

# Current & Emerging Issues

**The Calorie Labelling (Out of Home Sector) (England) regulations 2021** - This legislation aims to make it easier for people eating out to understand how much energy is in the food they are eating. It will require larger food catering outlets (over 250 employees) to display calorie information about the food they sell to enable customers to make informed choices from 6<sup>th</sup> April 2022. We have been advising Primary Authority Partners whom it affects and are raising awareness of the new requirements through re-tweeting Food Standards Agency information. Businesses will continue to be supported with specific advice when requested, although because it only affects larger catering outlets we anticipate that the majority of advice will be via the Primary Authority route.

**The Food (Promotion and Placement) (England) Regulations 2021** - The aim of these regulations is to:

- reduce the availability of products high in fat, salt and sugar (HFSS) bought through “volume promotions” like ‘buy one get one free’ offers, and
- to restrict the placement of HFSS product categories in high footfall areas of an affected store, like checkouts, end-of-aisle units, store entrances, and designated queueing areas.

We have been advising Primary Authority Partners whom it affects and are raising awareness of the new requirements through re-tweeting Food Standards Agency information. As part of this we have been working closely with the Association of Convenience Stores (ACS) who have over 30,000 members across the Country to write some guidance for their members to make the requirements clear and accessible. The first 3 pages are shown below, but the full guidance is now publicly available here: [acs assured advice - hfss 2022.pdf](https://www.acs.org.uk/assured-advice-hfss-2022.pdf)

The guidance document contains Assured Advice under the ACS Primary Authority scheme. For more details visit [www.acs.org.uk/assured-advice](http://www.acs.org.uk/assured-advice)

**ACS advice**

**HFSS PRODUCTS: PROMOTION AND LOCATION REGULATIONS**

The intention of The Food (Promotion and Placement) (England) Regulations 2021 is to:

- reduce the availability of products high in fat, salt and sugar (HFSS) bought through “volume promotions” like ‘buy one get one free’ offers, and
- restrict the placement of HFSS product categories in high footfall areas of an affected store, like checkouts, end-of-aisle units, store entrances, and designated queueing areas.

An ACS advice guide for retailers [www.acs.org.uk](http://www.acs.org.uk)

ACS the voice of local shops

ACS the voice of local shops

HFSS PRODUCTS: PROMOTION AND LOCATION REGULATIONS - An ACS advice guide for retailers

Convenience retailers' obligations under these regulations depend on the number of employees in their business and the size of their selling space in store(s). ACS' Assured Advice guide will help convenience retailers to understand:

- Which convenience retailers are impacted by the regulations.
- What volume promotions you can and cannot run on HFSS products.
- Where in your store you can and cannot display HFSS products.
- What area of your website and online platforms are affected.
- How you can determine if a product is HFSS.
- How the regulations will be enforced.

**What is a HFSS product?**

The regulations apply to the categories of prepackaged goods set out in the list below. However, this does not mean every product within each category will be restricted.

Products must be assessed on an individual basis to determine their 'nutritional profiling score' (NPS). Retailers should work with suppliers to establish what products are HFSS. The majority of suppliers will be clearly communicating what products are HFSS.


**1. IS MY BUSINESS IMPACTED BY THE REGULATIONS?**

**STEP 1/3: Restrictions on volume promotions**

Convenience retailers with more than 50 employees must not offer volume promotions on HFSS products. The calculation of your employee numbers could be impacted by your participation in a 'franchise agreement', including membership of symbol groups.

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      Q1{Do you have 50 or more employees?} -- YES --> A1[You cannot run volume promotions on HFSS products in stores or online.]
      Q1 -- NO --> Q2{Do you operate any part of your business as a franchise or are you a member of a symbol group?}
      Q2 -- YES --> A2[Add your symbol group or franchise head office whether their advice is that you are included in these regulations.]
      Q2 -- NO --> A3[You are exempt from all parts of these regulations.]
  
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**Franchise agreements and symbol groups**

Convenience retailers that are deemed to have a 'franchise agreement' will have to calculate their employee numbers based on all employees within the whole franchise business or symbol group they are part of, not just the people directly employed in stores.

Convenience retailers will need to consult their symbol group supplier or franchise partner to discuss whether their agreement is considered to be a 'franchise agreement' as defined in the regulations. The regulations define a 'franchise agreement' based on the following criteria:

- You agree with another party to the sale or distribution of food.
- You agree with another party to the supply of particular food products specified in an agreement.
- You agree with another party to comparable contractual arrangements as other businesses in all products provided by the franchisor.
- The internal or external appearance of the premises.
- The business model used for the operation of the business.

Retailers should give access to legal advice on the status of their contracts, either at advice provided by their symbol or franchise head office, or, if the retailer has sourced themselves.

Source: The Food (Promotion and Placement) (England) Regulations 2021 Section 2 (Marketing)

As this legislation affects a wide range of businesses, as well as responding to requests for advice we will also be talking to businesses as we visit them for other reasons to raise awareness and ensure they are considering how they will comply when it is in force.

**Major Changes to Online Safety Bill to tackle scams and fraud:** After a major campaign on the issue of online harms the Department for Digital, Culture, Media and Sport have recently published proposals to extend the scope of the draft Online Safety Bill.

Under the new proposals social media sites and search engines will be forced to stamp out fraudsters and scammers on their platforms.

A new legal duty will be added to the Online Safety Bill requiring the largest and most popular social media platforms and search engines to prevent paid-for fraudulent adverts appearing on their services.

The change will improve protections for internet users from the potentially devastating impact of fake ads, including where criminals impersonate celebrities or companies to steal people's personal data, peddle dodgy financial investments or break into bank accounts.

Companies will need to put in place proportionate systems and processes to prevent (or minimise in the case of search engines) the publication and/or hosting of fraudulent advertising on their service and remove it when they are made aware of it.

It will mean companies have to clamp down on ads with unlicensed financial promotions, fraudsters impersonating legitimate businesses and ads for fake companies. It includes 'boosted' social media posts by users which they pay to have promoted more widely.

The regulator Ofcom will set out further details on what platforms will need to do to fulfil their new duty in codes of practice. This could include making firms scan for scam adverts before they are uploaded to their systems, measures such as checking the identity of those who wish to publish advertisements, and ensuring financial promotions are only made by firms authorised by the Financial Conduct Authority (FCA).

Ofcom will oversee whether companies have adequate measures in place to fulfil the duty, but will not assess individual pieces of content, in keeping with the approach taken in the rest of the bill. It will have the power to hold companies to account by blocking their services in the UK or issuing heavy fines of up to £18 million or ten per cent of annual turnover.

**Brexit Benefits** – In January the Government published a Policy paper entitled “The benefits of Brexit” stating that “this policy document sets out how the UK is capitalising on the benefits of Brexit and how the government will use its new freedoms to transform the UK into the best regulated economy in the world.” [The Benefits of Brexit: How the UK is taking advantage of leaving the EU \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/612222/the-benefits-of-brexit.pdf)

Under “achievements so far” it included the following that are of relevance to Trading Standards Services:

- *Reviewing the EU ban on imperial markings and sales. This will give businesses and consumers more choice over the measurements they use. Imperial units like pounds and ounces are widely valued in the UK and are a core part of many people’s British identity.*
- *Enabling businesses to use a crown stamp symbol on pint glasses. The Crown Stamp is a proud emblem of our heritage that people remain fond of. We have begun the process of allowing it to be used once again, a fitting tribute to Her Majesty’s Platinum Jubilee.*

In relation to the Crown Stamp on pint glasses, it should be noted that selling by pints has always been allowed, and similarly the use of the crown stamp was never banned. It could always have appeared alongside other European marks.

In February this policy paper was followed up with an announcement of a study of the economic impacts of reintroducing imperial markings.

As the Local Authority Service responsible for Weights and Measures, Trading Standards are keen to be consulted as part of this study so that the costs and practical implications including those relating to enforcement can be taken into account.

It should be noted that whilst it has continued to be possible for a consumer to request products by an imperial measure the legal selling unit is currently in metric and therefore there will be a cost to the Local Authority if this were to change. Costs would be incurred for purchasing and maintaining new imperial local and working standard weight measures. It is also worth noting the increased potential for consumer confusion and increased difficulties in price comparison should imperial units be used instead of metric units. Most residents will have never used imperial units other than in very limited circumstances (for beer sales or road distances for example) and have never been taught about them. There are also likely to be increased costs for businesses.

**Levelling Up** - Recently the Government published the “Levelling Up” white paper.

[Levelling Up the United Kingdom: Executive Summary \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

There are several areas that are directly relevant to Trading Standards but no specific mentions or direct references. The sections on net zero, local empowerment, community and finance; and improving safety and tackling crime all have some relationship to the work of Trading Standards including in supporting the growth agenda.

The ‘Net Zero’ Section talks about new infrastructure and technologies and their potential to benefit disproportionately less well performing parts of the UK. However there is nothing on the importance of clear standards, effective market regulation, consumer confidence, or the risks from rogue traders, scams or “green washing” deceiving consumers and undermining the shift to a more sustainable future.

There are sections on local empowerment, community, finance etc which would normally link to the wider local growth agenda in which Trading Standards does have an important role in ensuring a well functioning economy, ensuring consumer confidence, enabling fair competition and providing support and advice to business but those roles are not specifically recognised.

There is a general section on improving safety and tackling crime but the focus is drugs, serious violence and Antisocial Behaviour. There is a reference to a new legal duty in the Police, Crime and Sentencing Bill to make agencies in Violence Reduction Units work together.

### **Public Accounts Committee (PAC) Report – Protecting Consumers from**

**Unsafe Products:** The Public Accounts Committee considered the National Audit Office report into product safety and on 30 September 2021 they published their report. The Government published their response in December 2021 The two key issues relating to Trading Standards and the Government responses are summarised below.

**PAC recommendation:** The Office for Product Safety and Standards (OPSS) should work with the Department and other parts of government to ensure the regulatory system is better coordinated. In particular, it should engage with the Department for Levelling Up Housing and Communities (DLUHC) and other relevant departments to address concerns around the long-term sustainability of the Trading Standards workforce.

## **Summarised Response**

OPSS recognises the fundamental role that local Trading Standards services play in product safety regulation and the importance of attracting new people into the profession. OPSS provides national capability to supplement and enhance the effectiveness of local authority enforcement activity and engages with local authorities and Trading Standards bodies and their views and feedback inform OPSS' delivery. OPSS also supports Trading Standards through funding testing laboratories, training, national co-ordination and intelligence such as the Product Safety Database.

OPSS is currently clarifying its offer to Trading Standards to facilitate greater understanding and cooperation.

OPSS was instrumental in the development of a new Regulatory Compliance Officer apprenticeship with partners.

BEIS currently provides £12 million funding to National Trading Standards and £1.25 million to Trading Standards Scotland per annum to add specialist expertise and to support trading standards to enforce cases that stretch beyond local boundaries.

Local authority regulatory services are funded from each local authority's budget, in line with local decision-making, but OPSS will continue to inform central government discussions on maintaining the effectiveness of Trading Standards Services.

**PAC recommendation:** The Department and OPSS should evaluate the regulatory resource needed for the future of the regulatory regime. This should reflect the impacts of product checks at the UK border, the OPSS's new duties on construction products and the loss of resource at local Trading Standards services.

## **Summarised Response**

OPSS provided £1.45 million for checks at key UK ports and borders for national product safety risks last year. OPSS will continue to work with local authorities, ports and border staff to address national product safety risks.

Department for Levelling Up, Housing and Communities is providing dedicated resource to specifically fund OPSS' construction products activity. As the national regulator for construction products, OPSS will continue to support local authorities and Trading Standards with competency and capability assistance as well as funding for their work on product safety

**BEIS Parliamentary Committee Investigation:** On the 1<sup>st</sup> March the Chartered Trading Standards Institute (CTSI) Chair of the Board, Steve Ruddy, provided oral evidence to a Business, Energy and Industrial Strategy (BEIS) Committee meeting as part of their investigation into post-pandemic economic growth, state aid and post-Brexit competition policy.

Others providing oral evidence were Rocio Concha, Director of Policy and Advocacy and Chief Economist at Which?; Matthew Upton, Director of Policy, Citizens Advice, and Matthew Vickers, CEO and Chief Ombudsman, Ombudsman Services.

At the hearing Steve highlighted the importance of improving consumer rights awareness for both businesses and consumers, along with stressing the key role of local trading standards services in protecting consumers, especially the most vulnerable.

<https://www.tradingstandards.uk/news-policy/news-room/2022/ctsi-provides-oral-evidence-to-business-energy-and-industrial-strategy-committee>