



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

Reference:	R 841061 C
Issue date:	28 th July 2022
Review date:	28 th January 2023
Co-ordinator	NielsenIQ Brandbank – Brandbank Ltd
Primary authority:	Cambridgeshire County Council
Supporting Regulator:	Not applicable
For publication on Primary Authority Register	YES

PRIMARY AUTHORITY ADVICE

Relevant Legislation:	The Food (Promotion and Placement) (England) Regulations 2021
Geographic Applicability:	England
Scope:	All businesses in the co-ordinated partnership that wish to use the Shopper Experience Platform in this respect.

Details of request:	<p>Request for Assured Advice:</p> <p>It is requested that, further to both our Direct and Co-ordinated Primary Authority partnerships with Cambridgeshire and Peterborough Trading Standards Service, the NielsenIQ Brandbank (NIQBB) systems are considered (insofar as they relate to HFSS-related data), with a view to giving assured status to the same, under both partnerships.</p> <p>Background:</p> <p>Further to our <i>co-ordinated</i> Primary Authority partnership, Cambridgeshire and Peterborough Trading Standards Service has already assessed - and given assured status to - a separate element of NielsenIQ Brandbank’s HFSS services (namely: the provision of NIQBB-calculated nutrient profile scores and associated HFSS statuses). Primary Authority assurance of the data generated by that service is subject to definitive, supplier-approved HFSS data not being available to any retailers, who are seeking to rely on the calculations. The NIQBB Shopper Experience Platform (the subject of this request for assured advice) is the platform by which food manufacturers/suppliers are able to provide that approved and definitive, HFSS-related data to retailers (and other users of NIQBB data), at scale.</p> <p>NielsenIQ Brandbank’s core systems have reliably aggregated and syndicated digital food product content between multiple manufacturers/suppliers and multiple online retailers for over 20 years. In addition to this service, the new Shopper Experience Platform enables manufacturers/suppliers to provide additional off-pack information about their products (such as HFSS data).</p>
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	<p>Specifically, the manufacturer/supplier is able to populate the following HFSS-related attributes in the platform:</p> <ul style="list-style-type: none">• 'HFSS Indicator' (dropdown options: HFSS / Not HFSS / Not Applicable)• 'HFSS Food Category' (dropdown of the categories set out in Sch.1 of the regulations (1-13))• 'HFSS Food or Drink' (dropdown confirming whether the product is a food or drink)• 'Nutrient Profile Score' (numeric value entered by the manufacturer) <p>It should be noted that the HFSS-related data, produced via the NielsenIQ Brandbank systems, relates to the EAN for the given product. Where there are different label versions with the same EAN, it is the supplier/manufacturer's responsibility to ensure the latest product version prevails in the NIQBB systems</p> <p>When a supplier provides data in any/all of the above attributes, this generates corresponding product data in the following locations (in addition to the core product data):</p> <ul style="list-style-type: none">• 'Product Library' (a repository of all approved NIQBB products and associated product data)• 'Data Feeds' (whether XML, JSON or other formats – these are the feeds of product data sent to retailers). <p>Data Feeds:</p> <p>Retailers regularly 'dial in' to the NIQBB systems to retrieve product data that is matched to their range lists. Each time the retailer dials in, they receive the most recent product version (superseding any older versions). A retailer typically dials in to the NIQBB systems once every 24 hours (sometimes more frequently) in order to obtain current product data matched to their range list.</p> <p>NIQBB does not publish content directly to the retailer's website; the retailer retains full control over the product content in terms of what, how, and when they surface it on their consumer-facing website(s).</p> <p>Specific Requests:</p> <p>The Primary Authority is invited to inspect the relevant systems and processes and their attention is specifically drawn to the following:</p> <ul style="list-style-type: none">• The supplier (manufacturer's) view/journey through the process;• The specific data attributes a supplier can provide in respect of HFSS;• The presence, prominence & content of any supplier-approval legal text during the process;• The resultant data feed/extract at the end of the process (that retailers and other data users will then receive);• The frequency of data feeds sent/available to retailers;
Advice provided:	<p>The NielsenIQ Brandbank systems and processes have been examined to assess whether the HFSS-related attributes, available to supplier-customers via the Shopper Experience Platform, will enable a user of the correspondingly generated HFSS-related product data, to comply with The Food (Promotion and Placement) (England) Regulations 2021.</p> <p>It should be noted that:</p> <ul style="list-style-type: none">• The NielsenIQ Brandbank core system feed (to which additional data generated by the new Shopper Experience Platform is appended) is a well-established conduit of reliable product information, and is designed to ensure current product information is made available to retailers promptly.• This additional information on NPM scoring is provided by the supplier alongside other off-pack attributes, and the on-pack data.• NielsenIQ Brandbank's core systems have been inspected and assessed to be reliable in transferring the data provided by suppliers to the retailers.• The data provided by suppliers is accurately transformed into a format each of the retailer systems can utilize for their purposes.• The supplier contract commits the supplier to provide accurate and current data to the portal. The legal text presented during the supplier-approval process provides a reminder of the legal

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obligations for the accuracy of the information (see image below). The supplier therefore is fully aware of the legal implications of providing information that other businesses rely on.

- Furthermore, specific legal text will be included (at the approval stage for each product) which will require the approving supplier to warrant that any product content intended for the England market includes up to date HFSS data (specifically calling out the need to ensure this for reformulated products). All existing suppliers have been notified of the change and the legal implications; all new suppliers will receive full training on the systems they are to use, including the Shopper Experience Platform.
- The approval for publishing the information to NielsenIQ Brandbank systems may only be completed by the person assigned to do so by the supplier and notified to NielsenIQ Brandbank. Furthermore, NielsenIQ Brandbank is able to view an audit trail of all such activity.
- The supplier already has a relationship with the retailers it supplies, where promotions may be discussed, and this information provision through NielsenIQ supports the operation of that relationship.
- Once the supplier has clicked on “Approve & Publish” the information is transferred into the live system and then is instantly available next time the retailer system updates. There are no inherent delays that would prevent the retailer getting updated information.
- If the supplier provides incorrect data and this is relied on by the retailer this is not different from the same information being incorrectly supplied directly to each retailer. The retailer will be able to demonstrate their own diligence and that they relied on information supplied that they did not know and could not reasonably be expected to have known was wrong.
- In the absence of data in the HFSS and NPM fields identified retailers will not be able to use this as a basis for decisions on promotional activity.

Cambridgeshire and Peterborough Trading Standards Service has examined the operation of NielsenIQ Brandbank Shopper Experience Platform (NIQBB SEP) for the recording and transfer of data relating to a product’s Nutrient Profile status, and whether a given food or drink product will fall to be restricted under The Food (Promotion and Placement) (England) Regulations 2021.

From the assessment carried out Cambridgeshire & Peterborough Trading Standards Service is satisfied that where a supplier Food Business Operator has provided data in the HFSS-related attributes of the NielsenIQ Brandbank Shopper Experience Platform - and approved the same - this data is consistently and accurately passed to the data user (the retailer Food Business Operator). This will provide the information for the Qualifying Business (Retail Food Business Operator) to make promotion and placement decisions for those products in compliance with The Food (Promotion and Placement) (England) Regulations 2021.

Cambridgeshire and Peterborough Trading Standards Service considers that the responsibility for the presence and accuracy of those attributes, and that they accord with the NielsenIQ Brandbank system requirements and specifications, rests with the supplier Food Business Operator and that this is made clear to them.

It is reasonable, therefore, for the retail Food Business Operator that is a qualifying business under regulation 4 of the Regulations to rely upon that data in the same way they would rely on that data if supplied directly from supplier to individual retailer in relation to a food not under the retailer’s name or mark.

In circumstances where the attributes provided by the supplier through the NIQBB SEP were found to be inaccurate, it would in all the above circumstances, nonetheless have been reasonable for the retail Food Business Operator to have relied upon the information provided. It would therefore be open for the retailer qualifying business to be able to demonstrate that they did not know, and could not reasonably have been expected to know, that reliance on this information would amount to an offence, meeting the requirements of regulation 16 as applying s21(4) Food Safety Act 1990 (“Defence of due diligence”).

Please Note This advice sits alongside equivalent advice for the Brandbank direct Primary Authority partnership

Communication with businesses

Nielsen Brandbank will communicate with clients to explain the operation of the Shopper Experience Platform, and may provide a copy of this advice for use by members of the co-ordinated group.

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<p>Communication with enforcing authorities:</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 & 21.10 of the Statutory Guidance).</p>
<p>Document references:</p>	<p>The Food (Promotion and Placement) (England) Regulations 2021 (legislation.gov.uk)</p> <p>Restricting promotions of products high in fat, sugar or salt by location and by volume price GUIDANCE - GOV.UK (www.gov.uk)</p> <p>The nutrient profiling model - GOV.UK (www.gov.uk)</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. The responsibility of complying with the legislation rests with the Qualifying Business as defined in regulation 4 of SI 2021:1368.</p> <p>This advice may only be communicated to other businesses if it is quoted in its entirety.</p>
<p>Issued by:</p>	 <p>Paul Maylunn Senior trading Standards Officer</p>
<p>Notes:</p> <ol style="list-style-type: none"> 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. 2. It should be read alongside the Primary Authority Statutory Guidance. 	

Annex – Supplementary Information

POTENTIAL FUTURE DEVELOPMENT - PLEASE NOTE:

NielsenIQ Brandbank is continually trying to improve and strengthen its systems. The following amendments to the system are actively being considered. These amendments will not materially alter the structure of the HFSS solutions in the NielsenIQ Brandbank Supplier Portal (as reviewed above), but they are detailed below for transparency. If/Once implemented, an addendum to any assured advice may be necessary to address these:

Validation:

NielsenIQ Brandbank is working on implementing a validation layer into the system. For example, where a supplier enters a Nutrient Profile Score of 20, but selects 'Not HFSS' in the 'HFSS Status' attribute, the system would raise a validation message when the user attempts to save the data.

Automation:

Where a supplier selects 'Not Applicable' in the 'HFSS Status' attribute, this will auto-populate the 'HFSS Category' with '0 - Not Applicable' (rather than leaving this attribute blank). This has some advantages to retailers using the data; ensuring parity with other data sources.

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Prompting:

Included in NielsenIQ Brandbank’s development roadmap, is the potential development of a ‘smart prompter’ to identify when a supplier has reformulated a product (but has not allocated a new EAN to the product (such reformulation would normally invoke the requirements to allocate a new EAN for the new product; in-turn leading to the creation of a new digital product)). Where such an instance is detected, the system would offer a prompt to the user *“Reformulated products may affect your HFSS status. Keep your Nutrient Profile Scores up-to-date”*. Development of this work will be kept under review, depending on supplier-need and development cost.

Category Wording:

The wording of the Sch. 1 categories may be tweaked from time-to-time in order to improve understanding and/or align with retailer expectations. The categories will fundamentally remain the same and will always be numbered as per Sch. 1 of the regulations.

Retailers will be able to use the data supplied in their own mechanisms for determining what promotional approach is to be taken for specific foods. The FDF (Food and Drink Federation) have a calculator for scoring against the Nutrient Profile Model. The supplier/manufacturer is directed to the FDF (with reference to their calculator) in the NielsenIQ Brandbank systems, as a means to perform an accurate nutrient profile calculation (if they do not feel confident in calculating an accurate nutrient profile score).

Use-Cases

The below table sets out each of the possible scenarios a supplier will face (8 in total) and how these would be reflected in the NielsenIQ Brandbank, Shopper Experience Platform HFSS attributes. NielsenIQ Brandbank will shortly be producing a video walking through some of these scenarios in the system:

NielsenIQ Brandbank HFSS Content Health Attributes - The Food (Promotion and Placement) (England) Regulations 2021							
		Attributes:				NOTES:	
Product-Type is a:		HFSS Indicator	Nutrient Profile Score	Food or Drink	Category		
Products In Scope of The Food (Promotion and Placement) (England) Regulations 2022	1	HFSS Food in scope of regs	HFSS	4 or more	Food	2 - 13	Self-explanatory
	2	HFSS Drink in scope of regs	HFSS	1 or more	Drink	1	Self-explanatory
	3	Non-HFSS Food in scope of regs	Not HFSS	3 or less	Food	2 - 13	Self-explanatory
	4	Non-HFSS Drink in scope of regs	Not HFSS	0 or less	Drink	1	Self-explanatory
Products NOT In Scope of The Food (Promotion and Placement) (England) Regulations 2022	5	HFSS Food NOT in scope of regs	Not Applicable	4 or more	Food	BLANK	To be used to voluntarily communicate health status of foods not in scope of The Food (Promotion and Placement) (England) Regulations 2021. This may be used by retailers to support the application of a full health lens to their range
	6	HFSS Drink NOT in scope of regs	Not Applicable	1 or more	Drink	BLANK	To be used to voluntarily communicate health status of foods not in scope of The Food (Promotion and Placement) (England) Regulations 2021. This may be used by retailers to support the application of a full health lens to their range
	7	Non-HFSS Food NOT in scope of regs	Not Applicable	3 or less	Food	BLANK	To be used to voluntarily communicate health status of foods not in scope of The Food (Promotion and Placement) (England) Regulations 2021. This may be used by retailers to support the application of a full health lens to their range
	8	Non-HFSS Drink NOT in scope of regs	Not Applicable	0 or less	Drink	BLANK	To be used to voluntarily communicate health status of foods not in scope of The Food (Promotion and Placement) (England) Regulations 2021. This may be used by retailers to support the application of a full health lens to their range

Shopper Experience Platform – Screenshots (supplier view)

The 4 x HFSS attributes:

Nutrition Other Text

Serves 1

HFSS Indicator ⓘ

HFSS Food or Drink

HFSS Food Category

Nutrient Profile Score

Nutrient Profile Score UK ⓘ

The HFSS Indicator Attribute (dropdown options):

HFSS Indicator ⓘ

HFSS

Not Applicable

Not HFSS

The HFSS Food or Drink Attribute (dropdown options):

HFSS Indicator ⓘ

HFSS

HFSS Food or Drink

Drink

Food

The HFSS Food Category Attribute (options are 1-13):

HFSS Food Category

Cat 9 - Desserts & Puddings

Cat 10 - Sweetened Yoghurt & Fromage Fraies

Cat 11 - Pizza

Cat 12 - Roast potatoes, sweet or potato chips, fries, wedges, potato waffles (and more)

Cat 13 - Various complete (or main part) ready meals. Breaded or battered vegetable, fish, shellfish, meat or poultry products.

The Nutrient Profile Score Attribute (numerical free-text):

Cat 13 - Various complete (or main part) ready meals. Breaded or battered vegetable, fish, shellfish, meat or poultry products. X v

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Nutrient Profile 10

Nutrient Profile 1234567890

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Approval Text (displayed to supplier when saving product data)

Bullet points 5 & 6 of particular relevance.

Product Approval

Please confirm that you wish to approve the selected product (or the multiple products selected, where you are bulk approving content) and that you have the necessary authority to do so.

By clicking "Approve", you warrant (and take full responsibility for ensuring) that:

- you have the appropriate authority to approve this product for distribution to data consumers and for display on consumer-facing media;
- any images and/or data (whether such data is present on the product packaging or is provided as supplementary information) are representative of the relevant product;
- all of the product content is suitable for external distribution to retailers and other data consumers (excluding any content designated as 'supplier specific attributes' within the relevant product record);
- any content specified as being 'supplier specific attributes' within the product record have been correctly designated as such. You hereby acknowledge and agree that any product information submitted by you in relation to the relevant products (e.g. supplementary information) will take precedence over any information coded by NielsenIQ Brandbank where the relevant data fields overlap;
- all images and data comply with all applicable product, food, labelling and information laws and regulations in force at the time of approval that are relevant to the market in which the product(s) are intended to be sold;
- in respect of food products intended to be offered for sale in England, all data relating to the HFSS (high in fat, salt and sugar) status and Nutrient Profile Score is accurate and current (particularly with regard to any revised / reformulated food products);
- you have obtained all necessary licences and consents (including from any relevant medical body) required for the marketing of each product;
- the product content is appropriate and applicable for each relevant market in which the product(s) are intended to be sold (including instances of dual labelling for UK and EU markets);
- you acknowledge that the images and/or data will be used by a variety of consumers;
- where you have the functionality to set a product 'live date', you acknowledge that it is your responsibility to ensure that live dates are set correctly and you acknowledge that the approved product information will be made publicly available from the live date specified;
- where you do not have the functionality to set a product 'live date', you acknowledge that the approved product information will be made publicly available from the date of your approval; and
- any supplementary information or amendments to a previously approved product do not change that product's EU 1169 compliance status (as previously determined by your organisation),

Screenshots of NielsenIQ Brandbank Product Library

Ingredients

Rapeseed Oil
 Ginger Purée
 Stock [Yeast Extract, Water, Potato Flakes, Salt, Natural Flavouring, Sunflower Oil, Sugar, Or
 Ground Spices [Cumin, Paprika, Turmeric, Coriander, Black Pepper, Chilli Powder, Cardamom
 Red Chilli
 Salt
 Lemon Juice Concentrate
 Fennel Seeds
 Onion Powder
 *17% of product

Nutrient Profile Score

Nutrient Profile Score UK - 10

Allergen Tag Text

For allergens, including Cereals containing Gluten, see ingredients in **bold**.

Allergy Text

There have been rare cases of allergic reactions to Quorn® products, which contain mycoprotein and fibre which may cause intolerance in some people.

Nutrition

	(as microwaved) Per 100g:	(as microwaved) Per Bowl:
Energy	395kJ/94kcal	1176kJ/281kcal
Fat	2.2g	6.6g

Per Portion
 Per Cooked Bowl (297g)



of an adult's reference intake (8400kJ/2000kcal)

Per 100g/ml

Per 100g



Nutrition Other Text

Serves 1

HFSS Indicator

HFSS Indicator - HFSS

HFSS Food or Drink

HFSS Food or Drink - Food

HFSS Food Category

HFSS Food Category - Cat 13 - Various complete (or main part) ready meals. Breaded or battered vegetable, fish, shellfish, meat or poultry products.

Product Description

NielsenIQ Brandbank Captured Product Name

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NOTES:

- Supplier interactions with Shopper Experience Platform are auditable.
- As a general rule suppliers can only top up voluntary food information. Mandatory Food Information elements are locked for top up in order to preserve the integrity of the food information.
 - However, certain attributes are available to the supplier to augment the data. For example, where country of origin for pork is given on-pack as, e.g. Poland, the supplier could update the country of origin information in the Shopper Experience Platform to reflect multiple potential specific origins (if the supplier sources meat from varying countries).
 - Similarly, the supplier can augment the product information with additional packaging information and/or marketing copy.

Partial Data Feed Extract

(Sent to retailers via API)

```
C:\Users\hoan9006\Downloads\9919372.xml
hoan9006\Downlo... x
ss
Previous Next Options 7 matches

</Headers>
- <Lozenges>
  - <Lozenge Id="1906" Name="Energy">
    - <Quantities>
      - <Quantity>
        <Value>395</Value>
        <Unit Id="2" Name="kJ"/>
      </Quantity>
      - <Quantity>
        <Value>94</Value>
        <Unit Id="3" Name="kcal"/>
      </Quantity>
    </Quantities>
  </Lozenge>
</Lozenges>
</Reference>
</FrontOfPackGDA>
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- <NameLookups Id="410" Name="HFSS Indicator">
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    <Value Id="132693">HFSS</Value>
  </NameValue>
</NameLookups>
- <NameLookups Id="427" Name="HFSS Food or Drink">
  - <NameValue>
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  </NameValue>
</NameLookups>
- <NameLookups Id="428" Name="HFSS Food Category">
  - <NameValue>
    <Name Id="4533">HFSS Food Category</Name>
    <Value Id="134943">Cat 13 - Various complete (or main p
  </NameValue>
</NameLookups>
</ItemTypeGroup>
- <ItemTypeGroup Id="14" Name="Product Description">
  - <NameTextItems Id="170" Name="Alternative Description">
    - <NameText>
      <Name Id="2066">Supplier Preferred Product Name</Nam
      <Text xml:space="preserve">Quorn Spiced Chickpea & Len
    </NameText>
  </NameTextItems>
  - <LongTextItems Id="25" Name="Brand">
    <Text xml:space="preserve">Quorn</Text>
  </LongTextItems>
  - <LongTextItems Id="32" Name="Features">
    <Text xml:space="preserve">Under 350 kcals</Text>
    <Text xml:space="preserve">Microwave 2 mins</Text>
    <Text xml:space="preserve">High in Protein</Text>
    <Text xml:space="preserve">No Artificial Colours, Flavours or
```

NOTES:

- Feed has been tested to ensure it consistently represents the HFSS data that has been input.
- NielsenIQ Brandbank users do not typically have editing access in the Shopper Experience Platform and could only do so if specific restrictions are removed. Therefore, the above testing (demonstrating that the data input by the supplier is faithfully transmitted to the retailer) is a well-protected model, unlikely to be corrupted by external intervention.
- Retailers typically receive a download of this data in its entirety for their products at the outset and then this is updated with revisions and new products and the new data is downloaded.
- Retailers have access to the NielsenIQ Brandbank Product Library, should they wish to view individual products. However, the product data sent at scale to a retailer (matched to their range list) is typically fed directly into the retailer's systems via XML/JSON.
- Further to the above, retailers decide what goes onto their website from that data package in entirety. NielsenIQ Brandbank does not publish directly to the retailer's website.