

Rethinking the UK salt reduction policy: the role of law-based interventions

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Excessive salt consumption is associated with a number of NCDs, including cardiovascular disease, hypertension, and raised blood pressure and cholesterol. While UK policy has been relatively successful to date in reducing the overall salt consumption of the population, there is scope for a more multifaceted approach that would lead to significant public health gains. This paper analyses the role that law-based interventions could play in salt reduction policy.

Law as an opportunity

The law – through interventions such as taxation, labelling, advertising and product regulation – can be a powerful tool to promote changes in the food environment. The current UK strategy on salt reduction is based on voluntary product reformulation action, whereas a comprehensive strategy would also utilise the capacity of legal interventions to correct the health inequalities that underlie high population salt intake levels, promote lasting change to the food environment, and limit the opportunity for conflicts of interest to undermine effective public health policy. The Childhood Obesity Strategy Chapter 2 shows that the UK government is increasingly prepared to think beyond information and education as strategies for protecting public health, and these lessons can and should be applied to salt policy more generally.

Ensuring compliance with International and EU Trade Law

Any legislative interventions adopted as part of salt reduction strategies must nevertheless comply with the law. Industry operators have argued that a range of NCD prevention policies infringe international and EU trade law, as they seek to restrict the consumption of freely traded goods. However, under international and EU trade law, states have a broad margin of discretion to determine the means they intend to use to protect public health. However, when invoking public health to justify exceptions to the general rules on trade liberalization they must ensure that they comply with the core principles of non-discrimination and necessity.

Non-discrimination: salt reduction measures must be neutral and should not give a competitive advantage to domestic products over imported products. It is therefore essential that states should ensure that nutrition profiling systems or taxation systems are based on objective criteria (e.g. public health protection) rather than arbitrary or protectionist reasons.

Necessity: salt reduction measures must also be necessary to meet a legitimate public health objective. It is essential that states clearly identify their policy objectives (e.g. preventing NCDs associated with salt consumption) and precisely frame their measures accordingly (e.g. restricting the marketing of food with a high salt content). There is a substantial evidence base available to support the necessity of legal interventions in achieving public health objectives, but states have the burden to rigorously demonstrate how this evidence base justifies the measures they have adopted to fulfil the objectives they pursue. Engaging with these legal issues (and the legal experts familiar with them) explicitly and early in the policymaking process will strengthen measures against potential legal challenges, and increase the chances of successful implementation.

For a rights-based approach to salt reduction

Salt reduction measures may also be challenged on the basis that they infringe the right of industry operators to free expression (which includes commercial expression such as advertising) and their right to property (which includes intellectual property such as trademarks). However, these rights are not absolute, and may be limited by governments seeking to protect public health. Again, states must demonstrate that the salt reduction measure under review is necessary to achieve the objective of protecting population health, and whether a form of protection that intrudes less upon commercial freedoms could have been implemented. In general, UK and EU courts have allowed a broad margin of discretion to governments and upheld evidence based health measures.

By explicitly grounding measures in the rights of individuals to enjoy health-promoting environments, especially where the measure aims at the protection of children, states will be in an even stronger position to counter fundamental rights based legal challenges, and may even dissuade some of these challenges entirely.