
Changes to legislation: There are currently no known outstanding effects for the Health and Care Act 2022, PART 1. (See end of Document for details)

SCHEDULES

SCHEDULE 18

ADVERTISING OF LESS HEALTHY FOOD AND DRINK

PART 1

PROGRAMME SERVICES: WATERSHED

Television programme services

1 After section 321 of the Communications Act 2003 insert—

“321A Objectives for advertisements: less healthy food and drink

- (1) OFCOM must set standards by virtue of section 321(1)(b) prohibiting television programme services provided between 5.30 am and 9.00 pm from including advertisements for an identifiable less healthy food or drink product, except as provided for by subsection (3).
- (2) OFCOM must ensure that the prohibition provided for by the first standards set by virtue of subsection (1) takes effect from the beginning of 1 January 2023.
- (3) Standards set by virtue of subsection (1) must exempt from the prohibition imposed by them—
 - (a) advertisements included in television programme services as a result of arrangements made by or on behalf of a person who is, at the time when the arrangements are made, a food or drink SME;
 - (b) advertisements prescribed in any regulations made by the Secretary of State under this paragraph.
- (4) For the purposes of this section—
 - (a) “advertisements” includes advertisements under a sponsorship agreement and anything else which, under a sponsorship agreement, is included in a television programme service, other than in a television programme;
 - (b) a product is “identifiable”, in relation to advertisements, if persons in the United Kingdom (or any part of the United Kingdom) could reasonably be expected to be able to identify the advertisements as being for that product;
 - (c) a food or drink product is “less healthy” if—
 - (i) it falls within a description specified in regulations made by the Secretary of State, and
 - (ii) it is “less healthy” in accordance with the relevant guidance;

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- (d) “the relevant guidance” is the guidance entitled “Nutrient Profiling Technical Guidance” published by the Department of Health on 1 January 2011;
 - (e) “food or drink SME” means a small or medium enterprise, within the meaning given by regulations made by the Secretary of State, of a description specified in the regulations.
- (5) Regulations under subsection (4)(e) that make provision by reference to the number of members of staff of a person may make provision about who is to count as a member of staff (including members of staff of another person).
 - (6) The Secretary of State may, before the date specified in subsection (2), amend that subsection so as to substitute a later date for the date that is for the time being specified there.
 - (7) The Secretary of State may by regulations amend this section to change the meaning of “the relevant guidance”.
 - (8) Before making regulations under subsection (3)(b) or (7), the Secretary of State must consult such persons as the Secretary of State considers appropriate.
 - (9) A statutory instrument containing regulations under subsection (7) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Commencement Information

II Sch. 18 para. 1 in force at 28.6.2022, see s. 186(4)

On-demand programme services

2 After section 368F of the Communications Act 2003 insert—

“368FA Advertising: less healthy food and drink

- (1) From the beginning of 1 January 2023, on-demand programme services must not, between 5.30 am and 9.00 pm, include advertisements for an identifiable less healthy food or drink product.
- (2) The prohibition imposed by subsection (1) does not apply in relation to advertisements included in on-demand programme services as a result of arrangements made by or on behalf of a person who is, at the time when the arrangements are made, a food or drink SME.
- (3) The Secretary of State may by regulations provide for further exemptions from the prohibition imposed by subsection (1).
- (4) For the purposes of this section—
 - (a) “advertisements” includes advertisements and sponsorship announcements (within the meaning given by section 368G(17)) under a sponsorship agreement;
 - (b) a product is “identifiable”, in relation to advertisements, if persons in the United Kingdom (or any part of the United Kingdom) could

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- reasonably be expected to be able to identify the advertisements as being for that product;
- (c) a food or drink product is “less healthy” if—
 - (i) it falls within a description specified in regulations made by the Secretary of State, and
 - (ii) it is “less healthy” in accordance with the relevant guidance;
 - (d) “the relevant guidance” means the guidance entitled “Nutrient Profiling Technical Guidance” published by the Department of Health on 1 January 2011;
 - (e) “food or drink SME” means a small or medium enterprise, within the meaning given by regulations made by the Secretary of State, of a description specified in the regulations.
- (5) Regulations under subsection (4)(e) that make provision by reference to the number of members of staff of a person may make provision about who is to count as a member of staff (including members of staff of another person).
- (6) The Secretary of State may, before the date specified in subsection (1), amend that subsection so as to substitute a later date for the date that is for the time being specified there.
- (7) The Secretary of State may by regulations amend this section to change the meaning of “the relevant guidance”.
- (8) Before making regulations under subsection (3) or (7), the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (9) A statutory instrument containing regulations under subsection (7) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Commencement Information

I2 Sch. 18 para. 2 in force at 28.6.2022, see s. 186(4)

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