

Nutrition and health claims on food: proposed legislative reforms

Action on Salt is an organisation supported by 21 expert members and working to reduce the salt intake of the UK population to prevent deaths, and suffering, from heart disease, stroke, kidney disease, osteoporosis and stomach cancer.

Action on Sugar is a group of experts concerned with sugar and obesity and their effects on health. It is working to reach a consensus with the food industry and Government over the harmful effects of a high calorie diet, and bring about a reduction in the amount of sugar and fat in processed foods to prevent obesity, type 2 diabetes and tooth decay.

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The government wants to ensure that consumers can have confidence in the food they buy, and any health benefits promoted on the label. The nutrition and health claims regulations ensure that claims made about a food or drink are accurate and not misleading so that consumers can make informed choices to meet their lifestyle and nutritional needs.

The reform proposals contained within this consultation are largely technical in nature, and are not related to the healthfulness of foods and drinks that feature nutrition and health claims. The government is proposing changes in relation to nutrition labelling, composition and standards (NLCS) retained EU law.

The consultation sets out 2 proposals:

- reforming nutrition and health claims enforcement in England by introducing an improvement notices regime
- removing redundant tertiary legislation that approved or rejected health claims from the statute book

The government is determined to realise the benefits of EU exit by ensuring that smarter regulation supports the UK's ambitions of creating the best regulated economy in the world, and stimulating economic growth, innovation and job creation.

The government wants to ensure that consumers can have confidence in the food they buy, and any health benefits promoted on the label. The nutrition and health claims regulations ensure that claims made about a food or drink are accurate and not misleading so that consumers can make informed choices to meet their lifestyle and nutritional needs. These regulations ensure that nutrition and health claims have been scientifically assessed and supported by evidence.

NB Although the consultation is being conducted by the UK government, the proposals for revocation would, if taken forward, be implemented via a Great Britain-wide statutory instrument (SI) which would be subject to the consent of ministers in Scotland and Wales.

Proposal 1

It is a criminal offence to use an unauthorised nutrition or health claim - for example, one that is not included in the legislation. However, the current enforcement procedure does not align with other food labelling enforcement which is less bureaucratic, more proportionate, and largely welcomed by businesses and enforcement agencies alike.

An improvement notice regime enables a consistent and low-resource enforcement approach to labelling offences.

Do you agree or disagree to the introduction of an improvement notice regime for nutrition and health claims as an additional step for enforcement authorities in England?

- Agree
- Disagree
- Don't know

Please explain your answer.

Action on Salt and Action on Sugar would support a mechanism that would reduce the burden on enforcement agencies (Trading Standards or environmental health department), if it results in increased compliance with the nutrition and health claims regulations.

If current enforcement in England, by which breaches are punishable by a criminal prosecution (fine or imprisonment), is not acting as a deterrent to potential law-breakers, we agree that the system needs improvement. It is our understanding that the current policy is not adequately acting as a deterrent because reported offences are not carried through to prosecution, due to time pressures on the enforcement officers, and the costly and burdensome court proceedings.

We are encouraged to hear that experience of the use of improvement notices by enforcement officers has shown that in most cases, an improvement notice is sufficient incentive for business to make the appropriate changes to become compliant with regulations. However this statement is not evidenced in the consultation, and thus we are unable to state confidently that this policy amendment will improve compliance.

We support policy reforms that will act as an added incentive for enforcement authorities to address non-compliance and for ease of businesses to ensure compliance with regulations. We are uncertain whether lack of compliance is due to limitations of the current policy, or because there is a lack of enforcement staff to follow up on potential offences, and a lack of resource (staffing, financial and legal). In particular, a lack of legal support is available to enforcement staff to take offenses through to legal proceedings, let alone prosecution. Issues within the Trading Standards or environmental health departments workforce are not included in the Impact Assessment, thus we are unsure where the root of the issues lies.

We would be concerned that the changes in regulation are stated solely to 'benefit businesses and enforcement agencies', however, as the legislation should be to the benefit of the public. Benefit to the public is not included in the Impact Assessment. It is vital that if there is a case where the offence could pose a risk to health, there remains a mechanism where an enforcement officer can still proceed immediately to prosecution.

Do you agree or disagree with allowing a 3 month notice period to bring in improvement notices?

- Agree
- Disagree
- Don't know

Please explain your answer.

If an improvement notice is being brought in, 3 months seems a reasonable period of adjustment. We also agree that the changes should come into force a maximum of 3 months from when the SI is made to enable industry and trading standards to prepare.

Proposal 2

Revoking redundant tertiary legislation would allow us to tidy up the UK NLCS statute book, making it simpler to navigate.

Do you agree or disagree with removing redundant tertiary legislation relating to the authorisation of health claims?

- Agree
- Disagree
- Don't know

Please explain your answer.

We agree that the UK NLCS statute book should be simpler to navigate for enforcement officers, and support the revocation of redundant tertiary legislation. We note that revoking this legislation has no legal impact as the legislation either rejected claims or the authorised claims are retained in the annex to Commission Regulation EU (No) 432/2012.

Impacts and benefits

As these proposals either maintain existing standards or streamline enforcement processes, it is proposed that no new burdens for businesses would be created.

Through these reforms we believe that we will achieve the right balance between safeguarding the public health needs of consumers and the burden on industry through robust and proportionate regulation.

Do you agree or disagree with the impacts that have been identified as resulting from proposals set out within this consultation?

- Agree
- Disagree
- Don't know

Please explain your answer.

We note no new burdens for businesses would be created, and that the only cost impact is familiarisation on business and enforcement authorities - that is, the total wage costs, on a per business or per local authority basis, for the time needed for an employee and a manager or director within the company to read and understand how the changes will affect business and the enforcement regime.

Are you aware of any impacts that have not been identified in this consultation?

- Agree
- Disagree
- Don't know

Please explain your answer.

The systemic lack of resources for enforcement officers, alongside an increase in enforcement duties, may in fact be the root of compliance issues. It is our view that if an improvement notice regime enables a consistent and low-resource enforcement approach to labelling offences, that will result in increased compliance with the regulations, we will support this approach. However there is insufficient evidence provided in the consultation to be able to state this with certainty.

Do you agree or disagree with the benefits these proposals would have which are referred to in the consultation?

- Agree
- Disagree
- Don't know

Please explain your answer.

Previous exploration of enforcement has found that there is very little formal reporting of cases of suspected non compliance into Trading Standards, the burden of submitting a complaint lies with the complainant and it is therefore time-consuming and resource-intensive (it is our view that it should not be down to the public/NGOs to raise formal complaints when observed). Evidence of systematic poor compliance raises a serious question about functionality of the enforcement system - e.g. labelling of infant formula and follow on formula. In the absence of systematic monitoring of compliance, enforcement is non-functional, regardless of how the mechanism is meant to work in theory.

Action on Salt and Action on Sugar would like to see a much more systematic and transparent approach to monitoring compliance;

- All inspections to be logged
- Type of company should be reported eg primary producers, manufacturer and packers, importers/exporters, distributors and packers, retailers and restaurants/caterers
- Outcomes of investigations (including where no further action has been taken) to be reported
- For the reporting to be transparent, published on eg the Food Standard Agency Website

There is a framework for the application, assessment and decision-making regarding the approval of nutrition and health claims, which are required to be based on scientific evidence and may only be used if they have first been approved by a UK appropriate authority following relevant risk assessment and risk management.

However the understanding of 'what a health and nutrition claim' is, is not as clear as outlined in the consultation introduction E.g. 'anti-reflux milk' - name of infant formula not counted as a claim though arguably reads as one? E.g. 'one of your five a day' on many fruit-based baby foods - not a claim? The Action on Salt and Action on Sugar would like the framework to include a requirement for a product to pass following a nutrition profiling assessment, such as using the Department of Health and Social Care's (DHSC) Nutrient Profile Model.

If it is important to this government that nutrition and health claims used are accurate, and consumers are not misled by marketing statements that make foods appear healthier or more nutritionally beneficial than they are, we would like to see a further consultation on the use of nutrition and health claims on foods deemed to be less healthy.

What classifies as a health or nutrition claim

DHSC Guidance Notes to assist with interpretation of the UK nutrition laws states the following about nutrition and health claims for infant formula¹ which is relevant to all foods/drinks: 'Article 8 of the Commission Delegated Regulation states: Nutrition and health claims are prohibited on infant formula.

¹ Department of Health and Social Care (DHSC). 2-22. Guidance Commission Delegated Regulation (EU) 2016/127 (supplementing Regulation (EU) No 609/2013): guidance Updated 14 March 2022. <https://www.gov.uk/government/publications/infant-and-follow-on-formula-and-food-for-special-medical-purposes/commission-delegated-regulation-eu-2016127-supplementing-regulation-eu-no-6092013-guidance>

The following definitions, which are set out in Regulation (EC) No 1924/2006 on nutrition and health claims made on foods, apply for the purposes of the Commission Delegated Regulation:

'Claim' means any message or representation, which is not mandatory under any enactment, including pictorial, graphic or symbolic representation, in any form, which states, suggests or implies that a food has particular characteristics.

'Nutrition claim' means any claim which states, suggests or implies that a food has particular beneficial nutritional properties due to:

- (a) the energy (calorific value) it:
 - o Provides
 - o provides at a reduced or increased rate, or
 - o does not provide

And/or:

- (b) the nutrients or other substances it:
 - o Contains
 - o contains in reduced or increased proportions, or
 - o does not contain

'Health claim' means any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health.

'Reduction of disease risk claim' means any health claim that states, suggests or implies that the consumption of a food category, a food or one of its constituents significantly reduces a risk factor in the development of a human disease.

Currently, the legislation on processed cereal-based foods and baby foods for infants and young children (Commission Directive 2006/125/EC) provides the following provision on claims, which is inadequate: 'Whilst claims not specifically prohibited may generally be made for the products in question in conformity with the rules applicable for all foodstuffs, such claims should, where appropriate, take into account the compositional criteria specified in this Directive.'²

Examples of health claims on less healthy foods:

- o Bite Back 2030 report in 2021 exposed the powerful, deliberate and dishonest marketing tactics being employed by the food & drinks industry to encourage teens to eat unhealthy products in ever increasing quantities [Bite Back (2021) Don't Hide What's Inside, https://biteback.contentfiles.net/media/documents/Dont_Hide_Whats_Inside.pdf]. They found: over half (57%) of food and drink products popular with teens, and with 'health halos' driven by health and nutrition claims, are high in either salt, saturated fat or sugar and would receive a red traffic light label. 76% of juices and smoothies would receive a red traffic light label for high levels of sugar; 81% for cereal bars; and 35% for flavoured yoghurts. A 17-year-old reported selecting a can of 'Innocent Bubbles' based on its colourful packaging that reflected the drink's fruit flavours and included the health claim 'Tastes good, does good.' One can of Innocent Bubbles contains 20g of sugar, which is 67% of a young person's maximum daily recommended allowance of free sugars.
- o Nature Valley Crunchy Granola Oats & Honey is marketed as '100% wholegrain oats'. However, a 42g bar contains nearly 3 teaspoons of sugar and would receive a red traffic light for sugar.

² Commission Directive 2006/125/EC of 5 December 2006 on processed cereal-based foods and baby foods for infants and young children. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006L0125>

- Grenade Carb Killa Protein Bar Salted Peanut is marketed as ‘high protein, low sugar’. However, a 60g bar contains nearly a third of the daily recommended maximum for saturated fat and would receive a red traffic light for saturated fat.
- Muller’s Frijj Chocolate Milk is marketed as ‘a source of protein, calcium and Vitamin B12’. However, a 400ml bottle contains 11 teaspoons of sugar and would receive a red traffic light for sugar.
- Kelloggs Crunchy Nut Bites Honey & Nut breakfast cereal is marketed as a ‘source of fibre’. However, a 30g portion contains one third of the daily recommended maximum for sugar, and would receive a red traffic light for sugar.
- KIND caramel almond & sea salt is marketed as ‘High fibre’. However, a 40g bar contains 3.2g of saturated fat and would receive a red traffic light.

In addition, there are certain foods that have specific composition and labelling requirements. These include:

- infant formula and follow-on formula (IFFOF)
- baby foods eg food intended for use by infants when they are weaned and by young children as a supplement to their diet and/or for their progressive adaptation to ordinary food
- foods for special medical purposes (FSMP) (for the dietary management of disease, disorder or medical conditions) Nb includes infant milks marketed as FSMP
- total diet replacement (TDR) for weight control products
- the composition and labelling of food supplements including the vitamins and minerals which can be added to them and the restrictions and prohibitions on the sale of these products

The NLCS REUL protects some of the most vulnerable people in society, including infants (legally defined in these regulations as 0-12 months), young children (legally defined as 12-36 months in these regs) and people who have specific nutritional needs for health reasons. As well as ensuring that accurate nutritional information is provided to consumers, NLCS legislation ensures robust compositional standards to help maintain high standards of quality and safety. This should help consumers to make informed choices about their diet and have trust in the food they consume. However, the FSMP category is being abused by industry and we support the recommendations made by First Steps Nutrition Trust in their submission to this consultation.

There is also a need to address nutrition and health claims that are extensively used on baby and toddler products in a way that is technically correct, but misleading. A recent survey of nearly 100 baby and toddler breakfast items found 86% of products claim to have ‘no added sugars’ or ‘only naturally occurring sugars’ despite many containing free sugars from fruit juices, concentrates and purees, misleading parents/carers into thinking that the product is healthier than it is.

- *Aptamil Oats, Raisin and Apple Bircher Muesli*, containing 21g/100g total sugars uses claims on packaging such as “no added salt, no added sugar, no preservatives, contains naturally occurring sugars and salt only, unique blend of ingredients, iron supports normal cognitive development, vitamin C, and Vitamin D contributes to the normal function of the immune system”
- *Cow & Gate My First Muesli 10m+*, containing 20g/100g total sugars uses claims on packaging such as “no added sugar, no artificial colours, flavours or preservatives, source of calcium, source of iron, contains naturally occurring sugars and salt only”
- *Ella’s Kitchen Banana Baby Brekkie*, containing 13.6g/100g total sugars uses claims on packaging such as “no added salt, no added sugar, organic, no added water, no lumps or bits and nothing artificial, just yummy organic food for babies, contain naturally occurring sugars and dairy free”
- *Aptamil Creamed Banana Porridge*, containing 26g/100g total sugars uses claims on packaging such as “contains naturally occurring sugars and salt, with our blend of galacto- and fructo-oligosaccharides, vitamin D for normal development of bones, iron to support normal cognitive development, vitamin A and C, suitable for first weaning”

- *Aptamil Multigrain Cereal*, containing 23g/100g total sugars uses claims on packaging such as “iron, to support normal cognitive development, Vitamins A and C, Vitamin D for normal development of bones”
- *Milupa Sunshine Orange Cereal* 33.2g/100g total sugars uses claims on packaging such as “high in iron, high in calcium, high in Vitamin D3. Contains naturally occurring sugar”
- *Hipp Organic Creamy Porridge*, containing 31.4g/100g total sugars uses claims on packaging such as “no added salt, no added sugar, contains 12 key vitamins and minerals and rich in calcium, supports bone development and rich in iron, supports cognitive development & the immune system, rich in vitamin C, supports iron absorption”

Aside from specific nutrition or health claims, there is a need for specific restrictions governing the visual appeal and design of packaging. Companies use cartoon characters and other child-appealing packaging on children's breakfast cereals and yogurts, for example, suggesting these products are suitable for children, when in fact many have high or medium levels of sugar, salt or saturated fat. Known as ‘pester power’, this marketing tactic is intentionally designed to attract the attention of children and influence their caregivers’ purchases. Whilst there are restrictions in place to prevent the irresponsible advertising of foods high in fat, salt, and sugar during peak viewing times for children, an evident loophole exists when it comes to product packaging. Unlike advertisements, there are no specific restrictions governing the visual appeal and design of packaging which influences children’s preferences. For example, 47% cereals with child appealing packaging contain one third of a 4-6 year olds daily maximum sugars recommendation in just one bowl [<https://www.actiononsugar.org/surveys/2023/breakfast-cereals-and-yogurts/#d.en.1068864>]

Other examples of foods with child appealing packaging:

- *Kellogg’s Frosties* - have Tony the Tiger on pack, and claim to have natural grains and added goodness (Vitamins D, B6 and B12), but contain 37g/100g total sugars
- *Kellogg’s Coco Pops Mega Pops* have Coco the Monkey, and claim to ‘support your family’s health; supporting brain function with iron, folic acid and riboflavin help reduce tiredness and fatigue, 50% daily vitamin d needs to support healthy bones, but contain 21g/100g total sugars
- *Heinz Peppa Pig Pasta shapes in tomato sauce*, claim to be 1 of your 5 a day, low in fat, low in sugar, Iron supports normal cognitive development Vitamin D supports normal bone development. However it contains 0.8g salt per can, which is 40% of the maximum recommended limit for a 3 year old.

We support First Steps Nutrition Trusts specific recommendations for formula milks, made separately in their submission to this consultation.