



**PRIMARY  
AUTHORITY**

**NIELSEN BRANDBANK**

This Primary Authority Advice has been produced by Cambridgeshire County Council in partnership with Nielsen Brandbank for use by members of the co-ordinated partnership to help the businesses comply with the law. If you follow this advice correctly your local regulatory officer should respect this and not ask you to comply with the law in a different way.

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| Reference:                                    | R 829822                      |
| Issue date:                                   | 3 <sup>rd</sup> November 2021 |
| Review date:                                  | 1 <sup>st</sup> October 2022  |
| Co-ordinator                                  | Nielsen Brandbank             |
| Primary authority:                            | Cambridgeshire County Council |
| Supporting Regulator:                         | Not applicable                |
| For publication on Primary Authority Register | <b>YES</b>                    |

**PRIMARY AUTHORITY ADVICE**

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| Relevant Legislation:     | The Food (Promotion and Placement) (England) Regulations 2021 DRAFT   |
| Geographic Applicability: | England   |
| Scope:                    | England   |
| Details of request:       | To approve a system to provide nutrient profiling scores for food and drink based on prepackaged food information and inferred food composition for branded foods to Nielsen Brandbank clients to support the application of, and compliance with, the Food (Promotion and Placement) (England) Regulations 2021 <i>Draft</i> .   |
| Advice provided:          | The Appendix contains a detailed explanation of the system and its operation, and associated context.<br>Where a food business has relied upon the Nielsen Brandbank systems and processes ("Solution A" - as set out in the Appendix) for the purposes of determining whether a given food or drink product will fall to be restricted under The Food (Promotion and Placement) (England) Regulations 2021 <i>Draft</i> , and the food business can demonstrate that they had no further information or knowledge, which would give them reason to suspect that an offence had occurred, or would occur, and where the source food information is accurate and accords with the Nielsen Brandbank system requirements and specifications, it is the view of Cambridgeshire and Peterborough Trading Standards Service that, in circumstances where the determination produced by the Nielsen Brandbank systems is shown to be incorrect, it would in all the above circumstances, nonetheless have been reasonable for the Food Business to have relied upon the information (determination) provided; meeting the requirements of s21(4) Food Safety Act 1990 ("Defence of due diligence"). |

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|   | <p>It is the opinion of Cambridgeshire and Peterborough Trading Standards Service that this approach will achieve a reasonable and acceptable balance between providing, on the one hand, certainty for retailers seeking to achieve consistent and scalable compliance with The Food (Promotion and Placement) (England) Regulations 2021, and, on the other hand, appropriately safeguarding government policy not to unduly inconvenience consumers.</p> <p>NOTE: This advice is based on the current, draft form of The Food (Promotion and Placement) (England) Regulations 2021 and will be reviewed when it becomes a UK Statutory Instrument, on publication of government guidance and following implementation of the regulations.</p> <p><u>Guidance for Regulators</u></p> <p>The Government intends to publish implementation guidance in early 2022. The document will explain further the regulations, food and drink that is in and out of scope and how the promotions restrictions are intended to apply. It will also contain guidance on enforcement of the Regulations.</p> <p>The consultation outcome (<a href="https://www.gov.uk/government/consultations/restricting-promotions-of-products-high-in-fat-sugar-and-salt-by-location-and-by-price-enforcement">Restricting promotions of products high in fat, sugar and salt by location and by price: enforcement - GOV.UK (www.gov.uk)</a> ) indicates there is expectation that enforcement focuses on compliance rather than penalising non-compliance.</p> <p>The solution that is the subject of this Primary Authority Advice is explained in the Appendix. It is considered by Cambridgeshire &amp; Peterborough Trading Standards Service to be an effective system of providing, on the basis of partial information, a reasonably accurate estimate of the nutrient profile score. It aims to achieve an acceptable balance between compliance and pragmatism and can provide assurance to food businesses (and retailers in particular) operating at scale.</p> <p>The process will remain under continuous review and Nielsen Brandbank will maintain any dialogue with clients. The calculation will use the food information on the latest available packaging.</p> <p>Where officers wish to query the promotion of specific food or drink on the basis of whether they are specified foods and subject to restrictions this should be through the retailer concerned. If the retailer shows they have relied on information provided by Nielsen Brandbank then the officer should recognise the best endeavours to ensure correct information and the high probability that Nielsen Brandbank will not have incorrectly assigned a HFSS product as suitable for inclusion in promotions.</p> <p>The officer is asked to confirm whether the process described below has been relied upon and verify that the date the information was provided is the latest available to the retailer.</p> <p>If there remain questions whether the product is a specified food, the nature and composition of the product should be established through appropriate means which may include the brand owner, their Primary or Home Authority, or analysis.</p> <p>If evidence shows that the HFSS status assigned by Nielsen Brandbank may be incorrect then please advise us as Primary Authority without undue delay. If discrepancies are identified by the officer and this Primary Authority is notified, Nielsen Brandbank will use that as part of its due diligence monitoring the operation of the process.</p> |
| <p><b>Communication with businesses</b></p>             | <p>Nielsen Brandbank will communicate with clients as set out in the document below.</p>   |
| <p><b>Communication with enforcing authorities:</b></p> | <p>An enforcing authority, proposing to take enforcement action against a business, is only required to notify the primary authority where they are aware that the business is a member of a regulated group. While guidance states that the enforcing authority should ask you whether you are relying on Primary Authority advice, we recommend that you ensure you communicate this as soon as possible, and do not wait to be asked (para 21.5 of the Statutory Guidance). The scheme does not allow for a business to make a notification to the primary authority where an enforcing authority has already taken action in respect of which it [the enforcing authority] failed to make the required notification to the primary authority (para 21.20 of the Statutory Guidance).</p> <p>Additionally, the rules allow for you (or the Co-ordinator) to notify the primary authority (para 21.19 of the Statutory Guidance).</p> <p>Once a primary authority receives notification, statutory time limits apply (usually 5 days) in which time they must respond to the notification. (Paras 21.9 &amp; 21.10 of the Statutory Guidance).</p>   |

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| <b>Document references:</b>  | <p><a href="#">The Food (Promotion and Placement) (England) Regulations 2021 (legislation.gov.uk)</a><br/><a href="#">Restricting promotions of food and drink that is high in fat, sugar and salt - GOV.UK (www.gov.uk)</a><br/><a href="#">The nutrient profiling model - GOV.UK (www.gov.uk)</a></p> <p><u>Note</u></p> <p>This advice is based on legislation in force, as amended, on the date of issue and the information you have provided. Any interpretation is based on current understanding of the law and may be revised in the light of new information, judicial interpretation or amended law.</p> <p>The responsibility of complying with the legislation rests with the qualifying businesses specified in the Regulations. Food Business Operators also have responsibilities in Article 8 of Food Information to Consumers Regulation EU 1169/2011.</p> <p>This advice may only be communicated to other businesses if it is quoted in its entirety.</p> |
| <b>Issued by:</b>  |  <p>Paul Maylunn<br/>Senior Trading Standards Officer</p>  |
| <b>Notes:</b> <ol style="list-style-type: none"><li>1. Primary Authority Advice is assured. This means that when a business is following the advice the primary authority can direct against any proposed enforcement action which is inconsistent with the advice.</li><li>2. It should be read alongside the <a href="#">Primary Authority Statutory Guidance</a>.</li></ol> |   |

– APPENDIX FOLLOWS ON NEXT PAGE –  
THIS ADVICE IS ONLY COMPLETE WHEN THE APPENDIX IS ATTACHED

APPENDIX

**HFSS – Request for Assured Advice**

**Request and Background**

From 1st October 2022, the promotion and placement of ‘specified foods’<sup>1</sup> will be restricted by The Food (Promotion and Placement) (England) Regulations 2021.

The nature of the restrictions is to control where such products can be placed (both in-store and online), and also to control the use of volume promotions in relation to such products. In both cases, exemptions apply, as set out in the regulations.

The regulations place the primary responsibility for compliance upon retailers. However, it is also recognised in the government’s consultation papers<sup>2</sup> that retailers will not always be able to easily identify the nutrient profile of *branded* products in particular (owing to a general paucity of on-pack food information vis-a-vis the requisite product information for accurate nutrient profile calculations). It is therefore suggested that manufacturers of branded foods may wish to provide retailers with nutrient profile scores relating to their products. The same government papers also allude to the possibility that any misleading “HFSS” representations made in this regard, may be prosecuted under s14 Food Safety Act 1990 (“Selling food not of the nature, or substance, or quality demanded”).

The efficient & consistent provision of nutrient profile scores, by thousands of UK food brand manufacturers, to all affected UK retailers, presents a significant logistical and technological challenge for all parties. The twin issues of consistency & scalability are key factors here. In order for these regulations to have their desired effect, all retailers must each apply the rules consistently. If consumers see the same product being treated differently between different retailers, this will undermine consumer confidence in this government policy, as well as potentially undermining numerous commercial relationships. It is therefore important that a solution is found, which ensures all retailers are aligned in their application of these restrictions. Furthermore, any solution that achieves consistency must also be capable of operating at a scale that can support the largest of retailers who will have product range lists running into thousands of products.

**Nielsen Brandbank**

Nielsen Brandbank has operated in the UK for over 20 years, creating digital product content for over 90% of the UK’s online grocery sector. Its traditional, core service involves the transcription of on-pack data and the creation of high-quality digital images, both of which are typically approved by the supplier before being made available for online use by data consumers (e.g. retailers). Nielsen Brandbank does not publish product content directly to retailer websites; moreover, it provides the supplier-approved digital product content to retailers for their use. Nielsen Brandbank has commercial relationships with thousands of food manufacturers, who use its services to create digital product content, which can then be distributed to multiple retailers (including all major UK retailers). This has created a unique model and industry footprint, where manufacturers need only provide product samples or information to one business, rather than having to do so multiple times in multiple formats to many businesses. Furthermore, at the other end of the chain, data consumers (such as retailers) receive digital product data that is standardised and presented in predictable and controllable ways; enabling them to construct their web-based content according to their needs. **For present purposes, this model presents an opportunity to facilitate an industry-wide, consistent approach to the provision of nutrient profile and HFSS data to retailers.**

While Nielsen Brandbank offers additional services enabling suppliers to provide further product information (which is not present on-pack), its core service digitizes the **on-pack data** for thousands of products. This puts Nielsen Brandbank in the position of holding most of the requisite food information

<sup>1</sup> The Food (Promotion and Placement) (England) Regulations 2021, r3.

<sup>2</sup> <https://www.gov.uk/government/consultations/restricting-promotions-of-products-high-in-fat-sugar-and-salt-enforcement/outcome/restricting-promotions-of-products-high-in-fat-sugar-and-salt-consultation-response-on-policy-enforcement> See: ‘Assessing Compliance’.

to perform nutrient profile calculations at scale, but also presents opportunities to apply certain techniques (set out herein) to that data, in order to help mitigate the effects of any absent food information.

It is against this background that Assured Advice is sought in respect of the proposed Nielsen Brandbank solution (as set out below), which aims to achieve an acceptable balance between compliance and pragmatism and can provide assurance to all food businesses (and retailers in particular) operating at scale. A failure to achieve this is likely to result in a scenario where retailers may restrict all foods in scope of the regulations, on the false assumption that all foods will be 'specified foods', owing to an absence of any evidence to the contrary. In this scenario, everyone loses. Not only do retailers and suppliers unnecessarily lose revenue, but consumers will be inconvenienced and unable to take advantage of lawful volume promotions or conveniently placed products, potentially making their shopping more expensive and time-consuming. The government's published policy makes the explicit point that it is not aimed at inconveniencing consumers.<sup>3</sup>

**Accordingly, assured advice is sought on the following, specific issue(s):**

Nielsen Brandbank will, in due course, offer a solution for brand manufacturers to provide the off-pack information directly to retailers, as outlined below ("Solution B"). However, in the meantime, and in the absence of all the requisite food information needed for nutrient profile calculations (using the FSA's 2004/05 nutrient profile model), can a nutrient profile score, calculated (as per the Nielsen Brandbank solution set out below) from:

1. the remaining on-pack food information;
2. associated data science techniques, and;
3. associated logical conclusions,

...be reasonably relied upon by retailers, using the same nutrient profile score, to achieve compliance with the above-stated placement and promotion restrictions, at scale? In particular, would this approach be capable of enabling a retailer to meet the requirements of s21(4) of the Food Safety Act 1990 (as amended) ("Defence of due diligence")? *Acknowledging and notwithstanding that the final arbiter of any such determination would, in all circumstances, be a court of law.*

**Co-ordinated or Direct Partnership Advice?**

It is proposed that any Assured Advice might be given as part of Nielsen Brandbank's Coordinated Primary Authority Partnership with Cambridgeshire and Peterborough Trading Standards, with a view to inviting any of Nielsen Brandbank's retailer customers, who are not already part of our Regulated Group, to join.

**The Nielsen Brandbank (HFSS) Solution (Overview)**

The Nielsen Brandbank solution has two parts. The first (Solution A) is a short/mid-term solution (**and the subject of this request for Assured Advice**). The second (Solution B) is a longer-term solution, not discussed in detail here.

It is anticipated that the first solution will be a temporary/bridging solution only. A summary of both solutions is outlined below:

**Solution A (NBB-Calculated Nutrient Profile Scores - Summary)**

Nielsen Brandbank uses on-pack food information and gap-filling logic and data science techniques (as set out below) in order to provide Nutrient Profile Scores (at scale) to retailers (or other parties using the service) by means of a regularly scheduled spreadsheet. *Typical screenshot available at Annex I*

<sup>3</sup> <https://www.gov.uk/government/consultations/restricting-promotions-of-food-and-drink-that-is-high-in-fat-sugar-and-salt/outcome/restricting-promotions-of-products-high-in-fat-sugar-and-salt-by-location-and-by-price-government-response-to-public-consultation> See discussion under: Equality Act: consultation questions 52 to 55.

### **Solution B (“Evolve” Platform - Summary)**

Food manufacturers use the new Nielsen Brandbank systems (“Evolve” platform) to provide both an indication of the HFSS status of their product(s) (“True”; “False”; “Not Applicable”) and the Nutrient Profile Score of their product(s). This score may be pre-populated by the Nielsen Brandbank estimated score (per Solution A) but is overwritable by the food manufacturer. This data is then available to retailers who subscribe to the Nielsen Brandbank services (all major UK retailers). *Screenshots available at Annex II.* Recognising that it will take time to onboard Nielsen Brandbank’s thousands of supplier customers to the Evolve system, Nielsen Brandbank offers Solution A (above) as a temporary, interim solution and proposes to conduct a managed transition to Solution B over time.

### **Nielsen Brandbank-Calculated Nutrient Profile Scores - Systems & Processes (Solution A)**

#### **Precautionary Approach**

Solution A is designed to err on the side of caution where there is ambiguity or missing food information, and will lean towards a higher nutrient profile score, helping to ensure that products are not inaccurately represented as healthier than they really are. The effect of this is that, should any inaccuracies occur, they are more likely to be inaccuracies that present a product as *less* healthy than it may actually be; not *more* healthy. This is an important principle when considering whether the data produced by solution A can reasonably be relied upon by retailers. For ease of reference, where this precautionary principle applies, the text will be [coloured blue](#).

The Nielsen Brandbank systems will produce a Nutrient Profile Score in accordance with the published **Nutrient Profiling Technical Guidance, 2011**<sup>4</sup>. Further to this, the Nielsen Brandbank systems will also involve the following strengthening and mitigating features:

#### **Currency**

Nielsen Brandbank recommends that a new data extract is produced and provided to the retailer (by Nielsen Brandbank) every four weeks (or as agreed with the retailer). Any products that have changed their product data in that period will receive a new Nutrient Profile Score when the next data extract is produced. Users of the Nielsen Brandbank service (Solution A) will do so under the agreed terms of a Statement of Work<sup>5</sup> (SoW). Without prejudice to the agreed terms contained in any SoW, the standard Nielsen Brandbank Terms & conditions will usually apply. Under these Terms & Conditions, the retailer is obligated to respond to any superseding product information in accordance with clauses 2.2.3 – 2.2.4 of Schedule 4 (“Data Access Service”), which for the avoidance of doubt, includes:

- requirements to apply any product amendments or deletions, to any media accessible to consumers, within 24 hours.
- Requirements to remove, from any media accessible to consumers, any products that have been superseded (...)

#### *(Currency) Product Reformulation – Responsibilities*

Nielsen Brandbank recommends suppliers inform Nielsen Brandbank when a new/reformulated product version of an existing product (materially affecting food information) is launched. Further to this, the standard Nielsen Brandbank service, routinely and actively, analyses product range lists (provided by retailers) to close any product gaps. This mitigates against a situation whereby a new, branded product version is available in-store but the equivalent digital product content/food information is not available online. The Nielsen Brandbank (Solution A) systems will only produce a nutrient profile score in respect of the latest product version available. It is the sole responsibility of the brand manufacturer

<sup>4</sup> <https://www.gov.uk/government/publications/the-nutrient-profiling-model>

<sup>5</sup> A legally binding agreement between the parties, setting out deliverables, timelines and any commercial terms. In this instance, the SoW may also include agreements regarding the frequency of the HFSS data provided (e.g. monthly or, weekly) - the contents of any SoW's are not pre-judged here.

to provide up-to-date product information to Nielsen Brandbank. A brand manufacturer is able to revise their products as many times as they wish during a given subscription period, often free from additional charges, thereby reducing the potential for delay in providing up-to-date product versions to Nielsen Brandbank. The most practical way a retailer can support this process is to make it clear to brand manufacturers that they [retailers] expect brand suppliers to provide up-to-date “current” product information to Nielsen Brandbank. While responsibility for compliance with these regulations will remain with retailers, it will likely strengthen a retailer’s due diligence defence to be able to evidence such active, reasonable precautions being undertaken.

#### *(Currency) Date Marks*

While Solution B is a service integrated to the Nielsen Brandbank supplier-facing user platform (“Evolve”) and is delivered to data consumers via API, Solution A (the subject of this Assured Advice) is to be initially delivered by an Excel file. Each Excel file is date marked within the file’s properties and provides evidence of the date relevant to all nutrient profiles contained therein.

#### **Communication**

Solution A (the subject of this Assured Advice) does not include a direct dialogue with brand manufacturers. The data is provided to the retailer on an ‘as is’ basis (according to Nielsen Brandbank’s terms and conditions) having been calculated according to the systems and processes detailed herein. From time-to-time it may be the case that a brand manufacturer queries the data - either with Nielsen Brandbank or with the retailer – and/or has a different and conflicting view of the nutrient profile. In such circumstances:

- Where a brand manufacturer independently (of Nielsen Brandbank) provides a nutrient profile score and/or HFSS status to a retailer, which differs from that provided by Nielsen Brandbank (under Solution A), it remains the sole responsibility of the retailer to decide which information to rely on.
- Where the brand manufacturer contacts Nielsen Brandbank to query the nutrient profile score and/or HFSS status of one or more of their products, Nielsen Brandbank will record this dialogue in its customer management systems. Nielsen Brandbank will present the following options to the brand manufacturer:
  1. The brand manufacturer can contact the retailer (as per the preceding point) and provide an alternative HFSS status and/or nutrient profile score. The retailer will be responsible for deciding whether to rely on the alternative brand-supplied information.
  2. The brand manufacturer can choose to use “Solution B” (“Evolve” platform), in order to provide direct nutrient profile score and/or HFSS status information via the Nielsen Brandbank systems (*Evolve screenshots available in Annex II*).
  3. If potential discrepancies in the nutrient profile score are identified by the Enforcement Officer, in addition to addressing this with the retailer (and if necessary, the brand owner), the Enforcement Officer can contact Nielsen Brandbank (ideally via the Primary Authority) whereupon, Nielsen Brandbank will ensure the above options are made available to the brand manufacturer. (*See also ‘Guidance for Regulators’ above*)

#### **Multipart Products**

In respect of products containing more than one product variant (e.g. multipack crisps with different flavours), the Nielsen Brandbank (Solution A) service will apply the methodology set out herein to each variant that provides ingredient & nutrition information, **and will communicate the least healthy outcome to the retailer.**

Nielsen Brandbank will use best endeavours to identify whether the provision of an average score (of multiple components) is the most appropriate approach, in lieu of the above-stated method.

#### **Categories (of potentially ‘Specified Foods’)**

The Nielsen Brandbank systems will produce a nutrient profile score for all foods. Until such time as the Department of Health & Social Care produces further authoritative guidance (expected) regarding the nuances involved in identifying all categories of potentially specified foods (further to Schedule 1 of

The Food (Promotion and Placement) (England) Regulations 2021), [Nielsen Brandbank will take the safest approach, enabling the retailer to make appropriate decisions on their full range \(or those products agreed to be included in their data extract\).](#)

## Approach to Absent On-Pack Information (Solution A)

### **Fibre**

As Fibre counts towards the 'C' points in the Nutrient Profile Model and can therefore (where a value is present) only *improve* a product's nutrient profile score, then, where this information is absent (recalling that Fibre need only be declared voluntarily in a Nutrition Declaration) this value will be recorded as '0' (zero). [This approach mitigates against inaccurately representing a product as being healthier than it really is on grounds of inaccurate Fibre values.](#)

It will not ordinarily be apparent from a product's packaging whether NSP or AOAC fibre values are given. In any event, the Nutrient Profiling Technical Guidance 2011, indicates that using either value is appropriate. [The Nielsen Brandbank process will default to AOAC values on the basis that these values cannot artificially inflate the product's nutrient profile score.](#)

### **Nutrition Declaration**

These restrictions apply to prepacked foods. The majority of prepacked foods will carry a mandatory Nutrition Declaration (although there are circumstances, as outlined in Annex V, Regulation (EU)1169/2011<sup>6</sup>, which will mean that a prepacked food may not carry a Nutrition Declaration - noting however that most (but not all) of the exemptions listed in Annex V will likely relate to foods that are out of scope of these restrictions).

Regulation (EU)1169/2011 also provides that nutrition values can be provided by means of a calculation from generally established and accepted data.<sup>7</sup> The Composition of Foods Integrated Dataset<sup>8</sup> (CoFID) is based upon the McCance & Widdowson canon of work and will likely constitute 'generally accepted scientific data' for these purposes.

Therefore, where a prepacked food does not carry a Nutrition Declaration, it will be hypothetically possible for Nielsen Brandbank to obtain the relevant nutrition values from the CoFID dataset. Nielsen Brandbank will not necessarily do this and reserves the right to only do so if a commercial agreement requires it. [In all other circumstances, where a Nutrition Declaration is absent from a prepacked food, which is in scope of these restrictions, the Nielsen Brandbank systems will not provide a Nutrient Profile Score.](#) In such circumstances, the obligation for complying with The Food (Promotion and Placement) (England) Regulations 2021 will remain with the retailer.

### **Fruits, Vegetables and Nuts - (QUID Values)**

The amounts of fruits, vegetables and/or nuts will not always be provided on pack. Where they are provided, this will usually be in the form of a % value (QUID) in the ingredients list. The Nielsen Brandbank systems use various logic to arrive at a sound estimate of the specific amounts of each, as below:

The majority of ingredients declared on a product will appear in descending order of weight (a legal requirement). The first ingredient to provide a QUID value (whether or not it is a fruit, vegetable or nut) will provide an anchor point and help to indicate the amount of any subsequent ingredients. This logic can be repeated for any subsequent QUID declarations also. [NOTE: further to the below information regarding dried fruits & vegetables, any doubling of non-QUID'ed values will also take account of](#)

<sup>6</sup> As amended by The Food (Amendment) (EU Exit) Regulations 2019'.

<sup>7</sup> Regulation (EU)1169/2011, art 31(4)(c).

<sup>8</sup> <https://www.gov.uk/government/publications/composition-of-foods-integrated-dataset-cofid>

*preceding 'QUID'ed' ingredients and the remaining available proportion of the food before any doubling is applied.*

In circumstances where there are no QUID values given, but either, or all of, fruit, vegetables or nuts are present, the Nielsen Brandbank systems will attribute equal weight to each ingredient. As a safeguard measure however, this includes maximum limits of certain substances (e.g. salt, additives etc..) in order to mitigate against unrealistic values. Further information can be provided if requested.

If, for any reason, the presence of fruit, vegetables and/or nuts is missed by the algorithm, this would have the effect of producing a less healthy nutrient profile score as their presence can only improve a nutrient profile score (in much the same way as any absent Fibre values do not risk presenting a product as being more healthy because of it – see above).

The Nielsen Brandbank systems rely on the NHS' '5 a day' guide<sup>9</sup> to determine what types of fruit and vegetables should be included, along with an internal database of nuts to identify common nuts (outside of those listed as allergens on Annex II of Regulation (EU)1169/2011). This is subject to ongoing review.

#### **Dried and Pureed Fruits & Vegetables**

As per the Nutrient Profiling Technical Guidance 2011, Nielsen Brandbank will double any values given for dried fruit and vegetables and commercially prepared concentrated tomato puree. It should be noted that this will mean a doubling of any relevant QUID (%) values, if/where provided on-pack.

#### **Prepared / Unprepared / Reconstituted**

As per the Nutrient Profiling Technical Guidance, the Nielsen Brandbank systems uses the nutrition values of a product as sold (not as consumed) - these will be the default values provided in a Nutrition Declaration, as required by art 31(3) Regulation (EU)1169/2011.

Where a food requires reconstitution before consumption (e.g. custard powder) the Nielsen Brandbank systems will look for reconstituted values on-pack and use these *where possible*. Such products account for approximately 1% of products in the Nielsen Brandbank systems.

#### **Millilitres / Gram Conversion (Gravities)**

The worked examples provided in the Nutrient Profiling Technical Guidance 2011, rely on specific gravities, as published in *Food Portion Sizes (3rd ed)*<sup>10</sup> in order to convert 'ml' values to 'gram' values. Nielsen Brandbank uses the same publication, and *The 2018 review of the UK Nutrient Profiling Model*<sup>11</sup>, in order to identify all appropriate gravities for this purpose and adjusts 'ml' values accordingly. Where sub-categories of foods (e.g. carbonated soft drinks) share similar but not identical specific gravity values, the Nielsen Brandbank systems will adopt an aggregate value for that sub-category.

### **Presentation (Solution A)**

Nielsen Brandbank will provide to the retailer, an Excel spreadsheet containing the estimated HFSS status and the estimated nutrient profile score. Currently, this output takes the form of:

1. The estimated nutrient profile score itself, and;
2. an estimated 'HFSS status' in the form of;
  - a BLANK entry, where a food scores less than 4 points (less than 1 point for drinks),or;

<sup>9</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/508442/5\\_A\\_Day\\_revised\\_licensing\\_guidelines\\_V10.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/508442/5_A_Day_revised_licensing_guidelines_V10.pdf)

<sup>10</sup> ISBN-10: 0112429610 / ISBN-13: 978-0112429616

<sup>11</sup> "Annex A", The 2018 review of the UK Nutrient Profiling Model, Appendix H, Table 4, p95:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/694145/Annex\\_A\\_the\\_2018\\_review\\_of\\_the\\_UK\\_nutrient\\_profiling\\_model.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/694145/Annex_A_the_2018_review_of_the_UK_nutrient_profiling_model.pdf)

- a “Less Healthy” entry if it scores 4 or more points (1 or more points for drinks).

*(Example screenshot provided at Annex I)*

### **Substantiation (Solution A)**

The purpose of this Assured Advice is to act as potential substantiation evidence to a retailer’s due diligence defence (“bypass provisions”), demonstrating that they have relied upon information provided, and that it was reasonable for them to do so.

### **Due Diligence (Solution A)**

Regulation 16(2)(c)(i) and (ii) of The Food (Promotion and Placement) (England) Regulations 2021, taken together, provide that ss21(2) to (4) of the Food Safety Act 1990 (FSA) apply in circumstances where an offence may have occurred under s15 FSA (“Falsely describing or presenting a food”) the reference to “sale or intended sale” includes “promotion or presentation”.

This will include s21(4) FSA:

*(4)A person satisfies the requirements of this subsection if he proves—*

*(a)that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by such a person;*

*(b)that the sale or intended sale of which the alleged offence consisted was not a sale or intended sale under his name or mark; and*

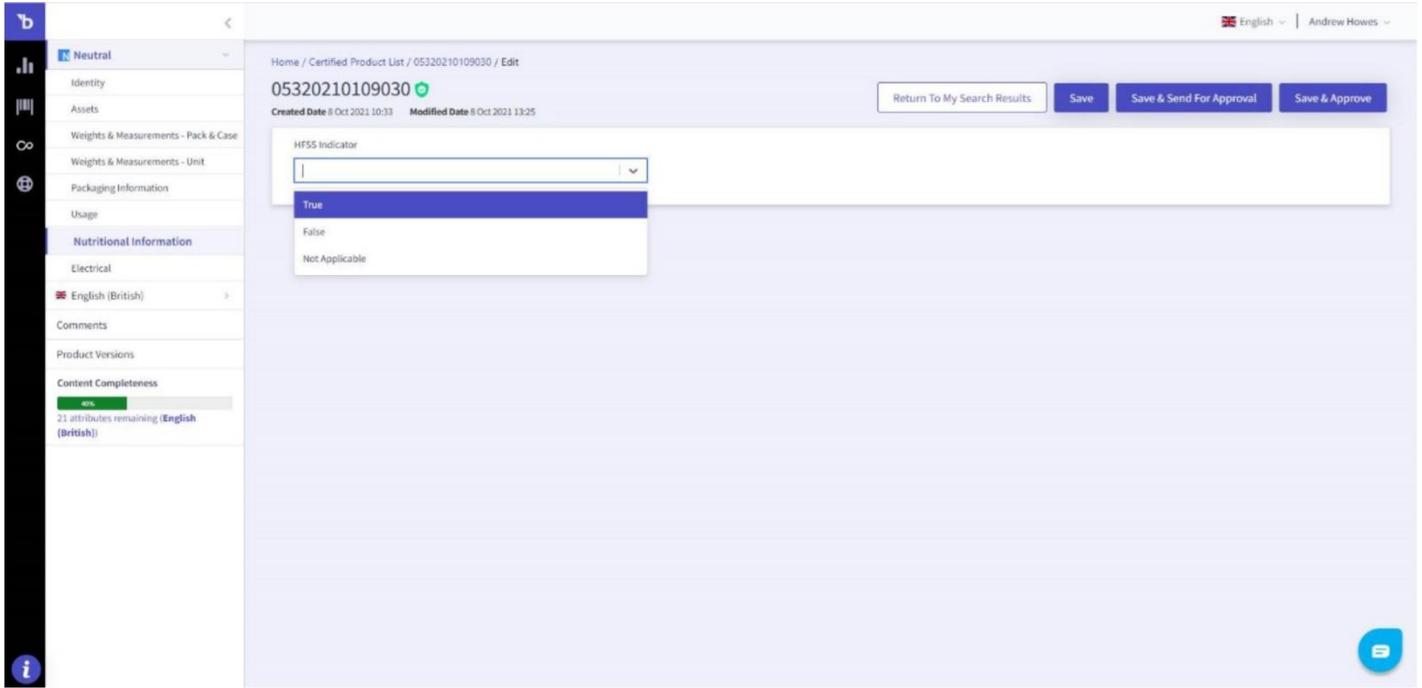
*(c)that he did not know, and could not reasonably have been expected to know, at the time of the commission of the alleged offence that his act or omission would amount to an offence under the relevant provision. (...)*



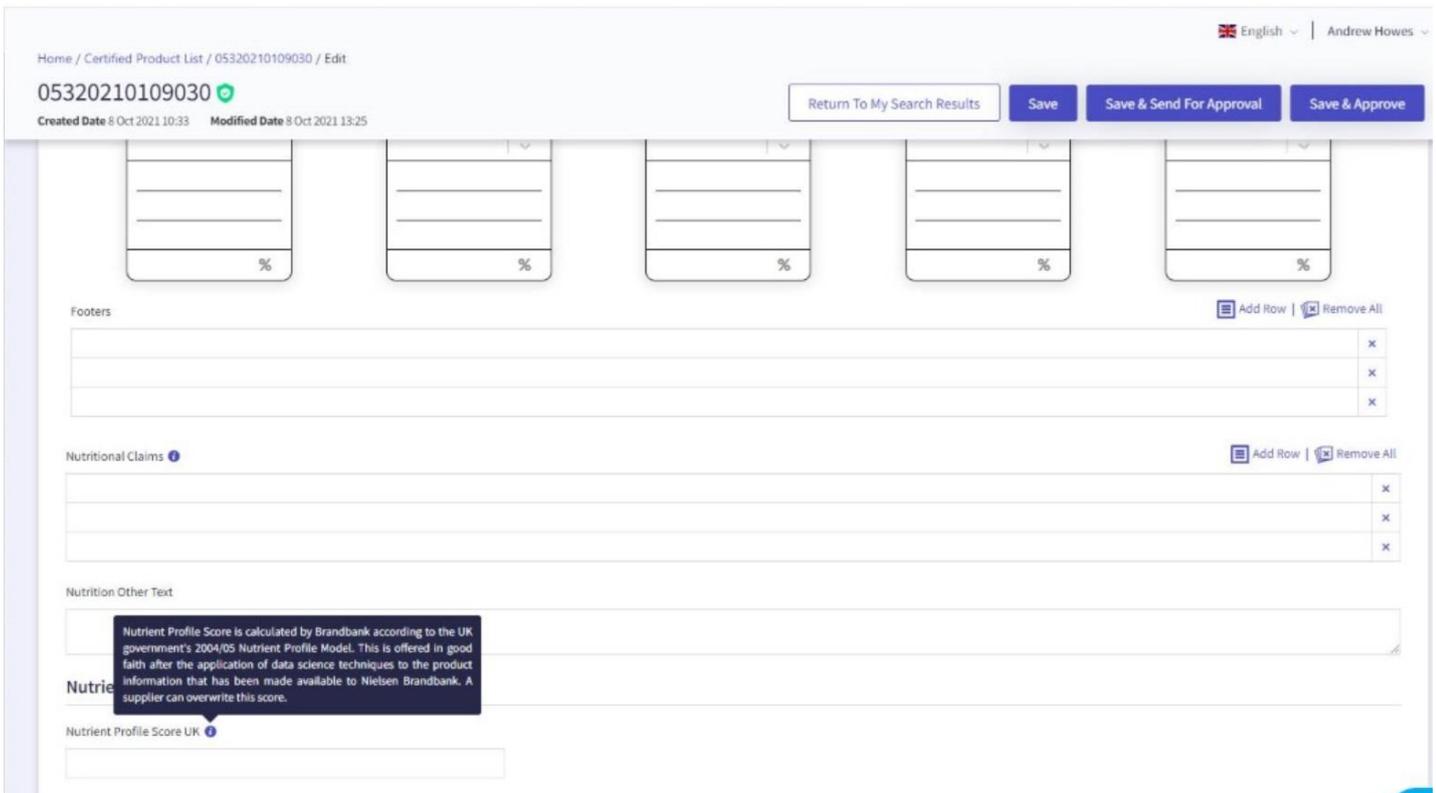
**ANNEX II**  
**(Screenshots - “Evolve” Platform (Solution B) - Supplier View)**

NOTE: The look and the layout of the Evolve platform may change from time to time.

**HFSS Indicator:**



**Nutrient Profile Score:**



END