

How badly do we eat?

 By [Neil Kirby](#)

3 Jul 2013

There is currently a range of proposed legislation to assist South Africans with eating properly. The regulations and statutes range from the control of foodstuffs for infants and the manner in which these products are advertised and packaged, the levels of salt in certain foods and the planned control of advertising and labelling of alcoholic beverages.

The efforts by the Department of Health to control foodstuffs range from a need to control sodium - presumably to address issues concerning high blood pressure and related diseases, which place a burden on the South African health care system - and the need for regulations dealing with the manner in which infant foodstuffs and products used to provide infants with access to those foodstuffs are marketed and advertised.

Turning to the control of salt in the South African diet, these regulations were published as Regulations Relating to the Reduction of Sodium in Certain Foodstuffs and Related Matters on 11 July, 2012, and will come into effect shortly. The regulations prescribe the levels of salt that are to be incorporated, by law, into basic foodstuffs, including, but not limited to, bread, butter, processed meats, snacks, and biscuits. The Department of Health in its Annual Report for 2011/12 states that one of its key directives is to "[r]educe the mean population intake of salt to an intake of salt to less than 5 grams per day by 2020." In addition, the Annual Report states that it is also a directive and goal of the Department of Health to "[r]educe by 20% the relevant per capita consumption of alcohol by 2020." This is all to the end that the Department of Health wishes to "[r]educe by at least 25% the relatively premature mortality [under 60 years of age] from [non-communicable diseases] by 2020". Certainly, one understands the control or the need to control levels of sodium in basic foodstuffs and actions taken by the Department of Health to lower the availability of sodium in the ordinary South African diet may very well be lauded. However, on the opposite end of the spectrum of control are the regulations for foodstuffs and the equipment used to administer foodstuffs to infants.

Bottles and teats are out

The Regulations Relating to Foodstuffs for Infants and Young Children, published finally in 2012 in Government Gazette 35941 on 6 December, 2012, endeavour to control the availability of products such as bottles and teats to the public in South Africa in order to dissuade the use of such items for purposes of administering foodstuffs to infants and young children. The rationale underlying this control is the view held by the Department of Health that breast feeding is the method of feeding infants that should be preferred by new mothers. The regulations go as far as prohibiting promotional activities, advertisements and statements on the Internet and other related social media concerning items such as bottles and teats. In fact, when one views the regulations and the measures that are to be introduced by these regulations in respect of the control of items such as bottles and teats, the controls are as vigorous as those imposed in respect of the advertising and selling of tobacco products. The rigid nature of the regulations and the intention of the regulations may indeed lead some to argue that the environment created by the regulations is such that it stifles speech, a right protected in terms of the Bill of Rights and the Constitution. The regulations are due to come into effect in a phased manner and the process will be as follows:

- 6 December, 2014: Specific labelling and packaging requirements for "designated products", infant formula, complementary foods, liquid milks, powdered milks, modified powdered milks, sweetened condensed milk, imitation dairy, and goat's milk products.
- 6 December, 2013: Sale and promotion of certain foodstuffs, feeding bottles, teats, feeding caps with spouts, straws or teats and gift packs.
- 6 June, 2013: Prohibition on free or low-cost designated products and samples and displays of such products.
- 6 December, 2015: The transitional measures are amended from 18 months to 36 months.

The proposed legislation dealing with alcoholic beverages is currently before parliament. Certainly, as stated above, this ties in with the Department of Health's prerogatives to control the consumption of alcohol amongst the South African population with a view, in turn, to controlling non-communicable diseases associated with alcoholism. The Bill, which is yet to be released for public comment, has been met with a degree of criticism by certain quarters already where indications are that the Bill will compromise the economics of the consumption, marketing, manufacturing and distribution of alcoholic beverages throughout the country. The Bill is a far-reaching legal mechanism for purposes of controlling the availability and advertising of alcoholic substances: bearing in mind that the labelling of containers of alcoholic beverages has already been controlled in so far as health messages are required on these containers pursuant to regulations in terms of the Foodstuffs, Cosmetics and Disinfectants Act No. 54 of 1972. Those messages include:

1. Alcohol reduces driving ability, don't drink and drive.
2. Don't drink and walk on the road, you may be killed.
3. Alcohol increases your risk to personal injuries.
4. Alcohol is a major cause of violence and crime.
5. Alcohol abuse is dangerous to your health.
6. Alcohol is addictive.
7. Drinking during pregnancy can be harmful to your unborn baby.

The increasing incidents of control over the manner in which foodstuffs are made available in our society is not a foreign trend when one understands how similar controls are being applied in other societies where certain problems have been identified amongst the health of the population. However, the difficulty is to balance the rights of the individual to associate with products of his choosing and the right of the manufacturers, distributors and producers of certain substances to participate meaningfully in the marketplace in order to have their products readily available to consumers. South Africa should, in all likelihood, brace itself for increasing controls to be imposed by law in respect of ordinary day-to-day consumer goods and products.

South African consumers are already in the dark in relation to medicine advertising, which is completely banned in relation to certain Scheduled Substances in terms of regulation 45 of the General Regulations to the Medicines and Related Substances Act. The dearth of information about medicine is still debated on the basis that the population should be informed about medicines and the options available to them, as opposed to relying only on the recommendations and dispensing practices of health care practitioners.

Debate about the availability of information about goods is one that may, indeed, play out in court in terms of the freedom of expression provisions in the Constitution. In light of the amount of information that is now controlled about day-to-day consumer goods, such as medicines, tobacco products, foodstuffs for infants and young children and alcoholic beverages, such debates may be required in order to promote a society based on equality, dignity and freedom.

ABOUT NEIL KIRBY

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