Written evidence submitted by British Association for Nutrition and Lifestyle Medicine (BANT)

Executive Summary

I. Food quality standards are set internationally by Codex Alimentarius, ISO and CEN. UK would be an independent member of CEN post-Brexit.

II. Food labelling standards are set by Codex Alimentarius and the EU. Labelling standards comprise 1) mandatory nutrition, origin, identity information; and 2) voluntary information which is either nutrition content or health claims. A UK-enhanced regime would offer opportunities to rectify deficiencies in current standards to improve consumer protection and health promotion.

Detail

1. BANT is a professional association representing nutrition practitioners regulated by the CNHC, HCPC and others under the umbrella of the Professional Standards Authority. BANT members are all clinicians trained in functional personal nutrition using the model set out in BANT’s written evidence to the House of Lords Science and Technology Committee 2008 inquiry into Genomic Medicine rather than the one-size-fits all public health model.

Food Quality Standards

2. International standards are set by ISO and CEN (for Europe and associates, including Australia). The relationship between ISO and CEN is governed by the Vienna Agreement.

2.1 ISO has over 1600 standards relating to food:

i. Food products

ii. Food Safety Management (ISO 22000 series)

iii. Microbiology

iv. Fisheries and Aquaculture

v. Essential Oils

vi. Starch and its by-products

2.2 CEN’s work related to food and feed:

i. CEN/TC 194 - Utensils in contact with food

ii. CEN/TC 275\(^2\) - Food analysis - Horizontal methods
iii. CEN/TC 302\(^3\) - Milk and milk products - Methods of sampling and analysis
iv. CEN/TC 307\(^4\) - Oilseeds, vegetable and animal fats and oils and their by-products - Methods of sampling and analysis
v. CEN/TC 327\(^5\) - Animal feeding stuffs - Methods of sampling and analysis
vi. CEN/TC 338\(^6\) - Cereal and cereal products
vii. CEN/TC 415\(^7\) - Traceable and sustainable cocoa
viii. CEN/TC 453\(^8\) - Nutritional Supplements compatible with doping prevention

2.3 BANT’s specific interest which it wishes to spotlight to the PAC is ISO Standard 26422(2010): *Food products — Determination of the glycaemic index (GI) and recommendation for food classification*. This is an assay standard. In its Scope it says:

i. This International Standard specifies a method for the determination of the glycaemic index (GI) of carbohydrates in foods.

ii. This International Standard defines the GI, outlines qualifying factors, and specifies requirements for its application.

iii. This International Standard recommends criteria for classification of foods into low, medium and high GI.

3. No foods in the UK are currently classed or labelled as low, medium or high GI.

4. We have submitted separately to the Health Select Committee follow-up inquiry on Childhood Obesity about the lacuna in carbohydrate labelling relating to modified starches which are empty calories and high glycaemic yet not labelled as sugar. We will not repeat here what we have sent to the Health Select Committee but ask the PAC

\(^2\) [Link](http://standards.cen.eu/dyn/www/f?p=204:7:0::::FSP_ORG_ID:6256&cs=1AA0172D25329A4915ADC624E0A5D1FCA)

\(^3\) [Link](http://standards.cen.eu/dyn/www/f?p=204:7:0::::FSP_ORG_ID:6283&cs=1814060861C4B18DED1F45364DF1903E9)

\(^4\) [Link](http://standards.cen.eu/dyn/www/f?p=204:7:0::::FSP_ORG_ID:6288&cs=1F041D58851856C2324F3F181D99536F9)


\(^7\) [Link](http://standards.cen.eu/dyn/www/f?p=204:7:0::::FSP_ORG_ID:915650&cs=126DDBD534311D9F85A025AF92751E7F)

to note that there is an international assay standard in existence for the classification of foods in terms of GI.

**Current Food Labelling Standards**

5. Codex sets guidance on the compositional requirements of foods so that they are nutritionally safe (quality and labelling). EFSA/EU build on Codex. Our focus here is on EU and UK.

6. Foods, including supplements, are subject to the provisions of:

6.1 EU Food Information Regulation which covers mandatory labelling (covers *inter alia* nutrition content, point of origin, allergens). BANT has submitted to the Health Select Committee that maltodextrins, empty glycaemic calories, should mirror that of countries like Australia and the USA and be classified as ‘sugars’.

6.2 EU Nutrition and Health Claims Regulation (NHCR) which covers voluntary labelling. There are two parts:

- Nutrition claims: these cover the intrinsic attributes of foods and the Regulation sets out what constitutes e.g. ‘low fat’ or ‘low sugar’ to ensure that true statements are not misleading (e.g. ‘90% fat-free’) – but not GI which is of more relevance to the consumer where not all empty calories are labelled the same; and

- Health Claims are about the effect of foods on the human organism: this was hugely controversial when proposed nearly 20 years ago. It has turned into a dog’s dinner and the rest of this submission will focus on this.

**Health Claims on Foods - Background**

7. The NHCR was established to control claims based on foods and supplements so that they were not misleading. The Unfair Commercial Practices Directive provides the legislative framework in general for false and misleading claims. The NHCR was designed to provide an additional level of protection. It also offered opportunities for product innovation which included claims on proprietary data and introduced the claim for ‘disease risk reduction’ which is outside the scope of medicinal law.

8. While a register of approved claims has been established, there is no definition of what constitutes a healthy food (nutrient profile) and that was supposed to be a pre-requisite to avoid authorized claims being made on unhealthy products. All claims were intended to be set in a framework of understanding of the ‘average consumer’. However that has not yet been effected and has resulted in absurdities: for example in EU law it is an offence to state that ‘Drinking water does not reduce the risk of dehydration’ – while there is a technical case for that, it simply does not meet the consumer understanding test. Specific obligations were put on ‘health professionals’ not to make claims though the term ‘health professional’ was never defined. The
NHCR only applied to claims related to ‘commercial communications’ which the UK interpreted to mean being about branded products rather than having a financial interest in the product or its promotion. This has led to the absurdity that any GP telling their patient to eat Weetabix instead of Frosties for breakfast because it is better for them is committing a criminal offence!

9. There are two levels of claims: the lower level covering well-understood structure/function claims and the higher level reduced risk of disease/children’s health claims. Under the NHCR pre-authorisation is required not just for disease risk reduction/children’s health claims but also for general structure/function claims. This was a bold decision and contrasts with practice in the US and in Australia and New Zealand where pre-authorisation is only required for higher level disease risk reduction claims, with an obligation to be able to produce sufficient evidence for the lower level claims. While the NHCR stipulates that evidence must be weighed, the Commission and Member States did not want a system of Qualified Claims as in the US.

"Is the claim a lie? No, but…": Qualified Claims and Freedom of Expression

10. The US has had qualified disease risk-reduction claims following legal challenge. Accused of setting too high a standard for substantiation, the Food & Drug Administration (FDA) was charged with breaching rights to free expression. The US Court of Appeals (Pearson v Shalala 1999) held that the FDA may not suppress health claims on the basis that they do not satisfy its “significant scientific agreement” standard regardless of how FDA defined that standard. The First Amendment of the US Constitution confers a right to free speech (including commercial free speech) which is held inviolable such that disclaimers are constitutionally preferable to outright suppression – so long as advertising is not inherently misleading. The FDA therefore had to shoulder the burden of proof to justify claim suppression where that claim could not be rendered non-misleading through use of a disclaimer to satisfy the requirement to protect public health and prevent consumer fraud. The Pearson decision was later refined by Whittaker v Thompson (2002) which held that evidence must be ‘credible’.

11. The Government may wish to review the wisdom of adopting intact the NHCR. There is a particular danger in stating in law a claim as false which later turns out to be true. It took nearly 30 years before the evidence on folate and neural tube defects became public health advice. The NHCR was established before the era of smart mobile technologies when the only source of information was the food advertisement or the product label. It is simply not fit for purpose in the current format. And any misleading product claim can be prosecuted through general trading standards regulations.
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2. https://boss.cen.eu/ref/Vienna_Agreement.pdf
4. https://www.cen.eu/work/areas/food/Pages/default.aspx
10. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3257747/