Department of Health and Social Care: Further advertising restrictions for products high in fat, sugar and salt

Response submitted by the Royal College of Paediatrics and Child Health

June 2019

This consultation seeks views on the Government's plans to place further advertising restrictions on products high in fat, sugar and salt (HFSS) as part of 'Childhood obesity: a plan for action, chapter 2'. More information is available on the gov.uk website.

Our response has been developed in collaboration with colleagues in the Obesity Health Alliance (OHA), a coalition of over 40 leading health charities, medical royal colleges and campaign groups working together to influence Government policy to reduce obesity across the life course. A full list of members is available on the OHA website.

Media in scope

1. The Government proposes that any further advertising restrictions apply to broadcast TV and online. Do you think that any further advertising restrictions should be applied to other types of media in addition to broadcast TV and online?

Yes

2. If answered yes, which other media should be subjected to further HFSS advertising restrictions?
Cinema/Radio/Print/Outdoor/Direct marketing/Other (please specify)

All of the above, plus Other. We also think restrictions to should apply to packaging, and to sponsorship, including sponsorship of TV channels, programmes, websites, sports events and school based activities. Sponsorship is currently regulated separately and we need a level playing field to avoid a loophole where HFSS could be shown at the start and end of advertising breaks.

3. Please explain why you think that we should extend additional advertising restrictions to these types of media. *(Drop down list, please select all that apply)*

a) Will reduce children's exposure to HFSS advertising and in turn reduce their calorie intake
b) Will drive further reformulation of products
e) Reduces risk of displacing advertising spend
f) Easy for advertisers and regulators to understand
g) Easy for parents and guardians to understand

HFSS definition

4. The Government proposes that any additional advertising restrictions apply to food and drink products in Public Health England's sugar and calorie reduction programmes, and the Soft Drink Industry Levy, using the NPM 2004/5 to define what products are HFSS. Do you agree or disagree with this proposal?

Agree. The Nutrient Profile Model (NPM) used to class food and drinks as HFSS is an established and evidence based tool which is currently used and understood by the food industry. It uses a scoring system to balance the contribution made by beneficial components and nutrients of food and drink to a child's overall diet with the negative contributions from nutrients where children' are consuming levels higher than the recommended. The model is well established, and following a review conducted by experts in 2018, it was agreed by Government that it would be updated.

Industry have already accepted use of the NPM for advertising purposes, therefore from an implementation perspective it is logical to use this existing tool, known to industry, rather than introducing a new way to categorise food and drink products. Using a consistent approach would provide a greater incentive to manufacturers to reformulate their products to reduce overall calories, sugar, saturated fat and salt, enabling them to both advertise and promote their products without restrictions.

We do not support any exceptions to the NPM as this could undermine its use. We recommend that the updated NPM is used in full to support once it has been developed and rolled out. In the interim we support the pragmatic approach being taken to apply the existing NPM to food and drink categories includes in PHE's sugar and calorie reduction programmes. However, this will exempt some HFSS products that are not included in the programme and we strongly urge the Government to reconsider this approach as soon as possible, using the latest version of the NPM to ensure these restrictions reflect current UK dietary requirements.

5. If you do not agree with the proposal what alternative approach would you propose and why? Please provide evidence to support your answer.

n/a

Broadcast consultation options

6. Please select your preferred option for potential further broadcast restrictions.

Option 1: Introduce a 9pm watershed
Option 2: Introduce a 9pm watershed with some advertising freedoms offered to companies who reformulate
Option 3: No government intervention

7. Please select the reason/s for your choice, providing supporting evidence for your answer.

a) Will reduce children's exposure to HFSS advertising and in turn reduce their calorie intake
b) Will drive further reformulation of products
e) Reduces risk of displacing advertising spend

f) Easy to implement
g) Easy for advertisers and regulators to understand
h) Easy for parents and guardians to understand

8. If you selected option 1, the government proposes an exemption for when there are low child audiences. Should this exemption apply to channels or programmes?

a) Programme *(selected)*
b) Channel

We have selected programme however we think that any exemptions should be applied across both programmes and channels in order to avoid loopholes and confusion for parents and families. In fact, we think that no children should be exposed to HFSS adverts. We understand that the exemption approach is being considered by Government in an effort to introduce legislation that is proportionate, balancing the needs to protect children with limiting the impact on advertising industries. However, we think the Government should not be considering any exemptions and should be taking a child rights approach to the introduction of this policy. Children are rights holders, and all policies that have a potential impact on children should be guided by internally accepted human rights principles and standards.[1] This means that upholding the rights of all children to be protected from exposure to unhealthy food and drink advertising, not just a threshold number, should always outweigh the impact on business.

9. If you selected option 1, do you agree that 1% of the total child audience (around 90,000 children) is the appropriate level at which programmes or channels should be exempted?

No. Given the strong evidence that is available to demonstrate that children's food preference and how much they eat is influenced by unhealthy food and drink adverts (as detailed by the DHSC in the consultation document), we strongly believe that **all** children should be protected from exposure to unhealthy food and drink adverts and there should be no exemptions. As we have outlined in our answer to question 8, a child's rights approach should be applied to this policy, prioritising the rights of all children to be protected from exposure to HFSS advertising.

This proposed threshold may also have a disproportionate impact on children with protected characteristics. Programmes with a low child audience are more likely to be watched by children with specialist interest, such as children on the autistic spectrum or with other types of neurodiversity who can have wide range, non-child-typical interests.[2] A recent meta-analysis found children with autistic spectrum disorder are more likely to watch typically adult TV content, such as news programmes.[3] Children with autistic spectrum disorder are also more likely to be overweight or have obesity compared to their neuro-typical peers.[4] Therefore an approach which

[1] UNICEF. A child rights-based approach to food marketing: a guide for policy makers. 2018
[2] https://www.autism.org.uk/about/behaviour/obsessions-repetitive-routines.aspx
[3] Stiller A (2018). Media Use Among Children and Adolescents with Autism Spectrum Disorder: a Systematic Review. Review Journal of Autism and Developmental Disorders
[4] https://www.liebertpub.com/doi/10.1089/chi.2016.0079

allows already vulnerable children to continue to be exposed to junk food adverts could increase inequalities.

10. If you selected option 1 and you do not agree that 1% of the total child audience is the correct threshold to grant an exemption please propose an alternative threshold, providing evidence to support your answer.

0% of total child audience. Given the scale of the obesity problem in the UK, there is not an acceptable number of children that can continue to be exposed to this type of harmful advertising. If an exemption does have to be set it should be as close to zero children as possible. The exemption should be reviewed on an annual basis and data should be made publicly available on the channels and/or programmes that have been granted exemptions and the scale of their child audiences.

Q11-18 are related to options 2 and 3 and are not relevant

19. If you would like to comment on the options that you have not chosen to support please comment here, providing evidence to support your answer. Please make it clear what option you are commenting on.

Option 2 – we are strongly opposed to this. The Nutrient Profile Model is an evidence based tool designed to profile a food or drink product by balancing the contribution made by 'beneficial' components/nutrients of food and drink to a child's overall diet alongside the negative contributions from nutrients where children's intakes are higher than recommended. The 'ladder' approach outlined in option 2 undermines the NPM and means that food products in particular with high levels or sugar, saturated fat, or overall calories could continue to be advertised to children, reducing children's exposure to only the very worst examples of unhealthy food and drinks. This policy and PHE's reformulation programme are two separate approaches with different goals and should not be conflated. There is no evidence that this approach would encourage reformulation and where businesses can still advertise their products there will be no incentive to reformulate. It would also be unclear to parents and families who are likely to assume that the watershed is applied equally to all unhealthy food, and therefore deem any advertised food to be considered healthier.

Option 3 – The option of taking no further action to restrict children's exposure to unhealthy food and drink advertising is unacceptable due to the strength of evidence regarding the exposure and effect of advertising on children as laid out by the Department in their consultation document.

<u>Online consultation questions</u>

20. Please select your preferred option for potential further online HFSS advertising restrictions.

Option 1: Introduce a 9pm watershed
Option 2: A targeting-based approach
Option 3: A mix of time and targeting

Option 4: No government intervention

21. Please select the reasons for your choice, providing supporting evidence for your answer.

a) Will reduce children's exposure to HFSS advertising and in turn reduce their calorie intake
b) Will drive further reformulation of products
e) Reduces risk of displacing advertising spend
f) Easy to implement
g) Easy for advertisers and regulators to understand
h) Easy for parents and guardians to understand

22. If you selected option 1, should exemptions be applied to advertisers that can demonstrate exceptionally high standards of evidence that children will not be exposed to HFSS advertising?

No. There should be a level playing field between TV and online regulations so that all children receive the same level of protection regardless of how they are accessing media content. Currently, good enough standards do not exist to demonstrate that a user of an online platform is not a child, meaning no advertiser can be sure that children will not be exposed to HFSS advertising. Standards are also poor for consistently specifying which category (e.g. HFSS) and advert belongs to, further limiting the ability to restrict all adverts of a specific category from being show to children. Therefore, no exemptions to a 9pm watershed approach should be applied.

23. If you selected option 1, what evidence should be required to meet the definition of "exceptionally high standards" for the purposes of securing an exemption?

As outlined in our answer to Q22, this evidence does not exist. As defined by the Word Health Organisation, an age verification platform of "exceptionally high standard" would need to ensure that the default assumption is that a user is a child and the marketing they receive should be restricted, acting like an ad block immediately preventing all inappropriate content from reaching the child, unless and until positive verification that they are of an appropriate age is received. This positive verification would need to be required for every user's session on a device.[5] Marketing legislation would also need to follow the UN Convention on the Rights of the Child in defining a child as being up to age 18, which they do not currently do and is a further barrier to the creation of any exemptions.

24. If you selected option 1, what exemptions might the government apply to advertisers who can demonstrate exceptionally high standards of evidence? Please describe how they would work and provide supporting evidence.

We do not think there is a high enough standard of evidence that would allow advertisers to be exempt from the regulation.

[5] World Health Organisation Europe. (2018). 'Monitoring and Restricting Digital Marketing of Unhealthy Products to Children and Adolescents'. http://www.euro.who.int/__data/assets/pdf_file/0008/396764/Online-version_Digital-Mktg_March2019.pdf?ua=1

25. If you selected option 1, should exemptions apply to certain kinds of advertising, recognising the practical challenges of applying a time-based restriction for some kinds of advertising?
No

Q26-34 are related to options 2, 3 and 4 and are not relevant

35. If you would like comment on any options that you have not chosen to support please comment here, providing evidence to support your answer. Please make it clear which option you are referring to.

Option 2 – we have concerns this does not address the current challenges that have been identified by the DHSC in their consultation document. Advertisers can never be 100% sure about the age of the person viewing their advert. The data they do hold is not in the public domain meaning it cannot be scrutinised or regulated with transparency.

Option 3 – we have concerns that this approach would be impossible to implements and regulate. It would also be extremely confusing to parents.

Option 4 - the option of taking no further action to restrict children's exposure to unhealthy food and drink advertising is unacceptable due to the strength of evidence regarding the exposure and effect of advertising on children as laid out by the Department in their consultation document.

Implementation and next steps

36. The government proposes to introduce any advertising restrictions arising from this consultation at the same time on TV and online. Do you think restrictions should be applied at the same time for TV and online?

Yes. Introduction of previous advertising restrictions (eg the CAP code) have been swift and these new regulations should be applied at the same time across TV and online to prevent displacement of HFSS advertising from one type of media to another. However, any delay in one type of media should not delay implementation in the other in order to start protecting children as soon as possible.

Public Sector Equality Duty

37. Do you think that introducing further HFSS advertising restrictions on TV and online is likely to have an impact on people on the basis of their age, sex, race, religion, sexual orientation, pregnancy and maternity, disability, gender reassignment and marriage/civil partnership?

Yes. The UN Convention on the Rights of the Child recognises that children need specify protections and that governments must work to ensure these. As we have outlined, any

exemption proposals do not protect these rights of the child. They are likely to disproportionately affect children with autism spectrum disorder.

38. Do you think that any of the proposals in this consultation would help achieve any of the following aims:

- *Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010*
- *Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?*
- *Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it?*

No

39. Do you think that the proposed policy to introduce further HFSS advertising restrictions on TV and online would be likely to have a differential impact on people from lower socio-economic backgrounds?

Yes. According to the latest data from the National Childhood Measurement Programme, obesity prevalence for children living in the most deprived areas was more than double that of those living in the least deprived areas for both reception and year 6.[6] In addition, recent research from Cancer Research UK found teenagers from the most deprived communities were 40% more likely to remember junk food advertisements every day compared to teens from better-off families.[7] Therefore as those from lower socio economic backgrounds are more likely to have excess weight, this policy is therefore likely to have a positive impact on their health and support reduction in health inequalities. This has been supported by modelling of a HFSS TV watershed in Australia, which showed that legislation to restrict HFSS TV advertising is likely to be cost-effective, with greater health benefits and healthcare cost-savings for children (aged 5-15) in low SES groups.[8]

Annex E – Impact assessment consultation questions

1. Do you have any additional evidence that would improve our understanding of how and where household spend on HFSS products may be displaced?

No

2. Our estimates of the impact on retailer and manufacturer profits are based on several assumptions around profit margins and retailer mark-ups. Can you provide us with any evidence that would help to improve these calculations?

No

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[6] NHS Digital. National Childhood Measurement Programme Data. 2016/17.

[7] Cancer Research UK (2018). A Prime Time for Action. https://www.cancerresearchuk.org/sites/default/files/executive_summary_-_a_prime_time_for_action_.pdf

[8] Brown V, et al. The Potential Cost-Effectiveness and Equity Impacts of Restricting Television Advertising of Unhealthy Food and Beverages to Australian Children. *Nutrients* **2018**, *10*(5), 622; https://doi.org/10.3390/nu10050622

Q3-5 are for advertisers and we have not provided an answer

6. We have assumed that HFSS advertising campaigns displaced to non-video forms of advertising (e.g. radio, billboards and direct mail) will have less impact on children's calorie consumption. Do you agree with this assumption?

No. We disagree with this assumption. Static adverts in outdoor places, including bus shelters and train stations, can have much longer "dwell time" than a video advert at the bottom of a web page. Many advertising companies use "marketing mix" strategies and there is a danger of negative displacement of this type. Unless there is robust evidence examining the impact of different types of food advertising on children's calorie consumption, then it should be assumed that all media has the same impact and the cost and health benefits adjusted accordingly.

7. For all our options we anticipate minimal additional regulatory burdens from further advertising restrictions in terms of regulatory ongoing compliance for broadcasters, advertisers and manufacturers / retailers. Does this assessment seem reasonable?

Yes. We agree with the conclusions set out in this consultation that there will be minimal additional regulatory burdens.

Q8-9 we are not in a position to provide an answer

10. Do you have any further evidence or data on the health benefits you wish to submit for us to consider for our final impact assessment?

Yes. The calorie model that has been used excluded the impact of disease in childhood. Therefore we consider that the health benefits of the various policy options have been significantly under-valued and are likely to be much higher than stated.

Diabetes UK estimates that there are around 6,000 young people with Type 2 diabetes in England and Wales.[9] Obesity is nearly universal in adolescents with Type 2 and increases the risk of Type 2 diabetes early in life.[10] It is known that Type 2 diabetes is more aggressive in children and young people than in adults,[11] and complications tend to appear much earlier.[12]

The benefits of the policy on dental health should also be considered. Although tooth decay is almost entirely preventable, PHE data show that almost a quarter (23.3%) of 5-year-olds in

[9] https://www.diabetes.org.uk/resources-s3/2019-02/1362B_Facts%20and%20stats%20Update%20Jan%202019_LOW%20RES_EXTERNAL.pdf

[10] Viner R. (2017) Type 2 diabetes in adolescents: a severe phenotype posing major clinical challenges and public health burden. *Lancet*.

[11] Hannon T. (2015) Type 2 diabetes in adolescents: a severe phenotype posing major clinical challenges and public health burden**.** *Ann. N.Y. Acad. Sci.*

[12] Dart et al. (2014) Earlier Onset of Complications in Youth With Type 2 Diabetes. *Diabetes Care.*

England had obvious experience of the disease in 2017, and tooth decay is still the number one reason for hospital admissions among young children (aged 6-10) in the UK.[13] There has been an 18% increase in the number of extractions taking place on children in hospitals since 2012, costing the NHS £205 million cumulatively.

The impact assessment also fails consider the health benefits of a reduction in obesity on mental health, despite strong evidence that obesity is associated with a range of poor mental health including depression[14] and anxiety.[15] It also fails to consider the impact for all seven types of cancer it is known to be associated with.

11. Do you have any additional evidence or data that would help us improve our estimates for the additional calorie consumption caused by HFSS product advertising?

No. The figures used in the impact assessment are taken from a recent and comprehensive systematic review and meta-analysis and we are supportive of them.

12. Do you have any additional evidence or data that would help us improve our assumptions on the levels of HFSS product advertising and its impact on children's food behaviours and preferences?

No. The figures used in the impact assessment are taken from a recent and comprehensive systematic review and meta-analysis and we are supportive of them.

13. Are you able to provide any additional evidence which would improve our understanding of the long-term impact of HFSS advertising exposure during childhood on food behaviours and preferences later in life?
No.

14. To quantify the impact on food and drink retailers and manufacturers, we have assumed that the calorie reductions are derived from reduced purchasing of HFSS products brought back into the home for consumption. Do you have any evidence or data that can help understand whether a proportion of this reduction would be from consumed outside the home and what impact this would have on the out-of-home sector?

Yes. In 2017 the Obesity Health Alliance, of which RCPCH is a steering group member, worked with the University of Liverpool to analyse adverts shown during peal time TV shows popular with children.[16] The demonstrated that adverts for fast food and takeaways made up 36% of the food and drink adverts shown – the largest category. The immediate impact of this peak time advertising on out-of-home food purchase has been illustrated by takeaway companies

[13] Public Health England. Oral health survey of 5 year old children 2017
[14] Luppino FS, de Wit LM, Bouvy PF, Stijnen T, Cuijpers P, Penninx BWJH, et al. Overweight, obesity, and depression: a systematic review and meta-analysis of longitudinal studies. Archives of General Psychiatry 2010;67(3):220-9.
[15] Gariepy G, Nitka D, Schmitz N. The association between obesity and anxiety disorders in the population: a systematic review and meta-analysis. International Journal of Obesity 2010;34:407-19
[16] Obesity Health Alliance (2017). A Watershed Moment

themselves, attributing 25% sales lifts. We know that portion sizes consumed from the out of home sector tend to be larger and more likely to lead to overconsumption, therefore we urge the Government to consider this in their impact assessment.

15. Do you have any additional evidence that could improve our assessment of how these restrictions may impact HFSS manufacturers and retailers? Particularly learning from the experience of current children's HFSS advertising restrictions.
No

16. Do you have any evidence or data to suggest how advertising restrictions may impact HFSS product sales of small and micro-businesses?
No

17. Do you have any evidence or data to suggest what proportion of the fewer HFSS calories purchased due to advertising restrictions may be removed from small and micro-businesses?
No

18. Do you have any additional evidence or data that could improve our estimates of how much HFSS advertising is present, across various online platforms and formats (e.g. desktop, mobile, video pre-roll, native, search, sponsorship, other video and other display) and children's exposure to these adverts online?

Yes. Research commissioned by the OHA has been provided to the DHSC separately.[17] This research shows that children and young people's *actual* exposure to digital junk food marketing is grossly underestimated by this assessment.

19. Our evidence on the impact of HFSS advertising on adults is inconclusive. Do you have any additional evidence which would improve our understanding of the impact HFSS advertising has on adult's food consumption, behaviours and preferences and purchases (either for themselves or their children)?

Yes. Research commissioned by the OHA has been provided to the DHSC separately.[18] Based on the strength and scale of evidence summarised in the paper, we think it is vital that the health benefits to adults of restricting HFSS advertising is considered within the impact assessment and consider it a major omission.

20. Can you provide us with any additional evidence to improve our understanding of how the pricing of advertising may change under our proposed options?
No

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[17] Examining the Kantar Consulting HFSS Digital Advertising Analysis in DCMS/DHSC Impact Assessment· Dan Parker & Dr Mimi Tatlow-Golden (2019)
[18] Boyland E (2019). Unhealthy Food Marketing. The Impact on Adults. http://obesityhealthalliance.org.uk/wp-content/uploads/2019/05/JFM-Impact-on-Adults-Boyland-May-2019-final-002.pdf

21. We have assumed that businesses could partially mitigate the impact of advertising restrictions by shifting to brand advertising, reformulating products, or promoting healthier alternatives in the brand. Do you agree with our assessment of the impact on broadcasters and likely mitigations?

We agree that there are many options for brands who wish to continue advertising, including reformulating their products, shifting their adverts to post-9pm or advertising their alternative non-HFSS products. Research by Cancer Research UK found that over half (54%) of brands advertising HFSS products on TV between 6pm and 9pm had an alternative non-HFSS product which could be advertised instead.[19]

Q22 is for business and we have not provided an answer

23. The Department of Culture Media and Sport and the Department of Health and Social Care would welcome any further comments regarding;

- *The calculations conducted in the Impact assessment;*
- *The assumptions made in the Impact assessment.*

A team of researchers have conducted an analysis modelling the health impact of a 9pm watershed which will be published in summer 2019.[20]

Key findings are summarised here:

- It is estimated that if all HFSS advertising between 5.30am and 9pm is withdrawn (with no channel exemptions), then the number of children with obesity would be reduced by 4.6% (1.4%-9.5%), equivalent to 40,000 (12,000-81,000) fewer children with obesity.
- Similar reductions were estimated for children who are overweight: the number would be reduced by 4.9% (1.4%-10.1%), equivalent to 120,000 (34,000-240,000) fewer children with overweight in the UK.
- For today's children (n=13,729,000) across their lifetime this would add 240,000 (65,000-530,000) quality-adjusted life years (QALYs), resulting in a monetary benefit of £7.4 billion (£2.0 billion-£16 billion).

This is considerably higher than the £1.4bn estimated in the Government's impact assessment, making the case for the strongest version of a 9pm watershed with no exemptions.

About RCPCH

RCPCH is the membership body for paediatricians, representing more than 19,000 child health professionals in the UK and abroad. We are responsible for the training, examinations and professional standards of paediatricians across the country, and we use our research and

[19] Cancer Research UK analysis of Nielsen data for on linear television channels of ITV1, Channel 4, Channel 5 and Sky One in the month of May 2018. Dataset and methodology submitted by Cancer Research UK as an appendix.

[20] Dr Oli Mytton, Unpublished data due to be published in summer 2019

experience to develop recommendations to promote better child health outcomes and to ensure that children are at the heart of the health service.

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