response, Section 8 of the guidance would benefit from practical examples illustrating the application of the identifiability test. In particular, the second and third bullet points under 8.2.2 would be strengthened by the inclusion of further examples and suggested mitigation measures to assist advertisers in achieving compliance. We recognise this may be a challenging request given time constraints but believe that additional detail would significantly enhance the guidance.

ⁱ Source: PPA own data, collected from members annually.

ⁱⁱ Source: Calculation based on PPA own data (above) and Defra. *Agriculture in the United Kingdom 2024. Accredited official statistics. Chapter 7: Crops. Volume of harvested production. For human consumption. 2024. 5,137 thousand tonnes. Published 10 July 2025 (Link: <https://www.gov.uk/government/statistics/agriculture-in-the-united-kingdom-2024>).*

ⁱⁱⁱ Source: Nielsen Discover Frozen Potato data to 14th Sept 2025 RSV 52 weeks

^{iv} Source: Kantar 52 w/e 6 September 2025.