

Scottish Government consultation on Mandatory Calorie Labelling in the Out of Home (OOH) Sector in Scotland

Response from Obesity Action Scotland
Closing date: 1 July 2022

Question 1 – Should mandatory calorie labelling at point of choice, for example, menus, menu boards, or digital ordering apps in the OOH sector (as listed in paragraph 1.2) in Scotland be implemented?

- Yes

Please explain your answer

Yes, mandatory calorie labelling at the point of choice should be implemented. Calorie information should be available wherever the consumer is making a choice – on physical menus or via digital platforms and apps. Calorie information needs to be provided at all points of choice to ensure consumers can make an informed choice at the point when they are making the decision to purchase.

Providing consumers with calorie information at the point of choice can help them to lower their calorie intake¹, and can encourage businesses to reformulate their menu options² to contain less calories, making them healthier, with a greater proportion of healthier food on offer to consumers. Evidence from a recently published rapid evidence review by Food Standards Scotland found that calorie information on menus can result in up to a 115-calorie reduction per meal, with an average of 47 calorie reduction per meal reported across the studies examined. Whilst the average reduction might appear to be a small number of calories, when aggregated across the whole Scottish population, and taking into account how often people eat out of home, it could lead to a significant reduction in calories consumed³.

Further, evidence shows that consumers are supportive of calorie labelling at the point of choice in the out of home sector, with just under two-thirds of people (64%) believing that premises should display calorie information on their menus⁴. This demonstrates a clear appetite for a change and widespread recognition of the role that calorie labelling can play in food purchasing and consumption decisions in the out of home sector.

¹ Crockett RA et al. (2018). Nutritional labelling for healthier food or non-alcoholic drink purchasing and consumption. Cochrane Database of Systematic Reviews.

² West C, Howie F (2018) An Evaluation of a Pilot on the Use of MenuCal within Small and Medium Scottish Food Businesses. Main Report

³ Food Standards Scotland (2022) Rapid Evidence Review: How Effective is Calorie Labelling in the Out of Home Sector? https://www.foodstandards.gov.scot/downloads/FSS_-_NSP_-_CL_-_Calorie_Labelling_-_Rapid_Evidence_Review_FINAL_-_22_March_2022.pdf

⁴ Food Standards Scotland (2020) Situation Report: The Scottish Diet: It needs to change 2020 update https://www.foodstandards.gov.scot/downloads/Situation_Report_-_The_Scottish_Diet_It_Needs_to_Change_%282020_update%29.pdf

Findings from a piece of work we undertook, examining the calorie content in portions of chips from a range of OOH businesses in Glasgow, demonstrate the significant contribution that eating OOH can make to daily calorie intakes⁵. The research found that the average bag of chips on sale (380g) contained around half of a woman's recommended daily calorie intake, with the largest portions containing as much as three quarters of recommended daily calorie intake. Without calorie labelling on these products, consumers are purchasing blind and have little or no awareness of the calories in these products. This is supported by recently published survey findings from NESTA which found that UK adults significantly underestimate the number of calories in popular snacks⁶. It reports that eating as little as 240 extra calories per day (equivalent to a grab bag of crisps) could lead to around a stone of increased weight, yet three quarters of people underestimated the impact of small changes, with one in ten believing they would lead to no change in weight.

It is important that digital apps are included in regulations for mandatory calorie labelling. Digital food ordering apps and platforms, including restaurant websites, account for a significant proportion of OOH purchases. Data shows that in Scotland nearly 70% of takeaway delivery orders were made using digital platforms⁷. This has been further exacerbated by the pandemic, which has seen a significant surge in the use of digital food ordering apps. For example, food delivery app service UberEATS saw an increase in orders of 150% between June and September 2020, compared to the same period the previous year⁸. Further, data from Food Standards Scotland shows that during the pandemic there was a 171% increase in the use of restaurant websites/apps and aggregators (such as Just Eat and Deliveroo), with aggregators accounting for the largest share of delivery type in urban areas⁹. Given the significant reach and growth of these digital apps and platforms in recent years, it is vital they are included in regulations for mandatory calorie labelling to ensure consumers are fully informed about the food they are purchasing when using these platforms.

Question 2 – Should any of the sectors listed in paragraph 1.2 be exempt from mandatory calorie labelling?

- **No**

No, we don't believe that any of the sectors listed in paragraph 1.2 should be exempt from mandatory calorie labelling. For such a policy to be effective, equitable and fair, it needs to be applied to all relevant sectors.

Food purchased out of home is such a common part of our diet and accessed so frequently that consumers need to have an awareness of what they are consuming. It also makes up around a quarter of all calories consumed¹⁰, so it is important that all sectors are included. When featuring calorie labelling in the sectors listed in paragraph 1.2, the regulations need to ensure that it is equitable with calorie labelling on all other foods.

We know from evidence that the majority of items purchased OOH are high in fat, salt and sugar and that we are consistently failing to meet Scottish Dietary Goals. Micro and small businesses also make up a significant proportion of OOH outlets in Scotland and account for a large proportion of OOH visits, so it is important that they are not exempt from the regulations. These businesses often

⁵ Obesity Action Scotland (2018) Chips to Go: Factsheet

<https://www.obesityactionscotland.org/media/1203/chips-factsheet2.pdf>

⁶ <https://www.nesta.org.uk/press-release/brits-drastically-underestimate-calories-in-snacks/>

⁷ <https://www.obesityactionscotland.org/blog/where-will-the-surge-in-online-food-ordering-take-us/>

⁸ Obesity Action Scotland (2021) Ordering Food Online (Out of Home)

https://www.obesityactionscotland.org/media/1610/ordering_food_online_-ooh-_2021_final.pdf

⁹ Food Standards Scotland (2021) The Impact of COVID-19 on the Out of Home Sector in Scotland

https://www.foodstandards.gov.scot/downloads/The_Impact_of_COVID_19_on_the_Out_of_Home_sector_in_Scotland_Report_PDF_Kantar_Report.pdf

¹⁰ Obesity Action Scotland (2021) Ordering Food Online (Out of Home)

https://www.obesityactionscotland.org/media/1610/ordering_food_online_-ooh-_2021_final.pdf

predominantly sell fast food and are used frequently by school children at lunchtime. We will discuss these points further in our response to question 3.

Question 3 – To which size of business in scope of the policy, should mandatory calorie labelling apply:

1. All businesses

Please explain your answer

Calorie labelling should be mandatory in all out of home businesses. For the policy to be effective, it has to apply to all businesses equally. Evidence shows that in the UK we consume between a fifth and a quarter of our calories out of home¹¹, and in Scotland specifically, more than 96% of people have eaten out of home in the last year¹². The majority of food purchased OOH is high in fat, salt and sugar. The top 10 food items purchased in the out of home sector are predominantly unhealthy products, such as soft drinks, confectionary, and cakes. We're also failing to meet Scottish Dietary Goals, and are consuming too many calories, as well as too much fat, salt and sugar. The energy density of the average diet in Scotland is 40% over the recommended levels in the dietary goals¹³. This suggests that the policy could have a positive impact. However, only mandatory calorie labelling in all OOH businesses would create a level playing field and guarantee that all consumers have equal access to the information needed to make an informed choice.

It is important that micro and small businesses are not exempt from the regulations as they make up a significant proportion of out of home retailers in Scotland, and account for a large proportion of visits in the out of home sector. The consultation document states that there are 41,297 food businesses registered in Scotland (based on data from the Food Hygiene Register). Another source of data is the Scottish Government Businesses in Scotland report and this data reports that in 2019, there were 19,465 accommodation and food service businesses registered in Scotland. Of these, 19,300 (equivalent to just over 99% of these businesses) were considered to be micro, small and medium sized, employing no more than 249 staff¹⁴. It is important to note that the figure presented in the consultation document also includes retail food businesses such as supermarkets and other retailers, which the mandatory calorie labelling regulations being proposed in this consultation would not apply to, as food products sold in retail settings are already subject to back of pack nutritional labelling requirements. Therefore, the figures we have presented from the Businesses in Scotland report provides additional information and an illustration of the number of OOH food and accommodation service businesses the regulations would apply to. We acknowledge that the figures are still likely to be an underestimate, as they do not include food businesses that are not considered 'service' businesses. Additionally, data from the Office for National Statistics, reported by the Scottish Parliament Information Centre, shows that in 2018 there equivalent to 65 takeaways per 100,000 of the population in Scotland, highlighting the significant reach of these types of businesses¹⁵. Therefore, if these businesses were not covered by the regulations, then customers who buy at these businesses, of which there are a significant number, would be put at a disadvantage.

¹¹ Quirk S. (2018) Out of home in the UK: Ingredients for sustained growth.

¹² Food Standards Scotland (2021) The impact of the Covid-19 on the Out of Home Sector in Scotland. Report prepared by Kantar
https://www.foodstandards.gov.scot/downloads/The_Impact_of_COVID_19_on_the_Out_of_Home_sector_in_Scotland_Report_PDF_Kantar_Report.pdf

¹³ Food Standards Scotland (2020) The Scottish Diet: It needs to change
https://www.foodstandards.gov.scot/downloads/Situation_Report_-_The_Scottish_Diet_It_Needs_to_Change_%282020_update%29.pdf

¹⁴ Scottish Government (2019) Businesses in Scotland 2019
<https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/11/businesses-in-scotland-2019/documents/businesses-in-scotland-2019-pdf/businesses-in-scotland-2019-pdf/govscot%3Adocument/Businesses%2Bin%2BScotland%2B-%2B2019%2B-%2Bpdf.pdf>

¹⁵ <https://spice-spotlight.scot/2019/08/07/fast-food-booming-a-cause-for-concern/>

Moreover, school children tend to shop more in small and micro businesses during lunch times. A report commissioned by the Food Standards Agency showed that the most popular outlet categories where pupils reported purchasing food or drink on the day the questionnaire was administered were takeaway, chip shop or fast food outlets (25.8%), newsagent or sweet shops (25.1%); supermarkets (23.0%), grocery or corner shops (20.1%), a sandwich shop or bakery (17%) and a burger/chip/ice cream van (11.1%)¹⁶. There will be many micro and small businesses in these categories.

Additionally, micro and small businesses often sell fast-foods. This was shown by one of our studies where the number of outlets that sold chips-to-go on one of the main streets of Glasgow was 30. All but one of these businesses were small independent establishments such as Chinese takeaways, Indian takeaways, fish and chip shops, kebab shops, pizza shops or cafes¹⁷. Further, Glasgow has a significantly higher number of takeaways than any other local authority area in Scotland, and UK-wide is only surpassed by Manchester – Glasgow has a staggering 90 takeaways per 100,000 of the population, compared to a national average of 65 per 100,000¹⁸. Glasgow is also one of the most deprived local authority areas in Scotland, demonstrating a clear inequalities impact. This is supported by a Glasgow-based study which showed that there was a greater density and clustering of fast food outlets in more deprived area, with the number of fast food (as well as alcohol, tobacco and gambling) outlets increasing linearly from the least to the most deprived areas¹⁹. Additionally, across Scotland as a whole, in 2019, those in the most deprived quintile accounted for 15.2% of visits to takeaways, compared to 10.9% from the least deprived quintile²⁰. If these micro and small businesses were not required to display calorie labelling, people living in most deprived areas could be put at a further disadvantage, and further widening health inequalities. Further, as school children frequently use these types of premises, it is imperative that they are included in the regulations to support the Scottish Government aim of halving childhood obesity by 2030. Failing to include these businesses would be a significant hurdle to achieving this aim.

A consultation held in 2018 by the UK Government for mandatory calorie labelling proposals for England asked whether micro and small businesses should be exempt from the requirement for calorie labelling. The consultation concluded that these businesses should be exempt and a mandatory calorie labelling policy was introduced to England on 6th April 2022 for businesses with 250 or more employees²¹. We do not believe this to be the correct approach and believe all businesses, including micro and small businesses, should be included in Scotland. However, it is important for micro and small businesses that there is sufficient support available, including both financial support and advice and guidance. We understood from involvement in previous consultation processes that this support was proposed to be provided and we are concerned that there is no reference made to it in the current consultation. Support must be provided for micro and small businesses in this regard.

¹⁶ Wills WJ, Kapetanaki A, Rennie K, et al. (2015) The influence of deprivation and food environment on food and drink purchased by secondary school pupils beyond the school gate. Report produced by the University of Hertfordshire under a contract placed by Food Standards Agency. FS411002

¹⁷ Obesity Action Scotland (2018) Chips to go <https://www.obesityactionsotland.org/media/1203/chips-factsheet2.pdf>

¹⁸ <https://spice-spotlight.scot/2019/08/07/fast-food-booming-a-cause-for-concern/>

¹⁹ Macdonald L, et al (2018) Do 'environmental bads' such as alcohol, fast food, tobacco, and gambling outlets cluster and co-locate in more deprived areas in Glasgow City, Scotland? *Health and Place*, 51:224-231.

²⁰ Food Standards Scotland (2021) The Impact of Covid-19 on the Out of Home Sector. Report prepared by Kantar

https://www.foodstandards.gov.scot/downloads/The_Impact_of_COVID_19_on_the_Out_of_Home_sector_in_Scotland_Report_PDF_Kantar_Report.pdf

²¹ <https://www.gov.uk/government/news/new-calorie-labelling-rules-come-into-force-to-improve-nations-health#:~:text=The%20changes%20E2%80%93%20which%20were%20approved,prepacked%20food%20and%20soft%20drinks.>

Question 4 – We are considering including food provided for residents and/or patients in the following public sector institutions within the scope of the policy. Should food within these settings be included within the scope of the policy?

1. Hospitals – Yes
2. Prisons – Yes
3. Adult care settings – Yes
4. Military settings – Yes

Please explain your answer

We have answered yes to each of the options above, but this is qualified support, with a nuanced and considered approach required in each setting.

In principle, we support each of these public sector institutions being included in the policy but we acknowledge that they are distinct settings with distinct needs. Therefore, it may be more appropriate to undertake specific impact assessments for these population groups to understand the needs within each setting and the impact of the policy.

Each of the settings identified above cater for specific and complex needs. For example, the food environment within hospitals and healthcare settings is changing through the Healthcare Retail Standard, and canteens which healthcare staff and visitors/members of the public use, being subject to the mandatory calorie labelling. However, it may not always be appropriate to include calorie information on the menus given to patients, as many patients need more nuanced advice and may have specific dietary requirements, depending on what they are in hospital or the healthcare setting for.

Whilst we support a wide roll out of this policy, we think these groups would benefit from a more nuanced approach.

Question 5 – The intention is that PPDS food would fall within the scope of the policy. Do you agree with that proposal?

- Yes

Please explain your answer

Yes, pre-packed for direct sale food should fall within the scope of the policy. Data from Food Standards Scotland highlights that pre-packed sandwiches were the second most commonly purchased food and drink item in the out of home sector in 2019, accounting for 20% of purchases²². This is a significant proportion of out of home sales and so such products should be included within the scope of the policy.

Paragraph 5.5 of the consultation document states that foods that are prepacked off premises such as confectionary, crisps or bottled soft drinks would be exempt, as there is already a requirement to provide nutrition information on these products through the Food Information to Consumers Regulations. However, there is no mention of fresh pre-packed items, such as sandwiches and salads, that are made fresh by a supplier and purchased by a business to sell on already made. Such products should be required to display calorie information and it should be the responsibility of the original producer/supplier of the products to ensure the correct calorie information is displayed.

Exempting PPDS would just create a loophole and may encourage the use of more packaging in order to avoid labelling.

²² Food Standards Scotland (2020) Situation Report: The Scottish Diet: It needs to change 2020 update https://www.foodstandards.gov.scot/downloads/Situation_Report_-_The_Scottish_Diet_It_Needs_to_Change_%282020_update%29.pdf

Question 6 – Should the foods and drinks listed above be exempt from calorie labelling (please state your view for each

- **Non-standard menu items prepared on request**
 - **Exempt – yes, but with caveats – see comments below**
- **Alcoholic drinks**
 - **Exempt – no;**
- **Menu items on sale for 30 days or less**
 - **Exempt – no;**
- **Condiments added by consumer**
 - **Exempt – no;**

Non-standard menu items prepared on request

We do believe such items should be exempt, although the calorie content of the individual components of the dish should be known by the outlet and available to the consumer if requested.

However, build/create-your-own options that appear as standard on menus should not be exempt from mandatory calorie labelling. For these options, the calorie information for each component item needs to be clearly displayed. This was the approach proposed in the UK Government consultation in 2018. In the consultation, they outlined for build-your-own, there would be a requirement for calories of the base product to be displayed and also the calories for each additional option available²³. It is welcome that the regulations introduced in England include build your own options. We support this approach and would like to see this approach implemented in Scotland.

Alcoholic drinks

Alcoholic drinks should not be exempt. They are a significant source of calories and we see no logical reason to exempt them in this regard. The mandatory calorie labelling policy recently adopted in England excludes any alcoholic drinks over 1.2% ABV, which is the majority of alcoholic drinks. We do not support this approach and would like to see all alcoholic drinks sold OOH required to display calorie information.

Alcohol contributes around 9% of calories in adult diets in Scotland. Alcoholic drinks can also contain considerable amounts of sugar and are often mixed with syrups and sugary soft drinks, further contributing to excess sugar and calorie consumption. It is recommended that adults don't consume more than 14 units of alcohol per week, however, on average every adult in Scotland is exceeding this by 36%²⁴, with significant implications for excess calories.

Further, evidence shows that many people do not realise the calorie content of alcoholic drinks, with over 80% underestimating the number of calories in a glass of wine²⁵. Showing the calorie content of drinks sold out of home could help increase awareness of the calorie content of alcoholic drinks and could help to reduce calories consumed.

Menu items on sale for 30 days or less

Such items shouldn't be exempt. These items can make a significant contribution to calorie intake over the period in which they are sold. Specials and seasonal items, such as Christmas hot drinks for

²³ Department for Health and Social Care (2020) Mandating calorie labelling in the out-of-home sector. Government response to public consultation, page 22

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903714/Calorie_Labelling_-_Consultation_Response.pdf

²⁴ Food Standards Scotland (2020) Situation Report: The Scottish Diet: It needs to change 2020 update https://www.foodstandards.gov.scot/downloads/Situation_Report_-_The_Scottish_Diet_It_Needs_to_Change_%282020_update%29.pdf

²⁵ Royal Society for Public Health UK (RSPH) (2014). Increasing awareness of 'invisible' calories from alcohol. London: RSPH.

example, would be included in this category and are often particularly high in calories and sugar. Research from Action on Sugar, which examined the calorie and sugar content in Christmas seasonal hot drinks from a range of retailers, found many contained a large number of calories and significant amounts of sugar. A single drink can provide over a quarter of the recommended daily calorie intake. For example, Starbucks Signature Caramel Hot Chocolate with whipped cream, using Oat Milk (Venti) contained 758 calories, over a quarter of the recommended daily calorie intake for a woman, and also had 23 teaspoons of sugar²⁶.

Further, evidence shows there is a significant uplift in purchasing during seasonal periods, including Christmas and Easter, which is associated with a large increase in calories consumed and has a resultant impact on weight. The evidence from the retail sector shows that additional purchases of discretionary products, such as crisps, confectionary and regular soft drinks, over a 12-week period including Christmas, equated to around 9,000 calories, which if consumed, is equivalent to around an average of 1kg weight gain for everyone in Scotland²⁷. It is therefore important that people continue to be fully informed at Christmas and other occasions about the food they are purchasing. Calorie labelling of seasonal OOH menus would ensure customers are fully informed the whole year round.

Condiments added by the consumer

Condiments added by the consumer should not be excluded.

Where condiments are provided in multiple serving bottles and/or where it is added to products on the request of the consumers, such as takeaway hot morning rolls, the calories of a standard serving of each condiment on offer could be detailed in a separate section on the outlet's menu and other points of sale. Where condiments are pre-packed, such as those in individual sachets of separate servings for example, the calorie information should be clearly provided on the sachet itself.

Question 7 – Should menus specifically marketed at children be exempt from calorie labelling?

- No

Comments

No, children's menus should not be exempt.

Menus marketed at children usually contain foods that are higher in fat, salt and sugar, and are generally perceived to be unhealthy, with parents reporting that they would like to see healthier options on children's menus as standard²⁸. There is also a growing preference from parents who would prefer if children were offered smaller portions from the main adult menu, rather than having a separate menu²⁹. Evidence further shows that consumers report it can be difficult to find healthy options for their children when eating out of home, with more than 7 in 10 (78%) stating that children's menus should contain more healthier options. Children are most likely to be taken to pizza or chicken outlets that have a children's menu, with chicken, burgers and pizza accounting for the 3

²⁶ <https://www.actiononsugar.org/news-centre/press-releases/2019/festive-hot-drinks-loaded-with-sugar--calories-reveals-lack-of-progress-inachieving-sugar-reduction-targets-.html>

²⁷ Food Standards Scotland (2016) Foods and drinks purchased into the home in Scotland using data from Kantar WorldPanel
https://www.foodstandards.gov.scot/downloads/Food_and_Drinks_Purchased_into_The_Home_in_Scotland_report.pdf

²⁸ Food Standards Scotland (2022) Out of Home Calorie Labelling and Children's Menu Research with those Experiencing Socio-economic Disadvantage

²⁹ Obesity Action Scotland (2018) The Out of Home Sector and its impact on the obesogenic environment
<https://www.obesityactionscotland.org/media/1202/eating-out-briefing2-002.pdf>

most commonly consumed main meals by children in the out of home sector (36%, 21% and 10% respectively)³⁰.

Additionally, discretionary foods are much more likely to be purchased out of home when children are present – two-thirds of out of home visits with a child up to the age of 9 contain a purchase of a discretionary item, compared to only 36% for adults eating by themselves³¹.

Findings from polling activity we commissioned to understand the impact of the pandemic on diets in Scotland further support these findings. It showed large increases in takeaway consumption in households with children, compared to households with no children. The polling found in March 2021, 40% of households with children reported eating more takeaways, up from 17% in May 2020. This compares with 28% in 2021 for households with no children (up from 11% in 2020)³². Increased consumption of takeaways has been found to lead to an increase in daily calories consumed by children. Research found that children who ate takeaway food at least once a week consumed between 58 and 168 more kcal per day, and this outcome was amplified in children from less affluent families³³.

Therefore, calorie labelling on children’s menus could positively contribute to improving children’s diets by enabling parents to make an informed choice about what their children are eating and the calories they are consuming, and could also encourage businesses to reformulate or change their menus marketed at children to make them healthier and/or provide more healthier options for children.

Question 8 – Should businesses be required to provide calorie information about options on children’s menus to parents and carers on request?

- **Yes**

Comments

Yes, this should be a requirement for businesses. However, mandatory calorie labelling on children’s menus would overcome the need for parents and carers to ask, ensuring the information is provided to everyone, all of the time. As outlined in our response to question 7, evidence shows that menus marketed at children usually contain foods that are high in fat, salt and sugar which are generally perceived to be unhealthy and many people report finding it challenging to eat out healthily with children. Therefore, providing this information as standard will ensure both parents/carers and children can make an informed choice about what they are eating.

Some parents and carers may not ask about calorie information, as they may be unsure if the business has the information or would be willing to provide it. Calorie information should therefore be mandatory on children’s menus.

Question 9 – What are your views on the proposed requirements for shown below for display of calorie information required at each point of choice?

- **All points of choice**
- **In same font and size as the price**

³⁰ Food Standards Scotland (2020) Situation Report: The Scottish Diet: It needs to change 2020 update https://www.foodstandards.gov.scot/downloads/Situation_Report_-_The_Scottish_Diet_It_Needs_to_Change_%282020_update%29.pdf

³¹ Ibid

³² Obesity Action Scotland (2022) Impact of Covid-19 Control Measures on Health Determinants – An Overview <https://www.obesityactionscotland.org/media/1712/oas-lockdown-polling-further-analysis-2022-final.pdf>

³³ Goffe L et al (2017) Relationship between mean daily energy intake and frequency of consumption of out-of-home meals in the UK national diet and nutrition survey. The International Journal of Behavioural Nutrition and Physical Activity, 14(1):131

- **State kcal information only and not also kJ**
- **Include reference statement of “adults need around 2,000 calories a day”**

Comments

All points of choice

Calorie information should be available at all points of choice, whether this be physical menus or menu boards, or online. This is important to ensure consistency and equal access to information for all consumers, regardless of the method of purchase.

In same font and size as the price

Calorie information should be in the same font and size as the price. It should also be clear and easy to read.

Locating calorie information beside the price could result in this information being seen and used by more consumers. Consumers will almost always check the price before purchasing at the point of choice and so will also notice the calorie information, if it is located beside the price.

State kcal information only and not also kJ

We agree that the information should state kcal information only and not also kilojoules (kJ).

Although kilojoules are the metric equivalent of calories and need to be included on the back of pack nutritional information along with calories, we do not think that they are as easily understood by the public as kcal would be. For example, the term ‘calorie’ is very often used in media, press, radio, TV, and on social media; while the term ‘kilojoule’ is almost entirely limited to scientific and legal contexts.

As the purpose in calorie labelling in the OOH sector is to provide consumers with useful and easily understandable information, we believe that including kcal (calorie) information only on labels would be the best way to achieve this. Research has found that the presentation of calorie information, where it is available, is often inconsistent and can sometimes be difficult for consumers to find or see at the point of choice/purchase³⁴. This highlights the need for clear and easy to understand calorie information that is provided in a consistent format.

Include reference statement

A reference statement should be included. This is important for contextualising the kcal content, as a specific calorie number can have limited meaning if in isolation from the wider context of recommended daily calorie intake. Evidence shows that the public also have little knowledge of what the recommended daily calorie intake is³⁵, so providing a reference statement would be helpful in this regard. To avoid confusing consumers with multiple numbers, the information provided should be as clear as possible. We recommend this includes the number of calories in the particular item or portion on offer and a note of the reference daily intake of kcal.

In the UK Government’s consultation response report published following the consultation they held in 2018, it recommended that the reference daily calorie figure that should be used is an adult woman’s reference calorie intake, rather than an adult male’s or a child’s, to keep in line with existing requirements for nutritional information on packaged foods³⁶. We agree with this approach

³⁴ Robinson, E., Burton, S., Gough, T. *et al.* (2019) Point of choice kilocalorie labelling in the UK eating out of home sector: a descriptive study of major chains. *BMC Public Health* **19**, 649 (2019). <https://doi.org/10.1186/s12889-019-7017-5>

³⁵ Food Standards Scotland (2022) Out of Home Calorie Labelling and Children’s Menu Research with those Experiencing Socio-economic Disadvantage

³⁶ Department for Health and Social Care (2020) Mandating calorie labelling in the out-of-home sector. Government response to public consultation

and would like to see it considered in Scotland for calorie labelling. An example of a reference statement in this regard could be ‘An adult needs around 2,000 calories per day’.

Research has found that calorie labelling can help consumers to lower their calorie intake, especially when the information is provided alongside contextual information indicating recommended daily calorie intakes³⁷. Survey evidence also shows that information on recommended daily intake is supported by the public, with respondents stating that it is very or fairly important that an explanation of recommended daily calorie intake is provided³⁸. Including a reference statement would, therefore, help to make calorie labelling more effective, particularly among consumers who have limited knowledge of recommended daily calorie intakes.

Question 10 – Should businesses be required or have the option to have menus without calorie information available on request of the consumer?

- **It should be a requirement for businesses**

Comments

We recognise the concerns raised regarding the impact of calorie information on menus for consumers who may find this information upsetting and that mitigations should be made to account for this.

We welcome the proposal for businesses to have menus available without calorie information on request of the consumer, as the appropriate mitigation, and this should be a requirement for all businesses. However, calorie information on menus and at all points of sale should be the default position.

Question 12 – What other mitigating measures could be adopted for consumers who may find calorie information upsetting?

Comments

Please refer to our response to question 10.

Question 14 – What support, in addition to detailed written guidance, would businesses need to implement calorie labelling effectively?

Comments

We understand from previous consultation processes and engagement on topic that the Scottish Government outlined it would provide free software and advice for businesses, particularly small and micro businesses. There is little or no information regarding this provided in the consultation, with the consultation document stating “... we anticipate that some businesses may require more time and support to ensure they can meet the requirements”. No information is provided on what this support will be, and there is no mention of financial support, which is a significant omission. Clarification is needed on this, including detailed information on what financial support will be provided, in particular for small and micro businesses. In our response to question 3, we outlined that we support mandatory calorie labelling in all businesses, but that there needs to be a package of financial and other support for small and micro businesses.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903714/Calorie_Labelling_-_Consultation_Response.pdf

³⁷ Sinclair et al. (2014). The influence of menu labelling on calories selected or consumed: a systematic review and meta-analysis. *Journal of the Academy of Nutrition and Dietetics*, 114(9), 1375-1388

³⁸ Food labelling in restaurants, cafes and takeaways, Diabetes UK survey of 1,976 people conducted between 9 and 23 October 2018.

Question 15 – From the publication of relevant guidance, what length of time would businesses need to prepare to implement calorie labelling effectively ahead of legislation coming into force?

- Don't know

Question 16 – Please comment on our proposals for enforcement and implementation outlined in section 10

Of fundamental importance is that enforcement needs to work. The fine associated with breaching requirements for mandatory calorie labelling needs to be set at a level which is sufficiently large enough that it disincentivises non-compliance and may therefore require to be proportionate to the size of the business.

Adherence to calorie labelling requirements could be enforced by local authorities/local authority enforcement teams. As acknowledged in the consultation document, local authorities are responsible for enforcing existing food law in the businesses covered by the scope of the proposals for mandatory calorie labelling. For example, out of home food businesses are subject to a regular inspection regime as part of food hygiene laws and regulations. Checking for calorie labelling on menus and at a points of choice could be added to this inspection regime. However, local authorities need to be appropriately supported and resourced to carry out this role.

In England, under the new mandatory calorie labelling regulations recently introduced, Food Authorities must enforce and execute the regulations in their local area. Food Authorities are those detailed in Section 5 of the Food and Safety Act 1990, and apply to all food authorities and authorised officers³⁹.

It also needs to be clear what is being enforced. For example, enforcement activity could be focused solely on ensuring the required calorie information is provided on menus at and points of choice, or it could also take into consideration how the calorie information provided was calculated, to check if the calorie information provided is correct and accurate. It is unclear from the consultation which of these is being enforced.

We note paragraph 10.4 of the consultation document states an intention to work with industry in developing guidance to local authorities. We would like clarity on this, with a clear understanding of which industry actors this includes and what their role would be – this needs to be outlined. Whilst it is important to acknowledge the role played by industry in the out of home sector, they should not be involved in any policy decision making processes, which aim to improve public health, as this is clear conflict of interest and could fatally undermine the impact/effects of the policy.

Question 17 – How could any requirements be enforced, in a way that is fair and not overly burdensome?

Enforcement needs to be consistent across the whole country to ensure it is fair. This requires a uniform approach across each local authority area to ensure this achieved.

As outlined in our response to the previous question, it needs to be clear what is being enforced – is it to check if out of home businesses have included calorie information on their menus, and/or if the calorie information provided has been calculated correctly. This needs to be clearly outlined and communicated to all actors involved. We would ask that both elements are enforced and a random

³⁹ The Calorie Labelling (Out of Home Sector) (England) Regulations 2021
<https://www.legislation.gov.uk/ukdsi/2021/9780348223538>

sampling scheme or spot check calculations could be set up to check calorie calculation information is correct.

Food Standards Scotland provides MenuCal – a free, web-based calorie calculator and allergen management tool which aims to support small and medium food business operators to provide calorie and allergen information on their menus. This could help to reduce some of the costs associated with implementing calorie labelling.

Question 18 – What impacts, if any, do you think the proposed policy would have on people on the basis of their: age, sex, race, religion, sexual orientation, pregnancy and maternity, disability, gender reassignment and marriage/civil partnership?

Please consider both potentially positive and negative impacts and provide evidence where available. Comment on each characteristic individually.

Disability

People with impaired vision may struggle to read calorie information. When accessible menu and point of sales information is offered to them (in any form), it should be accompanied by calorie information.

To monitor for any unintended consequences, an independent comprehensive evaluation should be commissioned and focus on these impacts as well as on the policy's effectiveness on food choices and reformulation.

Question 19 – What impacts, if any, do you think the proposed policy would have on people living with socio-economic disadvantage? Please consider both potentially positive and negative impacts and provide evidence where available.

The impacts at present are unknown, as it depends on what businesses are covered by the calorie labelling requirement. If it covers all businesses, the effect will be positive. However, if smaller businesses, for example, are exempted, this positive impact will likely be diluted.

We expect excluding micro and small businesses from calorie labelling could potentially impact people from low social-economic backgrounds. Scotland-based research showed that in Glasgow outlets selling fast food, alcohol, tobacco and gambling were clustered together and that the numbers of these clusters increased linearly from the least to the most deprived areas⁴⁰. If these outlets were not required to display calorie labelling, those living in most deprived areas could be put at a further disadvantage, potentially leading to widening of the health inequality gap.

Question 20 - Please use this space to identify other communities or population groups who you consider may be differentially impacted by this policy proposal. Please consider both potentially positive and negative impacts and provide evidence where available.

The proposed policy could also have an impact on people with low levels of health literacy. Low health literacy has been identified as a barrier to understanding nutrition and other labelling⁴¹. Individuals with a low level of health literacy may have little or no understanding of calories and may struggle to correctly understand and use calorie information. Further, individuals in more deprived areas can have less capacity and fewer resources to enable them to make decisions which limit the impact of environmental and other external factors.

⁴⁰ Macdonald L, et al (2018) Do 'environmental bads' such as alcohol, fast food, tobacco, and gambling outlets cluster and co-locate in more deprived areas in Glasgow City, Scotland? *Health and Place*, 51:224-231.

⁴¹ Cooper M, and Malloy-Weir L (2016) Health literacy, literacy, numeracy and nutrition label understanding and use: a scoping review of literature. *Journal of Human Nutrition and Dietetics*, 30(3): 309-325
<https://doi.org/10.1111/jhn.12428>

Provision of calorie information can help to increase levels of health literacy, by increasing understandings of calorie content in different foods and could influence food choices and purchasing behaviour. It is important that the calorie information provided is clear, easy to understand and accessible to ensure it can be understood and used by everyone.

We note that NHS Scotland has a health literacy strategy and action plan⁴², published in 2017, which details actions and commitments to addressing health literacy issues in Scotland. This should be considered in plans for mandatory calorie labelling in Scotland, to ensure the policy is effective for everyone.

About us

Obesity Action Scotland provide clinical leadership and independent advocacy on preventing and reducing overweight and obesity in Scotland.

For any enquiries relating to this submission, please contact Jennifer Forsyth
jennifer.forsyth@obesityactionsotland.org

⁴² NHS Scotland (2017) Making it Easier. A Health Literacy Action Plan for Scotland
<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2017/11/making-easier-health-literacy-action-plan-scotland-2017-2025/documents/00528139-pdf/00528139-pdf/govscot%3Adocument/00528139.pdf>