



Action on Salt Response to Department of Health & Social Care's Technical Consultation - Proposals for how the Introduction of Calorie Labelling in the Out of Home Sector should be enforced

Action on Salt

Action on Salt (formerly Consensus Action on Salt & Health, CASH) is an organisation supported by 23 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, stomach cancer and obesity.

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1) Are the proposed checks appropriate to assess compliance with calorie labelling?

We support the Government's decision to introduce mandatory calorie labelling in the out of home sector. This legislation will support people to make more informed food choices, and may play an important role in influencing the sector to produce healthier meals. We deem the majority of the proposed checks to be appropriate for the task at hand. However we do not agree on the conclusions of the consultation to allow exemptions on menu items that are displayed for less than 30 days, and urge the Department of Health and Social Care to reconsider. Previous surveys carried out by ourselves and local trading standards have shown that unlabelled foods sold in store are generally higher in salt compared to labelled foods^{1,2}. This is also likely to be the case for calories, fats and sugars, as portion sizes are significantly larger. A recent publication also found differences in nutritional content of meals served in UK restaurants with versus without labelling on their menus³. It is also a missed opportunity to not include alcoholic beverages, which are covered for instance, in the United States' menu labelling⁴. Alcohol consumption is frequent in England; results from the 2016 Health Survey for England reported that 31% of men and 16% of women drank more than 14 units of alcohol in a normal week. Alcoholic beverages can be a high source of calories and sugar and contribute excessively to daily energy intake. A study from University College London showed that alcohol consumption may also increase the risk of obesity⁵. Action on Sugar's nationwide poll of 2,022 adults found more than three quarters (76.4%) of adults think alcoholic drinks should have nutrition information displayed on packaging⁶.

Prior to the COVID-19 pandemic, household expenditure on eating out was reported to be increasing, up 8.8% between 2014 and 2018⁷. Research from Public Health England suggests that 1 in 5 meals are now eaten out of the home⁸. These meals tend to be served in bigger portions, and higher in fat, salt and sugars. There is also a clear link between deprivation and the number of takeaways in an area, with the more deprived regions having far more takeaways than the more affluent areas⁹. This coincides with increasing rates of overweight and obesity in the poorest parts of the country.

¹ <http://www.actiononsalt.org.uk/news/surveys/2011/bread/>

² <http://www.actiononsalt.org.uk/news/salt-in-the-news/2006/items/bakers-hiding-more-salt-in-unlabelled-bread--these-high-salt-levels-in-bread-are-responsible-for-7000-uk-deaths-each-year.html>

³ <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0222773>

⁴ <https://www.fda.gov/media/116000/download>

⁵ Shelton NJ, Knott CS. Association between alcohol calorie intake and overweight and obesity in English adults. *Am J Public Health* 2014;104(4):629-31. doi: 10.2105/ajph.2013.301643 [published Online First: 2014/02/15]

⁶ <http://www.actiononsugar.org/surveys/2020/ready-to-drink-alcoholic-beverages/#d.en.764846>

⁷ <https://www.gov.uk/government/publications/family-food-201718/family-food-201718>

⁸ <https://www.gov.uk/government/publications/health-matters-obesity-and-the-food-environment/health-matters-obesity-and-the-food-environment--2>

⁹ <https://publichealthmatters.blog.gov.uk/2016/10/21/obesity-and-the-environment-the-impact-of-fast-food/>

COVID-19 has undoubtedly changed a lot in a very short space of time, and as a result we have seen a reduction in the number of people eating out, and a rise in cooking and eating at home¹⁰. But these changes are likely to be short term. The Chancellor's 'Eat Out to Help Out' scheme, launched in July 2020 to increase footfall in the Hospitality sector and boost the economy, was used more than 35 million times in its first two weeks, thought to be the equivalent of over half of the UK taking part. It is therefore vital that we provide the public with the necessary tools to make more informed decisions. Whilst it is important we support local businesses to recover from the COVID-19 financial crisis, it should not be done at the expense of our health, especially of those most vulnerable in society.

Once legislation has been put in place, it is vital that sufficient support and adequate funding and resources are provided to local authorities. In addition, appropriate guidance to businesses must be given, including details on appropriate methods to use for calorie calculations, prior to legislation going into force. This will pave the way for smaller businesses, when legislation is reviewed in 5 years. We also propose that subsidies and/or access to a bank of Registered Nutritionists able to carry out nutritional analysis be made available to those companies who do not currently have the resources.

We acknowledge that laboratory testing, using qualified Public Analysts (the 'gold standard') is costly, but accuracy checks must be established, to minimise false information, and hold businesses to account. Some large businesses have the capability and indeed already carry out regular testing of their dishes and should therefore be required to provide certificates of analysis to local authorities as additional proof. Those currently not in the practice of regular testing can provide a nutritional breakdown of the meals to ensure accuracy and valid calculations. This will encourage transparency and ensure the onus is on the businesses to provide accurate figures.

When calculating calorie content, a full nutritional profile is established, including calories, fat, saturated fat, and sugars. Companies should be encouraged to share this nutrition information online, as some already do, to assist those who are looking to reduce specific nutrients for health purposes. The salt content should also be included in analysis and made public to assist those looking to reduce their salt intake to reduce their blood pressure. Most of the salt in the UK diet (75%) comes from salt added by the food industry to processed food or food eaten out of the home. As a result, many people do not realise they are eating too much salt and remain unaware of the effects it is having on their blood pressure and health. The Secretary of State for Health and Social Care has established salt reduction as a priority for prevention in the 2020s, and this policy must support this aim¹¹.

Providing full nutritional information will benefit and support current reformulation programmes, including salt reduction, where the out of home sector is at present falling behind. Nutritional information data is lacking in the hospitality sector, so full nutrition information would be a useful tool in monitoring and evaluating the success of the current Obesity Strategy.

¹⁰ <https://www.independent.co.uk/news/uk/home-news/coronavirus-lockdown-uk-cooking-habits-tesco-a9468221.html>

¹¹

<https://www.gov.uk/government/consultations/advancing-our-health-prevention-in-the-2020s/advancing-our-health-prevention-in-the-2020s-consultation-document>

2) Should local authorities issue improvement notices in cases of non-compliance with calorie labelling?

Yes. We agree that non-compliance will not pose an immediate risk to life, and improvement notices will hopefully encourage compliance and provide support to businesses, especially in the initial months. The improvement notice however, should provide an appropriate deadline in which businesses should address the issue; to our knowledge no such deadline has been proposed. This should be clarified in all documentation. We suggest a timeline comparable to the improvement needed e.g. if the entire menu needs addressing, refining and reanalysing, then allow 60 days for improvement, whilst if it's a small range of menu items, 30 days.

3) Where a business fails to meet the terms of an improvement notice, is a fixed monetary penalty of £2,500 appropriate?

£2,500 is a drop in the ocean for multinational food businesses, who are still spending millions of pounds advertising their less healthy options to promote unhealthy eating and drinking behaviours, but we appreciate the pandemic has impacted the entire sector, particularly small to medium sized businesses. This is why the policy is only aimed at businesses with over 250 employees (chains of approx 10 restaurants/cafes). Government has already provided additional support to the hospitality sector, through VAT cuts and the Eat Out to Help Out Scheme, which ran in August. It is imperative that the penalty is substantial to encourage companies to comply in the first instance. Steps must also be put in place in instances where companies repeatedly offend, or refuse to comply even after the penalty has been issued. A one-off penalty of £2,500 in this case will not be sufficient, so a clear timeline for paying the penalty should be put in place, along with payment increments as a result of non-compliance.

4) Are there circumstances where a different approach might be more appropriate e.g. repeat offences?

As stipulated above, we believe repeat offences need to be taken seriously, with harsher punishments put in place should companies repeatedly offend. These penalties will come into force 18 months from legislation, which is sufficient time for companies to set up appropriate internal systems. There are numerous affordable nutrition software systems (e.g. Nutrium, Nutricalc, Alacalc) available for businesses which are simple to use, therefore there should not be a grace period in the first instance.

A clear timeline should be outlined within legislation, with an improvement notice issued in the first instance, after which a penalty will be provided, along with a set time in which companies will need to pay the penalty, and improve their menus. Failure to comply will result in another penalty notice (bypassing the improvement notice).

5) Is 28 days an appropriate period to make representations and objections or to discharge liability for a Notice of Intent?



No. It is unclear the timeline companies will be given to comply with the improvement notice, before a penalty is issued. This should be made clear, and we suggest a timeline comparable to the improvement needed e.g. if the entire menu needs addressing, then allow 60 days for improvement, whilst if it's a small range of menu items, 30 days.

We do not agree that 28 days is an appropriate period to make representations and objections, or discharge liability for a Notice of Intent. The out of home sector will have been given ample notice during the implementation phase, plus sufficient time for the improvement notice. We therefore feel that Local Authorities should opt for 14 days instead of 28, to encourage compliance and avoid further delays and repeat-offences.

6) Should a person be able to discharge liability upon being issued with a fixed monetary penalty at a rate of 50% of the penalty issued?

No. We do not agree that the penalty should be reduced by 50% if paid early. As mentioned previously, companies will have been given sufficient warning of non-compliance, and an opportunity to improve their menus within an adequate period of time, which they have chosen not to address. In failing to do this, companies should be issued the penalty in full, payable within 14 days.

Whilst we appreciate the financial burden, this is the only incentive for companies to comply, and offering a 50% early payment option implies that the policy is for revenue raising, rather than for health improvement.

This will help ensure compliance, and funds raised should be issued to Local Authorities to carry out the necessary work in health improvement within the out of home sector.

7) Is 28 days an appropriate length of time to pay or appeal a Final Notice?

No. Companies would have been given sufficient warning of non-compliance, which they have chosen not to address. We believe the £2,500 should be issued in full, and payable within 14 days.

8) Should failure to pay or appeal a penalty within 28 days result in the penalty being increased by 50%?

Yes. Companies who fail to address non-compliance and correct their menus should be penalised. Mandatory calorie labelling on menus in the out of home sector is designed to create a level playing field, therefore it would be unreasonable for some responsible companies to adhere to legislation, whilst others flout the rules - this will not encourage compliance. Increasing the fine by 50% will send a clear message to businesses that failure to comply will not be tolerated.

9) Should the regulations specify who local authorities must consult or should local authorities have flexibility to decide who it would be appropriate to consult with?



N/A

10) Are there any circumstances where it might be inappropriate for local authorities to publish details of cases where a civil sanction has been imposed?

No, we believe that transparency is key to the success of any public health strategy. In doing so, it will create a level playing field and provide an opportunity for monitoring and increased engagement within the out of home sector. We propose the government introduce a 'nutrition rating scheme', much like the Food Standards Agency's Hygiene Rating on the doors of eateries, which would be monitored by a new and independent food watchdog. The results can then be put in the public domain for transparency and to hold companies to account, and will help consumers make informed decisions when eating out.

11) Will the additional requirements place any additional costs on your local authority?

NA

12) If there are any further matters that you would like to raise or any further information that you would like to provide in relation to this consultation, please give details here.

It is important to remember why providing calorie information on menus in the out of home sector is so important.

The Global Burden of Disease shows that the consumption of products high in fat, salt and sugar are by far the biggest cause of premature death and ill health in the world. In the UK, two thirds of calories consumed by families come from highly processed packaged foods, which are likely to be high in fat, salt and/or sugar (HFSS) and low in fibre, fruit and vegetables. The diets of UK children are particularly worrying where 47% of primary school children's calories come from HFSS foods, 85% of secondary school children are not eating enough fruit and vegetables, more than 90% are not eating enough fibre and all are eating too much salt and sugar

At the same time the UK has one of the highest overweight and obesity rates among developed countries. The UK currently spends about £6.1 billion a year on the medical costs of conditions related to obesity and overweight and more than £14 billion in treatment of type 2 diabetes.

Nutrition labelling is mandatory for manufactured food and drink sold in supermarkets and other retailers and in part, due to this, many manufacturers have committed to improve the nutritional quality of the food and drink they sell. Those providing food and drink from the hospitality sector should engage in a similar way to create a level playing field for the entire food and drink industry.

We live in an environment that makes it easy for us to gain weight, and very difficult to lose it. The more socially deprived in particular, are more at risk of suffering from ill health; young people from poorer backgrounds are more likely to be obese, consume a range of less healthy products and be exposed to more adverts promoting unhealthy food. But now, more than ever, people are appreciating the importance of a healthy lifestyle. Research from the Obesity Health Alliance found



that 74% of the public support government action on obesity in the wake of COVID-19. In addition to this, research from Diabetes UK found that nine out of ten people agree clearer food labelling would help them make healthier food choices¹². Research carried out by MRC showed that in addition to nutrition information provided online, having calorie information on the menu provides on average a better nutritional profile - fewer calories and less salt¹³. We appreciate there are some genuine concerns that the proposed measures will impact those with disordered eating, but we are confident that PHE have taken this into careful consideration. Calorie labelling is already present in supermarkets through mandatory nutrition labelling requirements, and applying them to the out of home sector, which is increasingly contributing to our everyday diet, will at the very least be a useful information tool to help people make more informed decisions.

We support the Government's commitment to reviewing and potentially extending the legislation to smaller businesses within 5 years. We urge the Government to follow through with this so as to create a level playing field, providing there is sufficient support for smaller businesses. Large businesses already have the capability to provide such information, often with a Nutritionist/Dietitian or team of Nutritionists/Dietitians on hand to provide support, and are therefore in a fortunate position to implement calories on menus effectively. Smaller businesses will likely have little knowledge on nutrition, nor the means to calculate and display calories accurately. Any funds raised from the penalties should therefore be ring fenced to provide nutrition support for small businesses. These conversations between SME's and local authorities should begin immediately, so that the transition is smooth and effective. This will also likely encourage dialogue in other areas of improvement within their menus.

Calculating calories is not particularly costly to the industry as the majority of large chain menus are fairly static. For those without dedicated nutrition teams, nutrition software is affordable, with many providing annual membership fees for less than £150 for unlimited recipes and nutrient calculations¹⁴.

¹² Diabetes UK Food Upfront campaign for clear food labelling

https://www.diabetes.org.uk/get_involved/campaigning/food-upfront-campaign

¹³ Differences in energy and nutritional content of menu items served by popular UK chain restaurants with versus without voluntary menu labelling: A cross-sectional study <https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0222773&type=printable>

¹⁴ Alacalc is one example of many softwares available for nutritional analysis. They provide unlimited nutrient calculations for £149.50 a year <https://www.alacalc.co.uk>