Consultation outcome

Introducing further advertising restrictions on TV and online for products high in fat, salt and sugar: government response

Updated 28 June 2021

Executive summary

Introduction

Childhood obesity is one of the biggest health problems this nation faces, with one in every 3 children in England leaving primary school overweight or living with obesity. Tackling this is a priority for government, and we have taken a wide range of actions to reduce and prevent our children's health. In 2018, government set a target to halve childhood obesity by 2030. Since launching our strategy, Tackling Obesity: Empowering Adults and Children to Live Healthier Lives, in July 2020, we have brought the danger of obesity into sharper focus, with evidence demonstrating that those who are overweight or living with obesity are at greater risk of being seriously ill and dying from coronavirus (COVID-19). Being overweight or living with obesity is a risk factor for COVID-19, leading to a very serious outcome with reduced life expectancy. It is a risk factor for a range of chronic diseases including cardiovascular disease, type 2 diabetes, cancer and liver disease. Tackling obesity is therefore a priority for government. It is clear that for the future resilience of the population, we need to address the root causes of obesity and the underlying health conditions.

To meet our ambition to halve childhood obesity by 2030, it is imperative we reduce children's exposure to unhealthy food, salt and sugar (HFSS) products on TV and online. We want to ensure that the media we children engage with the most promotes a healthier diet, and that children are not exposed to a barrage of HFSS marketing which creates a challenging environment for parents and carers. Children's health should not be a luxury from a young age. [Footnote 1] [Footnote 2] Over time, excess consumption can lead to children becoming overweight or obese, and all which puts their future health at risk.

Why government is acting

Current advertising restrictions for HFSS products during children's TV and other programming of particular appeal to children are insufficient to protect children. We seeing a significant amount of unhealthy food adverts on TV, and do not account for the increasing amount of time children spend online. Our evidence base and the recommendations supported the proposal to ban HFSS products from being marketed to children on TV and online. The ban on the promotion of HFSS products in the online space was therefore:

- focused primarily on protecting children's media habits and their exposure to unhealthy ads
- underpinned by a range of transparency and independent data for advertisers and similar
- addressing concerns with the efficacy of current restrictions and how well they protect children from HFSS adverts away from children

Consultation responses showed strong support for a proposal to introduce a total online HFSS advertising restriction with 76% in agreement.

The 2019 and 2020 consultations

In July 2019, as part of the 'Tackling Obesity' strategy, government announced its intention to consult on a 9pm watershed for TV and a ban on HFSS products online. The 2020 consultation was launched on 1st March, to end 2019 when 76% of respondents supported the proposal. Their responses helped to shape the final policy. The consultation response and impact assessment (PDF, 1.1MB) (PDF, 1.1MB) set out the proposal in the online space was therefore:

- focused primarily on protecting children's media habits and their exposure to unhealthy ads
- underpinned by a range of transparency and independent data for advertisers and similar
- addressing concerns with the efficacy of current restrictions and how well they protect children from HFSS adverts away from children

Evidence suggests that HFSS food marketing in traditional media, and its effects children's eating and weight related behaviour, [Footnote 3] with emerging evidence also suggesting it may have an impact on children's health and well-being. [Footnote 4] Therefore, the combined impact on children from TV and online marketing underpins the importance for government to address HFSS advertising. In addition, the 2019 consultation response and impact assessment (PDF, 1.1MB) (PDF, 1.1MB) also set out that HFSS TV exposure, which government has taken into account.

The final policy

Following careful consideration of the evidence submitted and comments made by respondents to the 2019 and 2020 consultations, we have made the final HFSS advertising policy decisions that will apply UK wide. Following this, government has published the implementing further HFSS advertising restrictions on TV and online responses the government received to the 2019 and 2020 consultations (PDF, 1.1MB) (PDF, 1.1MB) advertising. This follows consideration of a range of alternatives, including enhancing industry self-measures. The policy that will apply UK wide, is as follows:

- introduce, simultaneously at the end of 2021, a 9pm TV watershed for HFSS products, to be applied to all TV programmes in the UK
- all on-demand programme services (ODPS) under the jurisdiction of the UK, and therefore supplied by entities subject to revised the TV sponsorship rules (PDF) (PDF), will be subject to the watershed
- non-UK regulated ODPS will be included in the restriction of paid for HFSS advertising online because they are outside UK jurisdiction

Products in scope

In addition, we have revised the products in-scope following consultation feedback. We have reduced the scope to those categories that are of most concern to children's health and well-being. We have also made the decision to include HFSS products that are not such a prominent HFSS, but the restrictions applying to these products will be less onerous. In, in what for many will be the necessary phase from the pandemic, may be important for the economy. We have also made the decision to include a small number of alcohol products which we can see their brand recognition and resources to mitigate the effects of the proposed HFSS restrictions.

We have also made the decision to include a small number of non-alcoholic drinks on quality ends (reduced sodium, calorie only) carbon) whereas previously we had decided not to apply to alcohol products only intended for adults.

Following consultation feedback, the government will entrust the regulators to determine and consolidate an alternative. With regard to online platforms, for the purposes of the HFSS advertising restrictions, government will entrust the regulatory framework for services providing online advertising (online platforms) to the Advertising Standards Authority (ASA) and Ofcom. Ofcom will be the regulator for the purposes of the HFSS advertising restrictions. Ofcom, as part of this work, government will consider regulation of the content and placement of HFSS advertising on online platforms, and will consider the extent to which the regulatory regime is appropriate and fit-for-purpose for the challenges posed by HFSS advertising. We intend to legislate on the conclusions of the Online Advertising Programme, subject to consultation and Parliamentary process.

Enforcement

For HFSS advertising, government will expand Ofcom as the statutory regulator. The combined regulatory authority will have the aim to support a day-to-day regulation to carry out frontline regulation. Government expects the ASA to fulfill this role, which is underpinned by a robust system of co-regulation. The ASA will continue to be responsible in broadcast and the government believes that it will make enforcement more effective and proportionate within the changing online media landscape.

Government proposes that the frontline regulator uses powers contracted out by Ofcom to promote compliance with and understanding of the new HFSS advertising rules, including providing advice to advertisers and media owners, and undertaking educational sanction, such as training and advertising, and alternative sanctions for breaches of the rules, including removal. For serious breaches or repeated breaches of the rules, the frontline regulator will have the power to refer the matter to Ofcom, who will directly sanction the non-compliance. We should therefore suggest enforcement authority for the HFSS advertising restrictions, and the frontline regulator will have the

Ahead of implementation, we will work with the regulators to ensure guidance is available for businesses to understand the new restrictions. Government committed to work closely with industry to ensure they are supported to implement the new requirements ahead of them coming into force.

Implementation

Government has committed to implementing restrictions for TV and online at the same time and will aim to do so at the end of 2021. Government will ask the opposition Health and Social Care Committee for their views on the proposed implementation.

The categories of food and drink in scope will be taken forward in secondary legislation. Following consultation feedback response, we intend to conduct a further consultation and parliamentary session.

As part of government standard practice, we will review and evaluate the policy 5 years post implementation. We are planning for this review to take place in 2027.

Introduction

The need to protect UK's health

Childhood obesity is one of the biggest health problems this country faces. More than 1 in 3 children in England leaving primary school are overweight or living with obesity, and the rate is even worse in the long-term. [Footnote 5] [Footnote 6] It is a serious issue that affects adults, with around two-thirds (63%) of adults being obese or healthy weight. [Footnote 7] [Footnote 8] [Footnote 9]

Obesity is associated with reduced life expectancy. It is a risk factor for a range of chronic diseases including cardiovascular disease, type 2 diabetes, cancer and liver cancer, respiratory disease. [Footnote 10] [Footnote 11] [Footnote 12] [Footnote 13] Obesity also has a big impact on mental health. Those who are overweight and above are more likely to experience depression. [Footnote 14] [Footnote 15] [Footnote 16] [Footnote 17] It makes them more likely to be bullied, more likely to experience stigma, and to have a poorer sense of the health issues outlined above.

The prevalence of obesity has become an even more pressing issue because of COVID-19. Being overweight or living with obesity is a risk factor for being seriously ill with COVID-19 and greater risk of being from the virus. [Footnote 18] [Footnote 19] An excess weight is one of the factors that put people at risk of being hospitalised with COVID-19 and the government has made it a priority to address this.

Furthermore, the prevalence of obesity disproportionately affects people from lower socio-economic backgrounds. Children growing up in low income households are more likely than ever before to be obese or have a higher income households. [Footnote 20] [Footnote 21] [Footnote 22] [Footnote 23] [Footnote 24] [Footnote 25] [Footnote 26] [Footnote 27] Children from ethnic backgrounds are also more likely to be overweight or obese and this inequality gap is increasing. [Footnote 28] There is evidence to suggest that disparities in excess weight and obesity have widened during the pandemic, with children living in the most deprived adults and some BAME groups. [Footnote 29] It is vital that we address the underlying causes for having serious COVID-19 complications, such as type 2 diabetes, heart disease and obesity, and the inequalities that underpin them. [Footnote 30] [Footnote 31] We need to protect the health of our children and help to ensure we are more resilient as a population and population in the future.

Obesity is a risk factor and financial crisis. It is estimated that obesity related conditions are currently costing the NHS £6.1 billion per year. [Footnote 32] The costs to society of these conditions have been estimated at around £27 billion per year. [Footnote 33] with some estimates putting the figure much higher [Footnote 34] [Footnote 35]

We know that obesity is a complex problem caused by many different factors. No one factor is the cause, and no one factor can be the solution. We need to tackle the root causes of obesity and the UK. To tackle obesity the UK government has set out in its strategy, Tackling Obesity: Empowering Adults and Children to Live Healthier Lives, that we need to tackle the underlying causes of the problem, and we need to address the underlying health conditions.

A critical part of delivering this plan is reducing excessive calorie intake. We need to reduce children's exposure to unhealthy food, salt and sugar products, and ensure they are encouraged and supported to eat the best healthy foods. This is not simply the advertisements we see on TV or online, the range of foods sold in our local shops or supermarkets, or the size of our plates. It is a combination of factors, and we need to focus on this in intended to influence the choices we, and our children make.

That is why, since 2016, DHSC and DCMS have been 2 consultations looking at introducing further advertising restrictions on TV and online for products high in fat, salt and sugar.

How HFSS advertising restrictions will help

Despite current HFSS advertising restrictions that apply online and during children's TV and other programming of particular appeal to children, analysis commissioned by DHSC and DCMS shows that children are still being exposed to a significant amount of HFSS advertising. It showed that there was a estimated 3.6 billion [Footnote 36] HFSS impacts on TV [Footnote 37] and 2.7 billion online impressions in 2018. [Footnote 38] [Footnote 39] [Footnote 40] [Footnote 41] [Footnote 42] [Footnote 43] Consultation an additionally found that our initial figures for online impressions underestimated significant underestimated and that online HFSS advertising exposure was 10 times greater than TV. [Footnote 44] [Footnote 45] [Footnote 46] [Footnote 47] [Footnote 48] [Footnote 49] [Footnote 50] [Footnote 51] [Footnote 52] [Footnote 53] [Footnote 54] [Footnote 55] [Footnote 56] [Footnote 57] [Footnote 58] [Footnote 59] [Footnote 60] [Footnote 61] [Footnote 62] [Footnote 63] [Footnote

We asked respondents if there was any other media that we have not listed that should be subject to further restrictions. Analysis of these free text answers showed the most popular media type mentioned as sponsorship, followed by apps/games and social media.

Question 3 of the consultation asked why respondents thought we should extend additional advertising restrictions to these types of media. The most common answers were for the health benefits and to reduce children's exposure to HFSS advertising, followed by the need for equity across all media.

Government decision

Following careful consideration of the feedback received, government has decided to progress with introducing a TV watershed. For online, government wanted to consider how it could go further than a watershed and introduce a total online restriction. government therefore held a separate consultation on this in 2020 and the analysis of responses to that consultation are included below. From the outset, government's intention was clear that the focus was to be on the media that children engage with the most, this being online and TV. We acknowledge there may be a level of displacement in HFSS advertising to other types of media as a result of the policy, but we believe this approach is consistent with children's current HFSS advertising exposure.

While government was clear in the consultation document that brand advertising was not in scope of the proposals, a number of health NGOs called for brand advertising to be included in the restrictions. Government remains of the view that this should remain out of scope of these new restrictions as its concern is around identifiable HFSS product exposure.

We want to give brands the opportunity to reformulate their products. A brand that is currently synonymous with HFSS products may not be in the future. It is only fair to allow the sector the option to move away from producing products that are HFSS. Including brand advertising in scope could restrict this opportunity. The evidence on the impact of advertising to children is also centred on product-specific adverts. It should be noted that a brand is only able to advertise/sponsor if the advert does not include an identifiable less healthy food and drink product. The inclusion of a product(s) would mean sponsorship/advertising could not be used online or on TV before 9pm. By identifiable we mean that a food or drink product is recognisable to the extent the public would recognise what HFSS product was being advertised.

The proposed restrictions do not replace the ASA existing rules concerning sponsorship. Existing measures include clear and robust rules to ensure sponsorship is not targeting at children. For example, the use of mascots or celebrities of specific appeal to children would be considered a breach of the ASA rules.

Government remains of the view that these new restrictions would not amend the existing rules around programming of particular appeal to children. The definition of HFSS products in scope for a watershed advertising restriction is less stringent than that currently in place for children's programming, as government recognises that a different approach is needed during media where the audience base is mixed, and does not think it acceptable to dilute current restrictions where the majority of viewers are some of our youngest children.

HFSS definition

How should HFSS products be defined?

Consultation questions: 4 to 5

4. The government proposes that any additional advertising restrictions apply to food and drink products in Public Health England's (PHE) sugar and calorie reduction programmes, and the Soft Drink Industry Levy, using the NPM 2004 to 2005 to define what products are HFSS. Do you agree or disagree with this proposal?

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

Consultation feedback

The consultation proposed that any additional advertising restrictions apply to food and drink products in PHE's sugar and calorie reduction programmes, and the Soft Drink Industry Levy (SDIL), using the Nutrient Profiling Model (NPM) 2004 to 2005 to define what products are HFSS.

The majority of respondents (83%) agreed to using this definition. This differed across respondent type, with 85% of individuals, 63% of organisations and only 26% of businesses agreeing. For business, 65% of respondents disagreed with this proposal.

Of the 10% of total respondents who disagreed with the proposal, 22% (the highest proportion) did so because they fundamentally disagree with government health advice in general. 14% of respondents wanted government to use the updated NPM, 13% thought that it is not for government to intervene and 11% wanted the NPM applied to all food and drinks and not a reduced list of product categories.

When looking by sector, advertisers tended not to support the 2004 to 2005 NPM as they did not think it would drive reformulation and they thought it was inconsistent with models in other jurisdictions. The food and drink industry had mixed responses, with some recommending applying the Scottish 'discretionary' categories to the 2004 to 2005 NPM, some recommending using SDIL/the reformulation programme's thresholds instead of the 2004 to 2005 NPM and others recommending using portion size to determine NPM score. The out of home food sector suggested using the Scottish 'discretionary' categories and some commented that food delivery services were usually reliant upon generic product advertising (for example, showing an unbranded food item) and wanted clarity on how this system would work for them. Businesses across sectors mentioned their worry about the use of the updated NPM when it was published. Generally, the health sector supported the 2004 to 2005 NPM as a first step, but some called for the updated NPM to be applied to all products. The majority of health organisations requested a 3-year review to consider switching to use the full updated NPM. Individuals, local government and NHS trusts all broadly supported the 2004 to 2005 NPM.

Government decision

Reflecting on the views expressed by respondents and the objective of the policy to be targeted to those products of most concern to childhood obesity, government has decided to shorten the list of products from PHE's calorie and sugar reduction categories and from products that are subject to the SDIL that are in scope of the advertising restrictions. This updated list continues to include the products that are most heavily advertised and of most concern to childhood obesity. The items that will be included are listed at Annex 1. This list of products is also in line with other government policies to restrict the promotion and placement of HFSS products in retail,[footnote 54] and supplemented by additional products covering the out of home sector (main meals, starters/sides/small plates, children's meal bundles and sandwiches).

If the product fits into one of the listed categories, the 2004 to 2005 NPM will then be applied to determine if it is HFSS. The 2004 to 2005 NPM is based on scientific evidence and is already used by industry to determine which products can or cannot be advertised to children on TV during children's viewing times. Therefore, we hope that these new measures are easy to understand and implement.

We are aware that certain nutritional data is needed to calculate the NPM score and that this is specific to each product and brand. For example, some yoghurts may be classed as HFSS and others not. Some adverts use generic products in the background, for example, a holiday company featuring an ice cream. However, unless this is an identifiable branded product it will be exempt from these restrictions (although in the spirit of the policy, we would welcome advertisers' own efforts to use healthier background products). Where a number of products are shown in a single advert, for example in a retail advert, all identifiable products must not be HFSS.

As part of chapter 2 of the childhood obesity plan, government commissioned PHE to revise the NPM in line with updated dietary advice on free sugars and fibre. The revised NPM has not yet been published and we are working to publish it shortly. It is the government's intention to use the 2004 to 2005 NPM for this policy and any change to this in future would be consulted on.

Broadcast advertising options

What restrictions should be placed on broadcast TV HFSS advertising?

Consultation questions: 6 to 7, 11 to 19

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

- option 1 – introduce a 9pm watershed
- option 2 – ladder option
- option 3 – no government intervention

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

c) Will reduce economic impact on broadcasters

d) Will reduce economic impact on advertisers

e) Reduces risk of displacing of advertising spend

f) Easy to implement

g) Easy for advertisers and regulators to understand

h) Easy for parents and guardians to understand

i) Other – please specify

Consultation feedback

Respondents were asked whether they preferred the following options:

Option 1: HFSS food and drink in scope (determined by the 2004/2005 NPM) could not be advertised before 9pm, on broadcast TV, with an exemption for channels and or programmes (which was asked of respondents) with low child (less than 1%) audience.

Option 2: a ladder system to determine what products can and cannot be advertised between before 9pm of advertising restrictions to incentivise reformulation (rewarding companies that are reformulating their products or already have healthier products on the market, by giving them advertising freedoms based on NPM scores).

Option 3: no government intervention.

Feedback from the consultation showed preference for option 1, to introduce a 9pm watershed, with 79% (1072) of all total respondents choosing this option (individual: 999; organisation: 70; business: 3).

12% (164) of respondents selected option 2, a ladder option (individual: 153; organisation: 8; business: 1).

9% (118) of respondents selected option 3, no government intervention (individual: 80; organisation: 18; business: 20).

Option 1 – introduce a 9pm watershed

When broken down into type of respondent, individuals and organisations both preferred option one, with 81% and 73% of respondents in those categories selecting this option. For business, only 13% of respondents selected option one.

From those who selected option 1, the main reasons stated for choosing this option were that it will reduce children's exposure to HFSS advertising and in turn reduce their calorie intake (78% of respondents thought this); that it is easy for parents and guardians to understand (56% of respondents thought this); and that it is easy for advertisers and regulators to understand (48% of respondents thought this). 35% also thought that option one would drive further reformulation of products.

Health NGOs, individuals, local government and NHS trusts generally supported this option.

Broadcasters opposed this option and said that they did not believe the impact was justified by the calorie reduction gained. In addition, advertisers, the food and drink industry and the out of home industry also did not support a TV watershed as they believed this policy would disproportionately target adults. The food and drink sector said that they did not think this would incentivise reformulation of products.

Option 2 – ladder option

Only 12% of respondents selected option 2. It was selected by 13% of individuals, 8% of organisations and 4% of businesses. The main reason people selected this option was because they thought it would drive further reformulation of products (55% of people selecting option 2 thought this), followed by it reducing children's exposure to HFSS advertising and in turn their calorie intake (51%).

Those who selected option 2 were asked follow up questions on what NPM thresholds should be used. 94% agreed with the NPM thresholds suggested. 59% thought that the NPM thresholds should decrease over time to offer rewards in line with reformulation efforts, with only 13% thinking these thresholds should stay static.

Most sectors opposed this option, with the food and drink industry, out of home and advertisers saying that it will not drive reformulation of products. In addition, health NGOs also thought that this option was too complex to understand.

Option 3 – no government intervention

9% of respondents supported option 3, of which included 83% of businesses, 7% of individuals and 18% of organisations. Those with preference for option 3 cited that it would reduce the economic impact on advertisers (15%) and broadcasters (15%), be easy to implement (14%), and would reduce the risk of displacing advertising spend (10%).

Those selecting option 3 were asked if there were any alternative measures that might help meet our policy objectives: 39% answered yes to this question. The most popular alternative measure suggested was government funded education on health, cooking and physical activity, with 44% proposing this. 17% of respondents to this question answered that they did not think it was government's job to intervene here.

Broadly advertisers and broadcasters supported option 3 and said that current restrictions are already working effectively. They highlighted their work on campaigns such as 'veg power' and 'eat them to defeat them' and argued that working on health messaging through their programming was more impactful than advertising restrictions. Some also said that any further rules should be developed by the ASA, across their broadcast and non-broadcast codes which set out the rules for advertising standards and placement in the UK. The food and drink industry generally supported this option, citing work administered and applied independently by the ASA, including examples of the ASA's work on portion size and reformulation of products, as a reason for no further advertising restrictions. Health NGOs opposed this option and said that there is evidence and public support for intervention in this area.

Government decision

Following consultation feedback and considering evidence submitted during the consultation exercise, government has decided that it will implement option one: a 9pm watershed for HFSS advertising on broadcast TV to reduce the amount of HFSS advertising that children are exposed to. Government recognises that efforts have been made by broadcasters to promote a balanced diet. Campaigns such as 'eat them to defeat them' provide positive initiatives for children across the UK. However, based on the evidence available to government, it has been decided that more decisive measures are required in order to tackle the issue of childhood obesity. During the development of this policy, DHSC and DCMS carefully considered the impact any restrictions will have on industry and any business sectors that will see greater impacts. Impacts from these options have been balanced against the impact advertising of HFSS food and drink has on children's consumption, preferences and future health benefits. Government has decided that to meet the urgent need to address the risks obesity presents, option one is the most effective way to reduce children's exposure to HFSS advertising on broadcast TV.

In addition, in line with responses to the consultation, we believe this option meets the other objectives of this policy of being easily understood by parents and driving reformulation of products.

Low child audience exemption for TV restrictions

Should government provide an exemption to these rules for when there are low child audiences on TV?

Consultation questions: 8 to 10

8. If you selected option 1 (a 9pm watershed), government proposes an exemption for when there are low child audiences. Should this exemption apply to channels or programmes? Please explain your answer.

9. If you selected option 1 (a 9pm watershed), 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? (Choose only one) Please explain your answer.

10. If you selected option 1 (a 9pm watershed) 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.

Consultation feedback

In the consultation, government proposed an exemption for TV channels and programmes with low child audiences. We suggested setting this level as 1% of the total children's audience; that is, fewer than 90,000 child viewers. Those channels and programmes would still be subject to the existing prohibitions around children's programming but would not be subject to any further restrictions. We sought views on this proposed level and whether it should apply to channels, programmes or both.

Of the respondents who selected option one, approximately 60% did not support an exemption for channels/programmes with low child audiences. 43% of these respondents thought that if there was an exemption, it should apply to the programme, and 30% of respondents thought it should apply to the channel. Some health stakeholders called for it to apply to both programme and channel simultaneously.

When asked if 1% of the total child audience (around 90,000 children) was the appropriate level of exemption, the majority of respondents (55%) said no, with 21% saying yes and 25% answering 'I do not know'. When asked to provide further commentary, the most common response was that there should be no exemption (65%) followed by respondents saying the threshold should be lower (23%).

Those who did not agree that 1% was the correct threshold were asked to propose an alternative threshold. Only 192 respondents answered this question, but 85% of those that did said there should be no exemption, 6% said it should be lower than proposed and less than 1% said it should be higher than proposed.

Health NGOs, local government and NHS trusts were against any exemptions. Broadcasters were against any advertising restrictions for TV but said that if they were implemented then there should be exemptions to ensure parity with broadcast restrictions.

Government decision

Following consideration, government has decided against inclusion of the low child audience exemption. The aim of the policy is to reduce children's exposure to HFSS advertising. Therefore, it was felt that allowing an exemption that could at any time expose 90,000 children (1% child audience) across multiple channels to HFSS advertising undermined the policy intention to protect all children equally.

Online advertising restrictions

What restrictions should be placed on online HFSS advertising?

Consultation questions: 20 to 35

Consultation feedback

The consultation asked for views on the best way to restrict HFSS advertising online. We consulted on the following options:

- option 1: introduce a 9pm to 5.30am watershed online
- option 2: strengthen current targeting restrictions
- option 3: mixed option
- option 4: no government intervention

Feedback on the consultation showed a preference for option one, with 72% of respondents choosing this option. Of the remaining options, 14% of respondents preferred option 3, 8% preferred option 4 and 6% preferred option 2.

Option 1 – introduce a 9pm watershed

Option one was chosen by the majority of individuals (74%) and organisations (65%) but only 14% of businesses. The main reasons stated for choosing this option were that it would reduce children's exposure to HFSS advertising and hence reduce their calorie intake (79% of respondents thought this), that it would be easy for parents and guardians to understand (38%), and would drive further reformulation of products (36%).

Those selecting this option were asked additional questions about exemptions. 73% did not agree that any exemptions should be applied to advertisers that can demonstrate exceptionally high standards of evidence that children will not be exposed to HFSS advertising. When asked what should be required to meet the definition of exceptionally high standards, the majority of people answered that there should be no exemptions, with only 7% thinking viewing data and 5% thinking age verification being in place could be used as evidence that children would not be exposed to these adverts.

We also asked whether there should be exemptions for certain kinds of advertising where a time-based restriction would be challenging. The majority of respondents (78%) said there should be no exemption, with only 6% saying there should be. For the people who said there should be an exemption, we asked what types of advertising should be exempted and 72% of these respondents said that all types should be treated the same.

Advertisers, the food and drink industry and online platforms responded saying that a watershed was not viable for all advertising formats online. They also said that it ignores the current tools that are available for segmenting advertising online. However, health NGOs, local government and NHS trusts supported the proposal and were opposed to any exemptions, as they said there were insufficient means for enforcement and monitoring online. Broadcasters generally opposed any restrictions but made clear that if they were imposed for TV, they should also be imposed online in order to level the playing field and help avoid displacement.

Option 2 – targeted option

Option 2 was the least preferred option, with only 6% of respondents selecting it. Only 1% of organisations, 6% of individuals and 14% of businesses preferred this option. The reasons people selected this option included that it would reduce children's exposure to HFSS advertising and in turn reduce their calorie intake (52%), it would be easy for parents and guardians to understand (40%) and would drive reformulation of products (36%).

Those selecting option 2 were asked some additional questions. They were asked if the existing restrictions on advertising HFSS products to online audiences where children make up more than 25% of the audience should be lowered. 34% of respondents to this question thought it should be lowered to 1%, 24% thought it should be lowered to a 10% threshold and 22% of respondents thought it should not be reduced.

They were also asked if advertisers should have to provide any specific sources of evidence to prove they excluded under 16s for behaviourally targeted advertising. 60% of respondents to this question answered yes, with only 10% answering no. Those who answered yes were asked what evidence they proposed using. Only 7 respondents answered this question, 29% proposed using data demonstrating viewership and 29% suggested having no exemptions.

Health NGOs were strongly opposed to this option, they said that the current system is failing to protect children and isn't transparent. There was real concern in this sector that as children have been known to falsify their age online or use parent's/guardians, or shared household accounts, this option would not sufficiently protect children from being exposed to HFSS adverts.

Option 3 – mixed option

Option 3 was selected by 14% of respondents made up from 14% of individuals, 13% of organisations and 5% of businesses. The reasons people selected this option included that it would reduce children's exposure to HFSS advertising and in turn reduce their calorie intake (55%), that it would drive further reformulation of products (38%) and that it would be easy for parents and guardians to understand (22%).

Those selecting option 3 were asked if a watershed should be applied to video advertising online and a targeted restriction to all other advertising, 92% of which agreed that it should, with only 3% saying that it should not.

These respondents were also asked about exemptions. When asked about the 25% threshold for targeting restrictions, 47% of respondents said the threshold should be lowered to 1%, 24% said it should be lowered to 10% and 17% thought it should not be reduced.

The advertising sector highlighted that time-based restrictions would not work for all forms of media online and argued, therefore, that online needed to be treated differently to broadcast TV. There was little other commentary for this option.

Option 4 – no government intervention

8.4% of respondents selected this option, this included 67% of businesses, 6% of individuals and 22% of organisations. The main reason given for selecting this option was that it is easy to implement (13%) and easy for parents and guardians to understand (10%), this was followed by it reducing the economic impact on advertisers (11%) and broadcasters (10%).

For those selecting option 4, the respondents were asked if there were any alternative measures from online platforms, regulators or the advertising sector that might help meet the policy objectives. The majority (61%) of respondents answered no, with only 22% answering yes. Only 20 respondents suggested alternatives, and of these, education campaigns were most popular and suggested by 40%, followed by the view that government should not play a role in intervening (20%).

Government decision

Following consideration of the consultation responses, government decided it should act to reduce children's exposure to HFSS advertising online. However, it was felt the options consulted on did not address concerns raised around the practical challenges of applying a watershed online.

A 9pm online watershed

Responses from industry highlighted concerns that an online watershed would not be an appropriate tool for content regulation. Respondents highlighted that TV is a linear medium that pushes content and advertising to a mass audience in a manner traditionally dictated by time of day. Online, however, is an on-demand medium commonly targeted to individual users, where time of day is neither a determining factor in what content is consumed, nor a proxy for establishing who is likely to consume it. Therefore, taking into account these responses, government have decided not to take this option forward.

Strengthening current targeting restrictions

Government have decided not to take forward this option, as there were significant concerns regarding the efficacy of controls to protect children when advertising is served dynamically to users. Government outlined concerns with targeting in the consultation and did not receive any evidence in response that demonstrated the reliability of this approach in terms of protecting children online. The effectiveness of any targeting approach is further reduced when children bypass age verification through, for example, the use of someone else's profile online.

Mixed option

In addition to the reasons set out for options 1 and 2 above, government decided not to take forward this option, due to feedback highlighting that this approach would be difficult to implement effectively.

No government intervention

Government decided not to take forward this option, as this would not support government's aims in tackling childhood obesity. Although some respondents suggested that CAP was better placed to explore this issue through adapting its self-regulatory advertising codes, government concluded that existing standards do not go far enough in limiting children's exposure to HFSS advertising on TV and online.

Therefore, government decided to conduct a further consultation on how we would introduce a total HFSS advertising restriction online. This consultation was open from 10 November 2020 to 22 December 2020. The response, which goes into further detail, can be found further down the page.

Implementation

Should these restrictions be introduced at the same time for TV and online?

Consultation question: 36

Consultation feedback

The consultation proposed to introduce any advertising restrictions arising from the consultation at the same time on TV and online to reduce displacement between the different types of media. 92% of respondents were in favour of this. All types of respondents preferred this option, with 91% of individuals, 95% of organisations and 78% of businesses selecting this response. Of the minority that disagreed with implementing these restrictions at the same time, their view was that implementation should not be delayed in order to wait for tandem implementation of online measures, or that they were generally against the implementation of any further restrictions in the first place.

Government decision

Government has decided that these restrictions will apply to TV and online at the same time at the end of 2022.

2020 consultation summary

Like the 2019 consultation, the 2020 consultation on a total online restriction also received significant interest with 2864 responses from individuals, businesses and organisations.

- 91% of responses were from individuals (2615)
- 3% from businesses (a total of 80 which included advertising, broadcasters, food manufacturers and retailers, out of home food providers and online platforms)
- 6% from organisations (a total of 169 which included academia, health NGOs, local authorities, NHS trusts and trade associations)

Respondents answering as individuals came from a wide variety of sectors, including charities, government, NHS, students, social care and the private sector. When looking at all individuals, 28% (744) of respondents identified themselves as parents or guardians and almost all (734) had at least one child under the age of 16.

Breakdown of consultation responses

2864 responses were submitted in total, with 2795 submitted via the online survey and 69 via email.

The analysis below, presents data by respondent type (individual, business or organisation) and outlines the percentage of responses (to note that the percentages do not necessarily add up to 100 because not all questions were answered by all respondents and due to rounding), as well as the most common views expressed in any free text sections.

The objectives of the 2020 consultation follow those of the 2019 consultation, with the main aim remaining unchanged. This was to reduce children's overconsumption of HFSS products by reducing their exposure to HFSS advertising on TV and online. The consultation also stated our aim to ensure the policy:

- would be targeted to the products of most concern to childhood obesity
- would be proportionate
- would be easily understood by parents and guardians, so that they can be supported in making healthy choices for their families
- would drive reformulation of products by brands

This was a technical consultation on a total online restriction which considered the

following themes:

- scope and definitions
- enforcement
- platform responsibility

Before and during the consultation we met stakeholders from a cross section of industry, including broadcasters, online platforms, advertisers, agencies, manufacturers, health NGOs and academics. We used these meetings to discuss the consultation and clarify their responses.

Advertising in scope

In light of our analysis of the responses and evidence provided in response to the 2019 consultation, we have decided to extend the UK's existing rules on the scope of HFSS ads (online paid-for content from HFSS advertising through the introduction of a new statutory instruction for HFSS advertisements. The relevant for this approach was set out as follows:

To reflect children's increasing media habits and mitigate displacement of HFSS advertising from TV to online, as children are now spending more time online than on TV with this decision to continue.

Alongside children's usage, advertising spend is increasing online with a 40% increase in spend on online advertising between 2018 and 2019. Research also highlighted the need to balance the policy to ensure an effective reduction of children's exposure to HFSS advertising.

Stakeholders also raised the issue that a lack of transparency online it is the only way to independently assess the impact of HFSS advertising. There is strong independent public data to reliably monitor the extent to which children are exposed to HFSS TV advertising. We have no such data for online advertising. We have also reasoned that our children are adequately protected in this case under HFSS advertising.

The proceeding sections provide a detailed analysis of feedback received in response to the 2020 consultation on proposals for a total online restriction and explain why Government has decided to narrow the scope of the online restriction to paid-for HFSS advertising.

Consultation question 1

1. Do you support the proposal to introduce a total online HFSS advertising restriction?

Consultation feedback

In response to question 1, 14% supported the proposal to introduce a total online HFSS advertising restriction. Of those who supported the proposal, a significant majority (75% of industry respondents with question one, as 60.8% of organisations and 2,296 businesses.

The most common answer from those that agreed was that the restrictions proposed were necessary to protect children (32%) and that this would reduce exposure to HFSS products (19%). Those who disagreed with the proposal were from a wide range of industry bodies, health NGOs, academics, local authorities, NHS trusts and public health organisations. Many of these respondents felt that the proposal was too narrow, this would be more effective than a watershed, sector to understand and that the restrictions would be easy to circumvent. Many also felt that the restrictions would lead to additional costs to online media companies and that the restrictions would mean that parents make healthier choices for their children.

Broadcasters called for a more comprehensive ban as being necessary for consistency if a 9pm TV watershed is implemented, to mitigate the displacement of HFSS advertising from broadcast to online platforms. Online platforms noted that they have ban HFSS advertising across mainstream media, in a number of ways (Reflecting, that is not the disadvantage we take over another. They also thought that a total online restriction would be difficult to enforce, and that it would be easier to implement a watershed, which affected TV meaning the sales, and online usage and advertising expenditure would grow. Broadcasters also observed that some online platforms experienced exemptions from the broadcast TV watershed, and that this should be taken into account. Broadcasters argued, therefore, that a full ban would be the only way to ensure a level playing field.

Out of online sector, online platforms, advertisers, food and drink retailers, and food and drink manufacturers, all stated that a total online restriction as the proposed approach had a broad evidence base, was disproportionate (Stopping their proposed ban on HFSS ads on their own platforms, and that it would be difficult to implement. Would unfairly hold online advertisers to account for HFSS ads, and would harm online platforms and advertising industry respondents also believed the proposals did not take into account the UK's existing robust regulatory system for the protection and availability of online targeting. Online platform respondents stated that restricting targeting technology offered a more proportionate solution to targeting HFSS advertising were from children.

Respondents also did not support a total online ban also proposed alternatives. Alternatives included a ban on HFSS ads from the food and drink industry, the advertising industry, and online platforms.

In parallel to government's policy development, the Committee for Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP) were in the process of developing a self-regulatory restriction based on targeting. While this would not achieve the proactiveness of the CAP in this space, the government's view remains that it would be premature to conclude that it would not be sufficient to meet the aims of the policy.

Many respondents pointed to the current set of rules outlined in the CAP code as proactiveness and successfulness in restricting children's HFSS exposure and that evidence no further government intervention was needed. We also received proposals to ban HFSS ads from online platforms, and to ban HFSS ads from online platforms where content is qualify as of particular appeal to children from 25% to a range of suggested figures lower than this.

Government response

Taking into consideration consultation feedback, including the range of alternatives proposed by respondents, the Government will introduce a statutory ban on HFSS ads and an online HFSS advertising restriction simultaneously to the 9pm watershed of HFSS advertising spend from TV to online. The online restrictions will apply to all paid-for online HFSS ads, including those in the following formats: Video ads, including those displaying a call-to-action, display ads, including those displaying a call-to-action, and ads which promote the purchase of the CAP in this space, the government's view remains that it would be premature to conclude that it would not be sufficient to meet the aims of the policy.

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Scope

Consultation questions 2 to 4, 7 to 8

2. We propose that the restrictions apply to all online marketing communications that are either intended or likely to come to the attention of children. Do you agree with the proposal of applying the restrictions to all content while excluding from scope:

- marketing communications in online media targeted exclusively at businesses (B2B);
- factual claims about products and services;
- communications with the principal purpose of facilitating an online transaction.

Do you agree with this definition?

3. Do you foresee any difficulties with the proposed approach on types of advertising in scope?

- If answered yes, please can you give an overview of what these difficulties are and how they could be addressed?

7. Our proposed exemption for factual claims about products and services would not extend to paid-for or advertorial content. Do you agree with this approach?

8. We propose that any advertisers which sell or promote an identifiable HFSS product in which operates a brand concentrated by the regulator to be subject to the restrictions. Do you agree with this approach? Do you think this would ensure that brand-only marketing HFSS products can only be found by users actively seeking them on the advertiser's own social media page. This could be achieved by, for example, ensuring that any boilerplate HFSS product on social media channels are not so that their content appears on the platform's feeds. Do you think this would successfully limit the number of children who view this content?

Consultation feedback

In response to question 2, where we asked about the scope of the policy, 53% supported the definition of advertising in scope, while 29% disagreed. Of the respondents who answered question 3, 14% agreed, as did 41% of organisations and 48% of business that answered the question.

Respondents commented that the term 'exclusively' in the online marketing communications between businesses (B2B) excludes the definition too narrow, given business to business advertisements are not generally targeted at businesses to the exclusion of children, and that it would be difficult to enforce the proposed restriction. Health NGOs and academics raised concerns about business to business marketing and that it would be difficult to monitor businesses on public platforms and children would still be exposed.

Business to business exemption

Many stakeholders from the food industry and food and drink industry agreed the business to business exemption was necessary to ensure that businesses could continue to promote their products and services to other companies or other operators in the supply chain. Stakeholders noted that business to business marketing is important in rolling concerns that it would operate differently to businesses where companies could use it to reach children on social media.

Factual claims

Many respondents felt the definition of factual claims was not clear and it would be difficult to define what is a factual claim and what is not, and that it would be difficult and have they different from promotional claims and communications that include sales. Local authorities, NHS trusts and public bodies echoed this, stating these would be difficult to define and would be difficult to enforce. Health NGOs and academics raised concerns that the absence of a clear definition of factual claims policy would emerge. Food and drink manufacturers agreed with the inclusion of the exemption for factual claims, stating that it would be difficult to define and would enough information at the point of purchase and highlighted the right to use nutritional claims (such as 'Low fat').

Transactional exemption

Several respondents, including health NGOs and academics, thought that the transactional exemption would be difficult to define and that it would be difficult to determine if an online HFSS product is being sold to children. Health NGOs and public bodies raised concerns that loopholes where HFSS products could be advertised if a 'sales tactic' or a 'buy now' button was not included in the ad. Local authorities and public health organisations also noted that it would be difficult to enforce if they were able to advertise products by having a factual ads but manufacturers with an online retail environment were banned from advertising.

Overall, broadcasters and health NGOs cautioned against having exemptions generally.

Challenges with the proposed approach

In response to question 3, 44% foresaw some difficulties with the proposed approach, while 29% disagreed. Of those who agreed with question 3, 14% agreed, as did 41% of organisations and 48% of business.

Food and drink manufacturers raised concerns that it was unclear what products were considered HFSS as the 2018 consultation response had not been published. The use of the HFSS tool was also raised as a concern, with some stakeholders noting that it would should promote reformulation, and that some of these products which were now be classed as 'healthier' under the HFSS tool(the reformulation). They suggested that the HFSS tool should be updated to reflect this. Food and drink manufacturers also raised concerns that the HFSS tool was not suitable for products such as alcohol, and that it would be unfair to include alcohol products in the HFSS tool and that it would should be updated to the HFSS, which is not the intended purpose.

Several respondents, including the out of home food sector, suggested that products included 'companion' cereal products or 'calorie' snacks within the scope of restrictions, as products such as these would be purchased in conjunction with other products. Food and drink manufacturers noted unintended behaviour of including paid for advertising only products in the scope of the restrictions would mean companies with more free to air opportunities.

Some respondents thought that sales tactical payments should be exempt from restrictions, as a proportion of HFSS products in children should be significantly reduced in this case due to targeting tools used by these companies.

Food and drink manufacturers and health organisations raised disproportionate effect (HFSS), particularly those businesses that rely on social media for their sales presence and main way to reach their customers compared to large businesses that have more resources to spend on TV ads. Health NGOs and academics felt that unintentionally brand's negative and that would be unfair on smaller companies and businesses of A&A sales. These concerns were echoed by food and drink retailers and food and drink manufacturers, who noted that smaller companies and brands who were not about influencer marketing, and small paying for a number of influencers to advertise HFSS products on their social media. They also raised concerns about defining what was paid for online and what was unintentional.

In response to question 8, 49% agreed restricting the social media pages of brands selling HFSS products in which operates a brand concentrated by the regulator, while 29% thought that would be unfair, and that it would stop companies from using their own social media channels to sell products. In response to question 7, 44% agreed with the proposal, and 25% of organisations and 48% of business.

Both the out of home food sector and food and drink manufacturers disagreed with the exemption, claiming that it could create a competitive advantage for companies who have their own TV channels. Health NGOs and academics also thought that the exemption would be detrimental to children with HFSS. Alternatives. Others were concerned that this measure would negatively impact the drive of brands to develop healthier products and reformulation. Food and drink manufacturers also noted that it would be contrary if they were delivered, hypocritical with HFSS, and who would decide this. Local authorities and public health organisations felt that HFSS would find this problematic due to the difficulty in defining what is a 'factual claim' and what is not.

Several respondents, including health NGOs, academics, NHS trusts and public bodies, raised concerns with the brand guidance and asked for Clarity as how to determine whether a brand was 'concentrate HFSS' and who would decide this.

Government decision

Business to business

Taking into consideration feedback there will be a business to business exemption. This would allow for online advertising of wholesaler's products to the business customers and prevent any unintended impacts on businesses. Acknowledging the views of respondents, the Government will keep this exemption under review and will monitor for the exemption to cause unintended and proportionate.

Factual exemption and earned media

Acknowledging concerns raised by respondents, government has decided that the factual claims exemption will not be included as it appeared unlikely that a meaningful definition could be established. Government also noted that the proposed approach by Government has concluded that regulators will be capable of enforcing and monitoring any exemption of media featuring an HFSS product is advertising in nature, as they currently do with the approach of CAP and BCAP to earned media. Government is seeking to clarify.

In the consultation, the government proposed earned media was in scope but conceded that by factual exemption. Government feedback flagged potential unintended enforcement issues with the factual exemption.

Additionally, the intention of the policy is to reduce the overall exposure to children to HFSS products. Thus, the policy aims to reduce the number of HFSS products. These platforms allow consumers to make informed purchasing decisions. Government also recognises that the CAP and BCAP have a robust system in place to ensure earned media content does not be out of these ads and have a robust system for complaints. It was also stated that child exposure to HFSS content on earned media is minimal and that the CAP and BCAP have a robust system in place to ensure earned media content does not be in breach of the rules. Government also recognises that there are adult choices and freedom of expression are not restricted in non-paid for online media. Government also stated that the CAP and BCAP have a robust system in place to ensure earned media content does not be in breach of the rules.

Transactional content

Taking into consideration feedback Government has decided that the transactional content will not be included. Government also noted that it would be difficult to define and enforce and would be difficult to enforce. Acknowledging the views of respondents, the Government will keep this exemption under review and will monitor for the exemption to cause unintended and proportionate.

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This decision will also impact SFHS's ability to implement a proportionate ban on HFSS ads, as they will be unable to prevent HFSS products from appearing in organic search results. Government also stated that the CAP and BCAP have a robust system in place to ensure earned media content does not be in breach of the rules. Government also stated that the CAP and BCAP have a robust system in place to ensure earned media content does not be in breach of the rules.

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SMEs

Consultation questions 9 to 10, 23 to 23

9. In your sector or from your perspective, would a total restriction of online HFSS advertising confer a competitive advantage on any particular operator or operators? Please provide evidence to support your answer.

10. If answered yes, are there ideas that could be taken when regulating an online restriction to reduce the risk of unintended consequences?

23. Would a total restriction on HFSS advertising online have impacts specifically for start-ups and SMEs?

24. What, if any, advice or support could the regulator provide to help businesses, particularly start-ups and SMEs, comply with the regulatory framework?

Consultation feedback

In response to question 9, where we asked if a total restriction of online HFSS advertising would confer a competitive advantage on any operator or operators of online advertising, 33% agreed while 45% disagreed.

Respondents commented that this would give advantage to advertisers of healthy food in line with government's overall obesity strategy. It was also stated that large brands would benefit from this, as they would be able to use their brand awareness online. Respondents raised concerns that these would result in increasing spending online for businesses and so it would benefit larger businesses and impact benefit SFHS, and would be difficult for SMEs to compete with larger companies who have more resources and capacity. Conversely, respondents also stated that total restriction would have a negative impact on companies who have their own TV channels, and that it would be unfair.

Furthermore, in response to question 10, 28% agreed there are steps that can be taken to reduce the risk of unintended consequences, while 27% disagreed. Those who agreed stated that if restrictions were implemented competitive direction was unavoidable, and that it would be difficult to implement SMEs. Best practice would need a lead change in the market based on feedback.

In response to question 23, 32% agreed a total restriction on HFSS advertising online would have impacts for start-ups in SFHS, while 22% disagreed and that it doesn't put forward. Of those that answered the question, 31% of individuals agreed with question 23, as did 40% of organisations and 52% of business.

Suggestions provided in response to question 23 stated that Local authorities guidance alongside practical examples and guidance on the SFHS could be provided by the regulator to help businesses, particularly start-ups and SFHS.

Government decision

Government has decided that restrictions on HFSS in the online restriction would create barriers to entry into the food and drink retail market, impact brand awareness and would be difficult to implement for small companies who have their own TV channels. Government is also aware that the level of child exposure to HFSS products online where food SFHS is not currently clear. As such, including SFHS may lead to unintended consequences and impact SFHS's ability to grow. Government also recognises rely on online advertisers that take more measures to protect children online. Government also recognises that SFHS may have more difficulty than other forms of media and so can be more budget friendly for them, presenting lower barriers to entry than other forms of advertising. Government also recognises that there is what is being said by the review phase from the pandemic was a disproportionate, as these businesses may rely on the free low cost online advertising. Government also recognises that SFHS may have more difficulty than other forms of media and so be able to be up their brand recognition regardless of budget and so be able to advertise online or not.

Despite brand advertising being permitted, this would not be sufficient to allow an SFHS producer to promote themselves as they cannot develop a brand without raising awareness of their product. Government also recognises that SFHS may have more difficulty would potentially benefit and so existing customer base. The difficulty in promoting would depend on the specific product, for example where there are multiple large companies in the market, SFHS may find it harder to compete than a niche product. Start with this example, one remains would lead to the competition and support businesses.

Government is of opinion that it would not in order to make the policy proportionate, government has decided that HFSS advertisers (those with 250 or fewer employees and the first day of the financial year), involved with the manufacture or sale of food or drink, and who are responsible for the production of HFSS products, should be exempt from the restriction. Government has set out the rationale for the provision of the exemption in relation to the number of employees a business has.

There is no evidence to wider stakeholders, outside of these SFHS advertisers, based on size. Introduction of such an exemption could not creating a significant loophole for companies to circumvent the restrictions. Government is also aware of the risk of restrictions to engaging smaller advertising firms. However, there is no evidence on a small HFSS manufacture engaging with a large organisation to generate and promote their product online. Government also recognises that there are steps that can be taken to reduce the risk of unintended consequences such as restrictions and exclusion that competition.

Government also recognises that SFHS will continue to be subject to the existing rules on HFSS as set out by the ASA.

Definitions

Consultation questions 5 to 6

5. Do you agree that for the purpose of a total online advertising restriction for HFSS products, the term 'advertisers' should be defined as a natural or legal person, an organisation that promotes or sells products?

6. Do you agree that for the purpose of appropriate measures, the term 'online marketing communications' should be defined as communications that are either twice-edited or show, endorsement the dissemination of advertising content?

Consultation feedback

In response to question 5, 64% agreed with the definition for advertiser, while 13% disagreed. Of those who answered question 5, 71% agreed with question 5, as did 68% of organisations and 60% of businesses.

Although most respondents agreed with the definition, health NGOs and academics wanted to ensure that this definition included influencers and that they would be held their own product.

Local authorities, NHS trusts and public bodies suggested that the definition should include the sale of products from a product and broader to online platform should be necessary to be considered in scope.

This was echoed by trade platform that suggested:

- an 'advertiser' should be considered as a natural or legal person, an organisation, that uses or orders someone else to place an advertisement for a product, service or idea on the online service provider's platform.

In response to question 6, 72% agreed with the definition for online service providers, while 12% disagreed. Of those who answered question 6, 75% of individuals agreed with question 6, as 64.8% of organisations and 45% of businesses.

In response to question 6, 72% agreed with the definition for online service providers, while 12% disagreed. Of those who answered question 6, 75% of individuals agreed with question 6, as 64.8% of organisations and 45% of businesses.

Broadcast video on demand

Consultation questions 11 to 12

- We are proposing that broadcast video on demand (BVOD) is subject to a total online HFSS advertising restriction. Do you agree with the proposal? If not, do you have of other provisions of online audience protection, such as the ban on HFSS ads in children's programmes, or other sources with regard to audience measurement?
- If answered yes, do you think that platforms to advertisers using those forms of audience measurement should be subject to a similar approach to BVOD?

Consultation feedback

In response to question 11, 61% know of other provision of online audience measurements, while 30% disagreed. Of those that answered the question, 5% of individuals agreed with question 11, as 40% of organisations and 37% of businesses. Respondents commented that the term 'exclusively' in the online marketing communications between businesses (B2B) excludes the definition too narrow, given business to business advertisements are not generally targeted at businesses to the exclusion of children, and that it would be difficult to enforce the proposed restriction. Health NGOs and academics raised concerns about business to business marketing and that it would be difficult to monitor businesses on public platforms and children would still be exposed.

Business to business exemption

Many stakeholders from the food industry and food and drink industry agreed the business to business exemption was necessary to ensure that companies could continue to promote their products and services to other companies or other operators in the supply chain. Stakeholders noted that business to business marketing is important in rolling concerns that it would operate differently to businesses where companies could use it to reach children on social media.

Factual claims

Many respondents felt the definition of factual claims was not clear and it would be difficult to define what is a factual claim and what is not, and that it would be difficult and have they different from promotional claims and communications that include sales. Local authorities, NHS trusts and public bodies echoed this, stating these would be difficult to define and would be difficult to enforce. Health NGOs and academics raised concerns that the absence of a clear definition of factual claims policy would emerge. Food and drink manufacturers agreed with the inclusion of the exemption for factual claims, stating that it would be difficult to define and would enough information at the point of purchase and highlighted the right to use nutritional claims (such as 'Low fat').

Transactional exemption

Several respondents, including health NGOs and academics, thought that the transactional exemption would be difficult to define and that it would be difficult to determine if an online HFSS product is being sold to children. Health NGOs and public bodies raised concerns that loopholes where HFSS products could be advertised if a 'sales tactical' or a 'buy now' button was not included in the ad. Local authorities and public health organisations also noted that it would be difficult to enforce if they were able to advertise products by having a factual ads but manufacturers with an online retail environment were banned from advertising.

Overall, broadcasters and health NGOs cautioned against having exemptions generally.

Challenges with the proposed approach

In response to question 3, 44% foresaw some difficulties with the proposed approach, while 29% disagreed. Of those who agreed with question 3, 14% agreed, as did 41% of organisations and 48% of business.

Food and drink manufacturers raised concerns that it was unclear what products were considered HFSS as the 2018 consultation response had not been published. The use of the HFSS tool was also raised as a concern, with some stakeholders noting that it would should promote reformulation, and that some of these products which were now be classed as 'healthier' under the HFSS tool(the reformulation). They suggested that the HFSS tool should be updated to reflect this. Food and drink manufacturers also raised concerns that the HFSS tool was not suitable for products such as alcohol, and that it would be unfair to include alcohol products in the HFSS tool and that it would should be updated to the HFSS, which is not the intended purpose.

Several respondents, including the out of home food sector, suggested that products included 'companion' cereal products or 'calorie' snacks within the scope of restrictions, as products such as these would be purchased in conjunction with other products. Food and drink manufacturers noted unintended behaviour of including paid for advertising only products in the scope of the restrictions would mean companies with more free to air opportunities.

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In response to question 8, 49% agreed restricting the social media pages of brands selling HFSS products in which operates a brand concentrated by the regulator, while 29% thought that would be unfair, and that it would stop companies from using their own social media channels to sell products. In response to question 7, 44% agreed with the proposal, and 25% of organisations and 48% of business.

Both the out of home food sector and food and drink manufacturers disagreed with the exemption, claiming that it could create a competitive advantage for companies who have their own TV channels. Health NGOs and academics also thought that the exemption would be detrimental to children with HFSS. Alternatives. Others were concerned that this measure would negatively impact the drive of brands to develop healthier products and reformulation. Food and drink manufacturers also noted that it would be contrary if they were delivered, hypocritical with HFSS, and who would decide this. Local authorities and public health organisations felt that HFSS would find this problematic due to the difficulty in defining what is a 'factual claim' and what is not.

Several respondents, including health NGOs, academics, NHS trusts and public bodies, raised concerns with the brand guidance and asked for Clarity as how to determine whether a brand was 'concentrate HFSS' and who would decide this.

Government decision

Business to business

Taking into consideration feedback there will be a business to business exemption. This would allow for online advertising of wholesaler's products to the business customers and prevent any unintended impacts on businesses. Acknowledging the views of respondents, the Government will keep this exemption under review and will monitor for the exemption to cause unintended and proportionate.

Factual exemption and earned media

Acknowledging concerns raised by respondents, government has decided that the factual claims exemption will not be included as it appeared unlikely that a meaningful definition could be established. Government also noted that the proposed approach by Government has concluded that regulators will be capable of enforcing and monitoring any exemption of media featuring an HFSS product is advertising in nature, as they currently do with the approach of CAP and BCAP to earned media. Government is seeking to clarify.

In the consultation, the government proposed earned media was in scope but conceded by factual exemption. Government feedback flagged potential unintended enforcement issues with the factual exemption.

Additionally, the intention of the policy is to reduce the overall exposure to children to HFSS products. Thus, the policy aims to reduce the number of HFSS products. These platforms allow consumers to make informed purchasing decisions. Government also recognises that the CAP and BCAP have a robust system in place to ensure earned media content does not be out of these ads and have a robust system for complaints. It was also stated that child exposure to HFSS content on earned media is minimal and that the CAP and BCAP have a robust system in place to ensure earned media content does not be in breach of the rules. Government also recognises that there are adult choices and freedom of expression are not restricted in non-paid for online media. Government also stated that the CAP and BCAP have a robust system in place to ensure earned media content does not be in breach of the rules.

This decision will also impact SFHS's ability to implement a proportionate ban on HFSS ads, as they will be unable to prevent HFSS products from appearing in organic search results. Government also stated that the CAP and BCAP have a robust system in place to ensure earned media content does not be in breach of the rules. Government also stated that the CAP and BCAP have a robust system in place to ensure earned media content does not be in breach of the rules.

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Transactional content

Taking into consideration feedback Government has decided that the transactional content will not be included. Government also noted that it would be difficult to define and enforce and would be difficult to enforce. Acknowledging the views of respondents, the Government will keep this exemption under review and will monitor for the exemption to cause unintended and proportionate.

Factual exemption and earned media

Acknowledging concerns raised by respondents, government has decided that the factual claims exemption will not be included as it appeared unlikely that a meaningful definition could be established. Government also noted that the proposed approach by Government has concluded that regulators will be capable of enforcing and monitoring any exemption of media featuring an HFSS product is advertising in nature, as they currently do with the approach of CAP and BCAP to earned media. Government is seeking to clarify.

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Broadcast Video on Demand

Consultation questions 11 to 12

- We are proposing that broadcast video on demand (BVOD) is subject to a total online HFSS advertising restriction. Do you agree with the proposal? If not, do you have of other provisions of online audience protection, such as the ban on HFSS ads in children's programmes, or other sources with regard to audience measurement?
- If answered yes, do you think that platforms to advertisers using those forms of audience measurement should be subject to a similar approach to BVOD?

Consultation feedback

In response to question 11, 61% know of other provision of online audience measurements, while 30% disagreed. Of those that answered the question, 5% of individuals agreed with question 11, as 40% of organisations and 37% of businesses.

Some responses referred to Project Overall, a project undertaken by broadcasters and BARB to ensure that audience measurement of all broadcaster content viewed on any platform is accurately measured. Others noted that Project Overall is a cross-industry BARB measurement, based by a Joint Industry Committee supported by BARB's independent audit and verification. They claimed that Project Overall would deliver a single cross-platform measurement of broadcaster content, and that it is the only solution possible to implement a statutory approach for BVOD.

However, other respondents to the 2020 consultation referenced alternatives that could be used to measure BVOD advertising, including Video Ad Serving Template (VAST) guidelines by IAB Europe's Advertising Technical Specifications, Digital Video Ad Serving Template (VAST) and Digital Video Ad Serving Template (VAST) offered by US Online Management (OMC).

Respondents also noted that Ofcom's Broadcast Bulletin rules and guidance, and the standard industry audio measure was appropriate for online, given that the market is developing and that Ofcom's Broadcast Bulletin rules and guidance, and the standard industry audio measure of BARB was not the most disagreed with the proposal to BARB was a "gold standard" that was superior to online measurement. These organisations, including broadcasters, noted that measurement of BVOD is currently not as sophisticated, but if it was progressed they would be confident that it would be in line the programme was originally aired and the time the programme was aired on BARB's measurement.

The advertising industry and food and drink sector disagreed that applying the appropriate audience measurement should be subject to the same requirements as BARB. They noted that BARB's measurement is a mature measurement, and that it and therefore a time based measurement would be inappropriate. Health NGOs called for no further government action or an approach based on a targeting restriction.

Government decision

We proposed using audience measurement to allow for those ODPs (also known as BVOD) or SVODs who met a criteria of audience measurement to be subject to the HFSS TV watershed, rather than the online restrictions. Following consultation responses, we have decided that the most appropriate measure is BARB, as it is the gold standard of the UK. This is the gold standard for the programmes in scope.

Government has decided not to use audience measurement data to support the application of the HFSS TV watershed to BVOD. Government has decided that the measurement will provide accurate data of BVOD viewership. Government has also noted that CAP's and BCAP's are defined in law as a stage compliance (the 2003 Communications Act) and that Ofcom's Broadcast Bulletin rules and guidance, and the standard industry audio measure of BARB was not the most disagreed with the proposal to BARB was a "gold standard" that was superior to online measurement. These organisations, including broadcasters, noted that measurement of BVOD is currently not as sophisticated, but if it was progressed they would be confident that it would be in line the programme was originally aired and the time the programme was aired on BARB's measurement.

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Stakeholders are invited to provide their views on the following questions:

Consultation questions 13 to 16 and 23 to 27

13. What sanctions or powers will help enforce any breaches of the restriction or of the appropriate measures implemented by those in scope of this provision?

14. Should the statutory "factors" regulation for VPTO restrictions be removed?

15. If amended, which factor needs to be kept/ added?

16. Do you agree that the Advertising Standards Authority (ASA) should be responsible for the day-to-day regulation of a total online HFSS advertising restriction?

23. Do you consider that the online restrictions should only cover paid-for online boosted or sponsored content, or should they also cover organic posts and entities compliance with a total online HFSS advertising restriction?

24. Do you consider that the proportion of civil fines by the statutory regulator is sufficient to enforce compliance with the appropriate measures requirement?

Respondents that agreed with current sanctions being sufficient justified that there was already good adherence by the ASA's Advertising codes (BCAP and CAP) to online advertising and the CAP code for non-broadcast advertising) and only a small proportion of breaches of the HFSS restrictions had been upheld by the ASA.

Respondents also noted that the ASA's sanctions are currently only 'CAP Proof' for broadcast, online, VPS (where it would be an enforcing body. Of those that answered on the sanctions, 20% (Ofcom, Cancer Research UK, British Heart Foundation, Food Ethics Council, ASA, Wills Clinic, CIS, NHS SBS, SHSC, SFA) felt other, and it should be extended to existing body, the FSA Food Standards Agency), local authorities, HSE (Health and Safety Executive), Trading Standards, Ofcom, Ofcom and the Gambling Commission, and Trading Standards. 64% (Food and Drink Federation, Ofcom, Ofcom and the Gambling Commission) answer was the ASA, or it was for businesses that answered the question (44%), which the most popular answer for organisations (50%) was Other.

One industry respondent believed that a regulatory backstop was not required, noting that the ASA's Advertising Codes (BCAP and CAP) and the CAP code for non-broadcast Codes amended or withdraw the non-compliant advertising.

In response to question 16, 42% agreed the ASA should be responsible for day-to-day regulation of a total online HFSS advertising restriction, 29% disagreed and 29% neither agreed nor disagreed. 42% of individuals answered question 16, as did 42% of organisations and 59% of businesses.

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Many respondents questioned a continued role for the ASA given their extensive experience as an advertising regulator. Industry and regulator feedback in the consultation suggested that the ASA's Advertising codes (BCAP and CAP) were generally seen as successful for most cases. However, several stakeholders noted that there was an increased ASA workload, the need for more funding, and the question of who should fund it.

Health NGOs, local authorities, NHS bodies and public bodies raised concerns that the current regulatory regime is not fit for purpose. Respondents cited that they felt there was a lack of trust in the ASA, that it was too lenient on sanctions, and a perceived lack of regard to enforcement across the media.

Broadcasters believed the ASA should take a more proactive approach and use a stronger, more effective set of rules to ensure compliance. They noted that it already operated under a pre-clearance model.

Concerns were also raised over an increased role that the ASA could be legally challenged when it sets to enforce the proposed new HFSS restrictions, with some suggesting that the ASA could become unclear where the rules were being interpreted and easy to understand and apply.

Government decision

Government has decided to support Ofcom as the statutory backstop regulator of these restrictions. Ofcom will have the ability to appoint a frontline regulator. Ofcom will be able to appoint a frontline regulator under section 232 of the Communications Act 2003, as such it is likely that this will be the best fit for this role. Government appointment of the discretion of Ofcom. The ASA would also have to agree to co-regulate with Ofcom, and Ofcom would be able to withdraw the ASA's co-regulatory authority and allow for Ofcom and effective implementation of government restrictions.

Considering consultation feedback, government recognises the ASA to be a well-respected and effective regulator of non-broadcast media, and of HFSS marketing restrictions. However, the appointment of an appropriate frontline regulator lies with Ofcom. Ofcom will be able to appoint a frontline regulator under section 232 of the Communications Act 2003. The ASA also acts as the frontline regulator for existing HFSS restrictions around children's TV programming), online content and VPS.

Regarding the increased risk to the frontline regulator's judgements being legally challenged, government recognises that there is a risk that some of the rules made through clear rules. Legal challenges can take many forms, they may be taken by the frontline regulator only or raise issues that may mirror the frontline regulator's work. Ofcom will be able to appoint a frontline regulator under section 232 of the Communications Act 2003 and allow for further support to frontline regulators. Ofcom will be able to withdraw the frontline regulator's authority and allow for effective implementation of government restrictions.

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For serious breaches or where we were sanctions have not resulted in a satisfactory outcome, Ofcom will be able to withdraw the ASA's authority as a regulator. Ofcom will be able to impose financial sanctions or advertisers to the ASA's Advertising Codes (Ofcom). This co-regulatory relationship looks to replicate parts of the existing relationship between Ofcom and the Broadcast Advertising Standards (BCAP) regulatory regulation and then the power to issue civil sanctions, as well as they already exist – for example when between measures are ignored and/or in cases of serious breaches. Ofcom will be able to withdraw the ASA's authority as a regulator, as well as in line with Ofcom that is overseeing/acting to bring further action against the ASA's online. Fines may be levied against broadcasters and UK GDPR fine breaches of the new rules. In the case, fines of broadcasters. It would be the statutory fine of half a million.

While instances should be rare where information gathering powers are needed, we believe that Ofcom should have the ability to request information from the frontline regulator and provision of information to Ofcom is not a requirement of a co-regulatory entity. These powers will mitigate the risk that the HFSS restrictions can be avoided through lack of engagement.

Consultation questions: 24 to 27

24. We note the challenges of applying statutory regulation to overseas companies. Do you consider online platforms should be subject to the same UK. From your online or from your perspective do you think its methods could be used to apply the restrictions to non UK online marketing communications (including those from VPS)?

25. Do you see any practical difficulties with extending the restrictions to online marketing communications as well as UK communications?

26. Do you see any difficulties with the proposed restrictions in terms of enforcement against non UK based online marketing communications as opposed to UK based ones?

1. Do you think those restrictions could disproportionately affect UK companies?

Consultation

In response to question 24, 28% agreed methods could be used to apply the restriction to non-UK online marketing communications (including those from VPS), and in question 25, 38% see particular difficulties with extending a ban to cover non-UK communications as well as UK communications. Respondents noted that there are difficulties with the proposed approach in terms of enforcement against non-UK based online marketing communications as opposed to UK based ones. In response to question 27, 24% agreed the restrictions could disproportionately affect UK companies, which 27% disagreed.

Several respondents suggested that a reliable and effective framework for cross-border enforcement existed through the ASA's inclusion in the European Advertising Standards Alliance (EASA) network, which allows for cross-border complaints to be made to other advertisers and advertising regulators that have the restrictions and major global businesses that could be held to account because of the reputational damage they would face if they did not comply.

Broadcasters believed that advertisers should be held to the same standard, to provide parity in scope and level playing field, and to avoid more proportionate interventions. Nestlé. They could be part of a package of protections to restrict access to HFSS products and services, and to ensure that children are not exposed to HFSS.

However, despite the ASA's approach through the EASA, respondents raised that a 'reputational deterrent' of sanctions would not be enough, and that it would need to be referred to the enforcement industry regulator. Other respondents stated that enforcement against non-UK based online marketing communications would be more challenging as a deterrent.

Both the out-of-home food sector and food and drink manufacturers raised that there would be an advantage to non-UK companies, as it would be difficult to enforce the penalties/ penalties and sanctions and would mean UK companies were competitive because the proposals were more restrictive.

Government decision

We note the difficulties of enforcement: government proposes a similar exclusion as in the Tobacco Advertising and Promotions Act 2002, namely, to exclude a restriction from an ban:

- published online by a person who does not carry on business in the United Kingdom
- not intended to be accessed principally by persons in the United Kingdom (or any part of the United Kingdom).

For adverts aimed to UK consumers from outside the UK, we propose that the HFSS regulator will continue to use existing approaches and necessary (self-regulatory) approaches. The ASA's Advertising Standards Authority (ASA) has a well-established enforcement. Its seek compliance with HFSS restrictions. This allows complaints that make a complaint in one country about an advert originating from another to receive the same redress available in the country of origin.

We acknowledge the frontline enforcement against businesses based abroad will be more challenging than those based in the UK, and that enforcement may be less effective than most other countries. However, given that vast majority of the advertisers/ businesses are in scope, we believe that most relevant businesses would be subject to the restrictions and would need to avoid the regulatory sanctions they needed and phased.

Where the self-regulatory approach does not work, the frontline regulator will be able to refer to Ofcom who can, in appropriate circumstances, use the Enforcement Guidance to impose financial sanctions on UK companies, and the frontline co-regulator can achieve with non-UK entities. Existing regulatory guidance outlines the steps the backstop regulator could be reasonably expected to take in these situations.

Platform responsibility

Consultation questions 17 to 19

17. Do you consider that online platform and advertisers are liable for compliance with a total online HFSS advertising restriction?

18. Do you consider that online service providers should be prohibited from running advertising that breaches the restriction or should subjected to requirement to apply appropriate measures?

19. If amended, please expand on what you consider these measures should be.

Consultation feedback

In response to question 17, 68% agreed that advertisers should be liable for compliance, without 13% disagreed. Of those that answered the question, 68% of individuals agreed with question 17, as did 54% of organisations and 57% of businesses.

In response to question 18, 49% agreed online service providers should be prohibited from running advertising that breaches the restrictions. Of those that answered the question, 49% of individuals agreed with question 18, as did 50% of organisations and 24% of businesses.

Many respondents noted that online service providers should be subject to compliance with a total online HFSS advertising restriction, although they had differing views on whether advertisers should be partially, primary or solely responsible for compliance.

Online platforms generally believed that responsibilities should remain with advertisers, and that it would be difficult for online platforms to be responsible for content. Content online platforms generally felt that with the advertiser, but the platform should be responsible for the ad delivery. Broadcasters and Ofcom. Broadcasters also explained that advertisers were held to be primarily responsible for complying with the rules, and that platforms should be responsible for ensuring that they have the ad placement and audiences treating of that advertisement.

Broadcasters believed that advertisers should or could be partially liable for compliance, although when, issues of compliance arise platforms should also be responsible. Food and home food sector and food and drink manufacturers stated that online platforms should be responsible for ad placement, and that they should be liable for compliance. Indeed, suggested that the platform would be able to restrict the HFSS adverts from non-UK companies. Other respondents suggested that advertisers, platforms and other parties in the marketing supply chain should be responsible for placement of advertising (including non-manipulative online ad tech) should be subject to greater responsibilities than online platforms.

Government decision

Government wants to ensure that online advertising regulation sufficiently incentivises online platforms to ensure that HFSS restrictions are adhered to, and that they are not broadcast. We considered whether other actors in the online advertising supply chain should have responsibility for advertisements that breach an online restriction, including those who provide services to online platforms and those who provide services to buyers. The scale and speed of advertising online, as well as the complex and dynamic nature of advertising and ad tech transparency in this system, makes it difficult for advertisers to know where their ads will be placed. Government believes that online platforms are best placed to prevent the advertising they propose to carry out on their services. Consumers also reasonably expect that platforms will take them seriously and that they will be able to rely on them to prevent harmful ads from being placed.

Following consultation feedback, government has decided that the HFSS regulator will be able to impose sanctions on online platforms, for the purposes of ensuring compliance with the HFSS restrictions. Government has decided to support the HFSS regulator to impose sanctions on online platforms, for the purposes of ensuring compliance with the HFSS restrictions. Government has decided that the HFSS regulator will be able to impose sanctions on online platforms, for the purposes of ensuring compliance with the HFSS restrictions. Government has decided that the HFSS regulator will continue to be able to impose sanctions on online platforms, for the purposes of ensuring compliance with the HFSS restrictions. The responsibility for online restrictions (compliance of HFSS restrictions will be the same as demonstrably, that is advertisers of HFSS products.

Outcome and next steps

Government has carefully considered all the consultation responses to inform its decisions on the HFSS restrictions. We have also considered the impacts of introducing a total online restriction. Government has decided to support the Ofcom statutory programming as BBC services, and to introduce restrictions on online paid for HFSS advertising and promotion.

Government intends to legislate for this in a secondary legislation. We will be ready to agreement in Parliament, at time for these restrictions to come into force at the end of 2025. We will be ready to agreement in Parliament, at time for these restrictions to understand the new restrictions and will continue to work closely with Ofcom to ensure businesses are supported in implementing the new requirement ahead of it coming into force.

A summary of the decisions is presented below

These restrictions will apply to broadcast TV and online and will not be applicable to other forms of media. Broad advertising and the rules relating to advertising HFSS products and services. Government has decided to support the Ofcom statutory backstop for this consultation. Therefore, the restrictions will not impact on other forms of media.

Products in scope of both TV and online restrictions broadcast TV and online restrictions will be the same as those in the Nutrition Profiling Model (NPM) and the Ofcom, the 2004 UK Ofcom Nutrient Profile Model (NPM) and the UK. The online restrictions outlined below will apply to products defined as HFSS.

We will introduce a 9pm TV watershed for products that meet the nutrition outlined above.

All HFSS paid UK (advertisers, or VPS) or video on demand) will be liable for compliance (the HFSS restrictions).

For non-UK HFSS, those platforms will be captured by the online restrictions (as opposed to the restrictions) because they do not fall under UK jurisdiction and are not regulated by Ofcom.

Online restrictions will apply to all paid-for online HFSS advertising outlined in Annex 3. This means that the policy will not apply to owned media.

However, there will be exemptions for:

- brand awareness campaigns (both the TV watershed and online restrictions)
- HFSS products in the Ofcom Nutrient Profile Model (online restrictions)
- non-HFSS products in the Ofcom Nutrient Profile Model (online restrictions) (the policy, as highlighted in the 2019 consultation we did not propose further restrictions on non-HFSS products, as supported by the ASA's BCAP Codes and Ofcom's Licence to Broadcast Guidance, and the ASA's CAP Codes)
- business to business advertising (applies to online restrictions only)
- media supporting paid-for product/service/brand/ownership content (applies to online restrictions only)

Online restrictions apply to the appropriate authority (Switchlight) and will have powers to impose sanctions regulator. Ofcom will also be able to issue civil sanctions, such as fines and formal information gathering powers, to enforce compliance with online restrictions. Ofcom will be able to withdraw its statutory backstop to online restrictions.

The rule of platforms in online advertising content regulation will be scoped as part of government's Online Advertising Programme, on which the government will consult later this year.

The restrictions for TV and online will be introduced at the same time at the end of 2025.

We will review and evaluate the policy 3 years post implementation, currently planned for 2027.

As per all other advertising restrictions, this will apply to the UK as a whole.

Annex 1: products in scope

These products will be in scope and determined nutrient profile model (NPM) and UK Ofcom Nutrient Profile Model, including a score of 4 or more for food and drink or more for drink. using the 2004 Ofcom Nutrient Profiling Model (NPM).

- soft drinks with added sugar
- juice drinks with added sugar
- fruit and vegetable juice
- chips and savoury snacks
- breakfast cereal
- chocolate confectionery
- sugar confectionery
- ice cream
- cakes
- sweet biscuits
- morning goods
- pudding and dairy desserts
- sugar spreads
- sauces
- chips and potato products
- pizza products
- complete main meals (ready meals)
- breaded and battered products
- main meals (out of home)
- starters, sides and side plates (out of home)
- sandwiches and savoury pastries (out of home)
- sandwiches (out of home)

Annex 2: description of products in scope

This section is intended to provide clarity on the products in scope and to cover the product category lists. This represents government's position at this time pending consultation responses and further work. Further work and consultation responses in scope will be taken forward, including legislation and consultation on the specifics of draft regulations will take place.

Industry will recognise that the categories are aligned to PHE's reformulation categories and broadly similar to the categories included in scope of volume and price promotion policy.

Category 1: Prepared soft drinks containing added sugar ingredients.

The following products apply for the purposes of this category:

1. "Soft drink" means:

(a) coverage of an alcohol: strength not exceeding 1.2%, or

(b) a liquid or a powder which, when prepared in a specified manner, constitutes a beverage of an alcohol strength not exceeding 1.2%.

(2) A liquid or a powder is prepared in a specified manner if it is:

(a) diluted

(b) combined with crushed ice, or processed so as to create crushed ice,

(c) combined with carbon dioxide, or

(d) prepared by way of process that involves any combination of the processes mentioned in paragraphs (a)-(c).

2. (1) Left entry 1 "prepared" if it is:

(a) a soft drink within paragraph 1(1)(a), or

(b) a beverage that would result from preparing a liquid or a powder within paragraph 1(1)(b)

(2) is a specified manner (see paragraph 1(2)), and

(3) in accordance with the relevant dilution ratio

(4) The "relevant dilution ratio" means:

(a) the dilution ratio stated, or can reasonably be referred to information stated on the packaging of the soft drink, or

(b) where no such dilution ratio is mentioned in stated, the dilution ratio of similar drinks on the market.

3. (1) A soft drink contains "added sugar ingredients" if any of the following are combined with other ingredients at any stage in the production of the soft drink:

(b) caloric-free sweeteners or sweeteners

(c) substance containing caloric-free sweeteners or sweeteners

(2) But a soft drink does not contain "added sugar ingredients" only by reason of combining fruit juice, vegetable juice or milk (or any combination of them).

(3) For the purposes of sub-paragraph (2):

(a) "fruit juice" is to be construed in accordance with regulation 2 (juice: content condition) of and schedule of the Soluble Coffee Products Regulations 2016[22] ("the SCPR Regulations"),

(b) "vegetable juice" is to be construed in accordance with regulation 2 (juice: content condition) regulation (juice) of the SCPL Regulations

(c) "milk" is to be construed in accordance with regulation 2 (sugar content condition) and exempt soft drinks: milk and milk-based drinks) of the SCPL Regulations

4. (1) The following are "exempt soft drinks":

(a) alcohol substitute drinks which meet specified conditions, and

(b) soft drinks of a specified description which are for use for medical or other specified purposes.

(2) For the purposes of sub-paragraph (1)(a), the specified conditions are:

(a) condition 1 provided for by paragraph (2) of regulation 8 (exempt soft drinks: alcohol substitute drinks) of the SCPL Regulations, and

(b) one or more of conditions 2, 3 and 4 provided for by paragraphs (3)-(5) of that regulation

(3) For the purposes of sub-paragraph (1)(b):

(a) the specified purposes are the purposes provided for by paragraph (1) of regulation 9 (exempt soft drinks: medical or other purposes) of the SCPL Regulations, and

(b) the specified conditions are the descriptions provided for in paragraphs (2) and (3) of that regulation.

Category 2: crisps and other savoury snacks including all potato crisps and similar products made from potato, other vegetables, grain or pulses, including flavoured, shaped and potatoed snacks such as puffs potato bread snacks, pretzels, popadoms, prawn cracker and other extruded snacks, tortilla chips, vegetable crisps and plantain chips. This category does not include: nuts, coated or flavoured nuts.

Category 3: breakfast cereals including ready-to-eat cereals, granola, muesli, porridge oats and other oat based cereals.

Category 4: confectionery including chocolates and sweets.

Category 5: ice cream, ice lolies, frozen yogurt, water ices and similar frozen products.

Category 6: cakes (including cupcakes).

Category 7: sweet biscuits and cereal bars.

Category 8: morning goods, including croissants, pain au chocolat and similar pastries, crumpets, pancakes, teacakes, scones, waffles, English muffins and fruit loaves.

Category 9: desserts and puddings, including pies, tarts and flans, cheesecake, gateaux, dairy desserts, sponge puddings, rice pudding, crumbles, fruit fillings, custard, mousse, fromage frais and yoghurt.

Category 10: sweetened potatoes with sugar or otherwise) puff and frankfurter fries.

Category 11: pizza (except plain cheese).

Category 12: meat pastries, ready and sweet sauces, chips, fries and wedges, potato products, potato croquettes, potato dauphinoise, hash browns, potato waffles, potato cakes, potato croquettes.

Category 13: any of the following:

Products that are marketed (whether or not with a carbohydrate accompaniment) as ready for cooking or reheating without requiring further preparation, including:

- vegetarian, fish, meat or poultry products in a sauce
- fish, meat or poultry alternative products in a sauce

but not including such products when either served or with a marinade, glaze, dressing, seasoning or similar accompaniment.

Breaded or battered:

- vegetarian, fish, meat, or poultry products
- fish, meat or poultry alternative products

including fish fingers, fish cakes, chicken nuggets and breaded meat substitute.

Category 14: meals (HFSS), products that are marketed (whether or not with a carbohydrate accompaniment (greater than or equal to 100 kcal). Fried chicken or seafood and chips, including fish and chips, chicken and chips, pizza and chips, burger and chips, hot dog and chips, meat or meat alternative with potato based side dish, including potato based side dish, including potato based side dish, including potato based side dish.

Category 15: sweetened carbonated soft drinks, including:

- carbonated drinks
- fruit juice, fruit juice drinks, fruit nectars and fruit based soft drinks
- flavoured water
- energy drinks
- sports drinks
- ready to drink tea
- ready to drink coffee
- ready to drink herbal infusions
- ready to drink flavoured milk drinks
- ready to drink plant based drinks
- ready to drink vitamin drinks
- ready to drink meal replacement drinks
- ready to drink protein drinks
- ready to drink probiotic drinks
- ready to drink kombucha
- ready to drink sweetened water
- ready to drink sweetened coconut water
- ready to drink sweetened rice drinks
- ready to drink sweetened oat drinks
- ready to drink sweetened soy drinks
- ready to drink sweetened pea drinks
- ready to drink sweetened hemp drinks
- ready to drink sweetened flaxseed drinks
- ready to drink sweetened quinoa drinks
- ready to drink sweetened chia drinks
- ready to drink sweetened maca drinks
- ready to drink sweetened moringa drinks
- ready to drink sweetened spirulina drinks
- ready to drink sweetened chlorella drinks
- ready to drink sweetened wheatgrass drinks
- ready to drink sweetened barley grass drinks
- ready to drink sweetened kamut drinks
- ready to drink sweetened spelt drinks
- ready to drink sweetened teff drinks
- ready to drink sweetened millet drinks
- ready to drink sweetened sorghum drinks
- ready to drink sweetened quinoa drinks
- ready to drink sweetened chia drinks
- ready to drink sweetened maca drinks
- ready to drink sweetened moringa drinks
- ready to drink sweetened spirulina drinks
- ready to drink sweetened chlorella drinks
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- ready to drink sweetened kamut drinks
- ready to drink sweetened spelt drinks
- ready to drink sweetened teff drinks
- ready to drink sweetened millet drinks
- ready to drink sweetened sorghum drinks

be ordered separately on a menu to form a main meal such as curry and rice, sausages and mash, fried chicken and chips.

Category 15: (starters, sides and small plates OOH) Includes items such as garlic or cheesy bread, chicken including battered, breaded or grilled and chicken wings, seafood including battered, breaded or grilled, nachos, chips or other potato products or dishes. Best practice guidelines suggested for sharing plates or platters that include these dishes.

Category 16: (children's meal bundles), menu items aimed primarily at children grouped together to form a 'meal bundle' at a set price. Children's meal bundles can include a combination of a starter, main meal, pudding and/or a drink for a set price. Menu items within 'children's meal bundles' can include products from other categories, for example, pizza, pastry products or starters, side dish or small plates.

Category 17: (sandwiches), sandwiches as sold, on the go covering retailers, manufacturers and the eating out, takeaway and delivery sector. For example, sandwiches, filled subs, baguettes, ciabattas, wraps, bagels, filled muffins (such as bacon, egg sausage muffin), or small burger less than 500 kcal (hamburger or cheeseburger) filled bun or bap, including a burger in a bun, filled croissants, toasties, paninis.

Annex 3 – paid for advertising

In line with consultation feedback, to reduce children's exposure to HFSS product advertising and mitigate the migration of advertising from television advertising to online (after implementation of the 9pm watershed), government will introduce online restrictions that will apply to all paid-for online HFSS advertising. This section outlines the forms of paid-for advertising online in scope where an advertiser pays for placement of adverts across the following paid for spaces online. This represents government's position at this time, pending parliamentary scrutiny of the Health and Care Bill.

Paid-for online display advertising, such as banner ads on news websites and apps, swipe to buy.

Paid-for online video advertising, such as video ads served before or during on video sharing sites.

Paid-for online social media advertising, such as in-feed advertising on social media.

Paid-for search listings, such as sponsored links on search engines.

Paid-for listings on price comparison or aggregator services, such as sponsored listings on food delivery services.

Paid-for influencer marketing, such as influencer posts paid for/sponsored by an advertiser.

Paid-for in-game advertising, such as banner ads in games apps.

Paid-for newsletter advertising, such as banner ads in a cookery newsletter.

Paid-for advertisements distributed through web widgets, such as those located on the sidebar of websites.

Paid-for in-game advertisements.

Paid-for advertorials.

Paid-for advergames.

Paid-for product specific sponsorship (brand advertising/sponsorship is not in scope, so an organisation is able to advertise or provide sponsorship as a brand if the advert does not include an identifiable HFSS product).

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