

Response to Food Standards Scotland board paper (of 18th September 2024) on revised position on Mandatory Calorie Labelling in the Out of Home sector

Obesity Action Scotland (OAS) welcomes the opportunity to comment on Food Standards Scotland's (FSS) board paper¹ on revised position on Mandatory Calorie Labelling (MCL) in the Out of Home (OOH) Sector.

Highlights

- The out of home sector makes a significant contribution to diets and calories consumed in Scotland. Food served tends to be high in calories and in fat, salt and sugar.
- Early action is needed to improve the OOH food environment. FSS' call for mandatory calorie information is a critical step towards improving the healthiness of the sector.
- A whole population approach is critical to ensure coherence in the delivery of dietary interventions across the life course, diseases and sectors.
- Evidence points to the potential benefits of mandatory calorie labelling/information for improving consumer awareness, encouraging product reformulation, and for population health, which warrants priority consideration.
- FSS' paper suggests benefits from mandatory calorie information for driving change to improve healthy food content in the OOH sector. **Ready access to MCL at the point of choice is critical to equip consumers to access healthier options and sustain the sector's healthiness.**
- **Readily accessible mandatory calorie labelling/information at the point of choice (option 2 in the FSS paper) should be the default requirement across OOH premises and locations, with opt-out provisions to address concerns of those living with certain eating disorders.**
- International evidence highlights the importance of MCL as a public health intervention, positively addressing obesity, and recognising that any costs of implementation are significantly outweighed by the public health and wider benefits.

I. Background: The Out of Home Sector in Scotland – why mandatory calorie information is needed

The evidence base in the FSS board paper indicates the enormous contribution the OOH food sector makes to diets in Scotland. The paper outlines that there are around 45,000 OOH outlets in Scotland. This is based on FSS' definition of an OOH outlet, with figures taken from FSS Food Hygiene Information Source (FHIS) database² (in July 2024). Additionally, the paper notes a preference to use the term calorie information rather than calorie labelling. We welcome this change and agree that this approach is more relevant to the context of the paper's subject matter. When we refer to calorie labelling in this response, it therefore implies calorie information.

The OOH sector also contributes significantly to calorie intake in Scotland – this is acknowledged and evidenced in the board paper. Evidence shows that food available/served in the sector is predominantly unhealthy and, notably, contributes around a quarter of all calories consumed³. For example, food and drink purchased and consumed in the OOH sector tends to exceed the recommended 600 kcal per meal detailed in the Scottish Government Eatwell Guide⁴ and data from Scotland shows that confectionary and sweet treats, sugary drinks and quick meals were among the most commonly purchased food and drink categories in the sector⁵.

Evidence also shows that the OOH sector is frequently used, with 96% of people in 2021 reporting they visited an OOH outlet, with an average of just under three trips per week per person⁶. The board paper strongly makes the case that the OOH food environment is unhealthy and therefore needs action to improve it. Crucially, the paper acknowledges there has been no change in these trends, which given the magnitude of the problem, warrants population and sector wide interventions.

The evidence in the paper not only provides a strong case for action to improve the healthiness of the food provided in the OOH sector, but further supports automatic access of mandatory calorie information at points of choice as we elaborate under key considerations.

The importance of calorie and nutrition information in the out of home sector has been recognised in the recently published report *Recipe for health: a plan to fix our broken food system*⁷ from the House of Lords Food, Diet and Obesity Committee. The report outlines the following recommendation in relation to nutrition labelling/information in the out of home sector: “*Make prominent nutrition labelling mandatory for all businesses in the out-of-home sector.*” This points to the necessity for nutrition information in the OOH sector and for it to apply to all businesses.

In our response below, we outline a number of key arguments as to why ready access to mandatory calorie information in the OOH needs to be the norm.

II. Key considerations

1. The efficacy of mandatory calorie information for healthiness of OOH sector remains clear

Evidence on the efficacy of calorie information for the healthiness of the OOH sector and for driving consumer awareness remains clear. Therefore, any alterations to the direction of policy offering ready access to mandatory calorie information at the point of choice is unwarranted and problematic.

Mandatory calorie information is a critical component for improving the healthiness of the OOH sector. The evidence presented by FSS in the paper indicates a clear rationale for recommending calorie labelling in 2019. This was based on strong recognition of the need for action to improve health by improving the food environment in Scotland and the food offered in the OOH sector is widely recognised as being more energy dense and higher in calories. The paper highlighted the need to take action to increase the availability, promotion and consumption of healthy food in the OOH sector. It further outlined a recognition of the need for mandatory action, with voluntary measures considered as ineffective, inconsistently implemented, and not delivering the scale of change needed.

Evidence from a rapid evidence review carried out by FSS in 2022 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. This points to the potential for innovating to offer information in a manner that maximises calorie reduction. Whilst the average reduction might appear to be a small number of calories, taking into account how often people eat out of home, it could lead to a significant reduction in calories consumed⁸. Additionally, as the House of Lords Committee report affirms, mandatory, rather than voluntary, measures are required to deliver desired outcomes and positive changes to population health outcomes.

Findings from a rapid evidence review carried out by FSS³, cited in the paper found a positive impact from mandatory calorie information for encouraging businesses to reformulate their products, improving the overall healthiness of food offered in the sector. It highlights that on average OOH outlets reduced the calorie content of the items they serve/sell after the implementation of calorie labelling (i.e. reformulation of products) and acknowledges that this has a positive effect on reducing calories purchased across the population and makes healthier options the default option for consumers. This is a significant finding and further demonstrates why mandatory calorie information is required to drive whole population public health and diet improvement. Similarly, findings from a multi-country study which examined various places with and without mandatory nutrition information on restaurant menus found some impact on consumer awareness and subsequent behaviour detailing that where mandatory nutrition information was provided, there was an increase in reports of noticing and using the information, as well as greater efforts to modify consumption⁹.

The paper makes a good case for the role mandatory calorie information plays in promoting and encouraging product reformulation by food businesses in the sector, thus helping to improve the overall healthiness of the sector. However, in relation to consumers, the focus needs to expand to include consumer awareness and empowerment besides behaviour change given how critical these are both to stimulate behaviour change and enable accountability and sustainability of healthy content in the OOH sector. Evidence on consumer awareness is therefore an area that calls for closer and early review and is elaborated next.

2. Consumers right to know and consistent messaging across outlet types

Consumers have a right to know the calorie and nutritional content of the food they are consuming when eating OOH and make the determination if it's health-promoting or not. Calorie information needs to serve the broader purpose of empowering consumers to know what they are purchasing and assessing its adequacy. Evidence from a recently published paper highlights that whilst

provision of mandatory calorie information does not necessarily drive or result in significant consumer behaviour change, it found that individuals were less likely to underestimate how many calories they were consuming, therefore demonstrating a clear positive impact in terms of consumer awareness, knowledge and understanding¹⁰. Consumer awareness is an important determinant of the likely success of a policy and the full impact of a policy cannot be properly assessed without including it in evidence reviews and impact assessments. As the FSS paper states, improved transparency can enable action.

However, the recommendation to pursue Option 3 in the paper makes it more challenging for consumers to be aware. Not having calorie information provided at the point of choice in the OOH sector creates a barrier for consumers to access information about the food they are purchasing and consuming. It requires them to seek out information and places them at the discretion of businesses. Such an approach disfranchises consumers and creates a power imbalance between consumers and businesses. Remedy to this requires an approach where calorie information is available by default and delivers transparency at the points of choice.

A situation to the contrary creates an imbalance and inconsistent messaging between different types of outlets. There are strict rules in the UK and Scotland governing nutrition information on pre-packaged food and drink products sold in retail settings. Since 2016, nutrition declarations are required for most prepackaged foods. This includes nutrient values and energy information in both kilojoules and kilocalories (kcal)¹¹. However, non-prepackaged foods have far fewer information requirements than prepackaged foods and energy information is not a requirement. Therefore, if kcal information is required for all prepackaged foods sold then it is reasonable to expect the same requirements to apply to all food sold in the OOH sector. Consumers have as much right to know what they are purchasing and consuming when accessing the OOH sector.

Furthermore, ready access to mandatory calorie information offers an opportunity to hold businesses accountable for the food they sell, further encouraging product reformulation, and could potentially ease the enforcement burden. This approach helps enlist consumers as the first line of monitoring and reporting non-compliance, reducing the need and cost of compliance visits and therefore the enforcement burden on local authorities and trading standards. Providing calorie information in this way could also encourage businesses to further reformulate their products, improving the overall healthiness of the food offered in the sector.

3. Taking a whole population approach

The board paper recognises the importance of a whole population approach. It follows that policy measures are widely applied to benefit the whole population. Measures such as mandatory calorie information are widely regarded and recognised as part of a comprehensive package of policy measures addressing marketing, promotions and pricing to achieve sustainable and sustained public health outcomes and improve the OOH food environment. It should therefore be set up to deliver dietary guidance for the whole population and this would require barrier-free access to the information for all.

Data quoted in the paper from the eating disorder charity Beat suggests that around 1.25 million people, approximately 1.9% of the population in the UK, has an eating disorder. As a result, this leaves 98.1% of the population without an eating disorder and requiring dietary guidance, such as calorie information. Therefore, we do not feel it is appropriate for the policy to be changed based on

the perceived negative impact on such a small proportion of the population, when the whole population benefits are acknowledged and recognised.

4. Concerns of those with lived experience needs a holistic approach

We fully appreciate and acknowledge that the experiences and concerns of individuals with lived experience of eating disorders as a sub population are important and calls for empathetic consideration. Please refer to our recommendations in Section IV on how these can be addressed. Nonetheless, this subpopulation would typically include individuals with over-eating disorders and diabetes - sub populations with widely different dietary guidance needs.

The evidence does make the important observation that eating disorders and obesity are not separate issues and the relationship between them is complex since many people with lived experience of an eating disorder also live with obesity. This calls for exploring evidence on the perspectives of people living with obesity, diabetes and similar diseases who need on-going dietary guidance and their perception of readily accessible calorie labelling.

5. Need to consider broader evidence of impact on people living with eating disorders to inform a change in policy direction

The paper acknowledges that most of the evidence cited on eating disorders is qualitative and with small sample sizes. For example, the study by Public Health Scotland¹² has a small sample size of around 18 individuals, who self-identified as having an eating disorder. This has the potential to bring bias to the sample and the study. Additionally, the study briefly looked at whether providing wider nutritional information, rather than just calories, could be beneficial. Its conclusion that exposing people to broader nutritional information might cause harm has then been engaged to deem public display of calorie information to be undesirable. This approach uses data pertaining to a subpopulation with a specific life context to make decisions that affect the whole population, and this is a huge jump.

The FSS paper also acknowledges that there are significant gaps in the evidence base regarding the effect of MCL on individuals with lived experience of eating disorders. For example, the majority of the studies and evidence cited in the paper is qualitative and with a small sample size. It also acknowledges there are some gaps in the evidence base including evidence from clinicians and views of carers/supporters of people living with an eating disorder. Despite this, the paper asserts '*...there is a mounting body of evidence demonstrating a risk of harm to those living with, recovering from, or vulnerable to developing an eating disorder.*' Given the limitations cited in the paper, we do not feel it provides a strong enough basis for altering course to render mandatory calorie information on-request an option for the population at large.

Additionally, the paper, while suggesting that calorie information on pre-packed food items when grocery shopping can present a problem for individuals, then asserts that the lack of calorie information when eating OOH provides them a sense of freedom. This effectively demonstrates why the change in policy proposed is so damaging for the health of the population at large and makes the case to explore how the needs of those living with eating disorders can be addressed without compromising the needs of the wider population.

Furthermore, there is evidence in the wider literature that suggests some positive impacts from calorie labelling for people living with eating disorders which are not explored or discussed in the paper. The positive effects recorded in the literature include increased feelings of control and responsibility including planning of food intake, can help to reduce anxiety, reducing the shame around food choices by providing information and thus reducing ‘overconsumption’ and associated guilt, and increased reassurance and feeling informed about food¹³. Further evidence from a UK cross-sectional study indicated that more than 50% of study participants either strongly agreed or agreed with the paper that calorie information on menus would be helpful when deciding what to eat¹⁴.

Mandatory calorie information is widely recognised by several countries as an important part of a package of measures designed to improve the food environment to make accessing healthier food the easiest option for everyone. Therefore, given these figures and recognition of the importance of taking a whole population approach, we do not feel that it is prudent to change the policy position on direct access to mandatory calorie information for the public.

6. Parity with the UK in protecting consumers

MCL was successfully implemented by the UK Government in April 2022 for OOH businesses in England with 250 or more employees. This has been modelled to show positive impacts on health, including potential for a reduction in deaths from cardiovascular diseases¹⁵, as well as consumers being more likely to report using calorie information which could have wider public health implications¹⁰. It is imperative Scottish consumers benefit from MCL as their English counterparts do.

Meanwhile the UK regulation has meant calorie labelling appearing voluntarily in the Scottish outlets of large UK businesses that have stores across the country. It is vital to create a uniform message across all OOH points of choice, businesses and across the UK by making it mandatory at the point of choice in Scotland as well.

7. Consistent dietary messaging in children’s environment

Such a measure, especially easy access to MCL, gains relevance as far as children are concerned. This is a vital measure to ensure consistency with other dietary guidelines, such as those for school meals, that children are familiar with in their school environments. As children grow up and begin to access the OOH sector for their dietary needs, it is critical that the sector reinforces the guidance they receive in schools by offering easily and quickly accessible mandatory calorie information. Given the limitations on children’s awareness and bargaining power, requiring them to request calorie information from businesses, could severely disadvantage them in accessing healthy food and reduce the effectiveness of school-based interventions.

8. Increasing the availability of and access to healthy food

Apart from children’s access, smooth reach to mandatory calorie information in the out of home sector is key to improving the overall availability and accessibility of healthy food for all in the out of home sector. The policy forms a critical part of the package of measures required to improve the out of home food environment in Scotland. Increasing availability of healthy food benefits everyone, including those with eating disorders.

9. Implementation costs

The paper identifies implementation costs as one of the key barriers for businesses emerging from responses to the 2019 consultation. The paper cites this among evidence/examples of what has changed with regards to supporting the shift in position. Any costs of implementing the policy can be off set against the cost savings that will be achieved for health and the wider economy once the policy is implemented and fully operational.

We are aware of concerns around implementation costs of mandatory calorie information, especially for small and microbusinesses and previously called for support to be provided to enable them to successfully take forward mandatory calorie information in their premises, in our response to the most recent consultation held in 2022¹⁶. It is important that an appropriate package of support is provided to small and microbusinesses to enable them to properly comply with calorie information requirements and ensure maximum effectiveness of the policy. Small and microbusinesses need to be included to ensure maximum effectiveness of the policy. The House of Lords reported cited earlier highlights that limiting mandatory calorie information to businesses with 250 or more employees in England means that there are only 545 businesses within scope of the regulations⁷. This may go some way towards explaining why some of the evidence evaluating the impact of the policy has found only marginal impacts, as the significant majority of businesses are not included, and further emphasises the significance of sector-wide regulations.

III. International examples/evidence

As outlined in the paper, there are a range of countries internationally that have successfully implemented mandatory calorie and/or nutrition information in the out of home sector.

Countries such as Australia, the USA and parts of Canada have taken forward policies on mandatory calorie and/or nutrition information in the out of home sector. Various studies have reported evidence of effectiveness in these countries in terms of a reduction in calories consumed, such as up to a 250-calorie reduction in food purchases when menu calorie information is provided¹⁷.

In Australia, provision of calorie information has been implemented in 5 jurisdictions. The main argument given by the government for implementation of the policy was to create one consistent food labelling/information system. The option chosen in Australia was to develop a mandatory food regulatory measure for menu labelling in the Food Standards Code – it was felt this option was the most likely of those proposed to support healthier food choices and contribute to the prevention of obesity and diet-related chronic diseases, *“providing a public health benefit which is far greater than the expected cost of labelling for the industry and government”*¹⁸.

There were several recognised benefits of the above policy option, which mirror many of the arguments we have detailed in our response. These include ensuring that all modes of sales and types of menus are included to enable comparison of menu options within and across businesses; create a level playing field (with respect to menu labelling) for all businesses; assist people to understand and use energy information to make informed, healthier food purchase choices at point of sale; and minimise the use of different menu labelling systems, ensuring consistency. This highlights the positive widespread benefits to individuals, businesses and population health that can be achieved through mandatory calorie information.

Australia provides an interesting case study as they have similar rates of adult overweight and obesity to Scotland and face similar challenges of an obesogenic environment. A regulatory impact assessment¹⁷ into the menu labelling policy did acknowledge concerns and potential costs to both businesses and individuals via implementation costs and taxation but significantly it also recognised the widespread benefits to public health that could arise from the policy, including reduced costs which could free up money to be spent elsewhere.

IV. Way forward

Based on the options outlined in the paper, we suggest that mandatory calorie labelling/information at the point of choice remains the norm, with adaptations instituted to accommodate concerns for those with lived experience of eating disorders.

Option 2 should be taken forward – pursue progression of the original recommendation of mandatory calorie labelling available at the point of choice in out of home outlets in Scotland as the norm, with some adaptations to accommodate concerns of those with eating disorders. This approach ensures an automatic opt-in/coverage of the whole population, while making room for those with eating disorders to opt-out of the norm.

The opt-out option could include offering alternative menus without calorie information upon request by those living with eating disorders and utilising digital options such as a toggle button to switch calorie information on and off. However, digital options may not be available to small and micro businesses, those in remote locations and anyone with limited internet access.

There is also scope to provide nutrition information in place of calorie information on displays within out of home outlets, such as public display boards and menu boards for example. This would help to ensure that all consumers still receive necessary information regarding the nutritional composition of the food on offer to them, while avoiding distress to individuals with lived experience of eating disorders. Non-pre-packaged food and non-alcoholic drinks at the point of choice should be included. Full calorie information should still be provided on menus alongside this.

In this regard, it is important to define what is meant by non-prepackaged food. In this instance, we do not mean meals selected from a menu in a restaurant and consumed on the premises. Rather we mean food that is offered for sale on a counter, for example, such as in a café or bakery, and is purchased to consume either at the premises or away from it.

It is imperative that the nutrition information proposals are implemented now and not at some point in the future, as is indicated in the paper. It is reasonable to expect out of home food outlets to be able to provide calorie and nutrition information at the point of choice on all of their products. It is a legal requirement for allergy information to be provided for all non-prepackaged food sold¹⁹. Given this requirement, businesses will be aware of the nutritional composition of the food they are offering to consumers in order to provide the legally required allergy information and therefore it is reasonable to expect them to be able to provide nutrition information on the products and to also be able to calculate calorie content on that basis.

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