

Further advertising restrictions for products high in fat, salt and sugar

Consultation Response

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

Yes.

2. If answered yes, which other media should be subjected to further HFSS advertising restrictions?

Cinema; Radio; Print; Outdoor/Direct marketing

Other – We would want this to include sponsorship, for example of events or sports programmes aimed at children or where children are likely to be a significant part of the audience.

This should include sponsorship of television programmes, seasons or time periods, which are currently regulated separately by Ofcom. Removing this loophole will prevent the inclusion of HFSS advertising directly around programmes in idents, which are not restricted as advertising currently is.

The experience of restrictions on tobacco (including sports sponsorship for example) shows that a comprehensive approach is both possible and a key part of a comprehensive approach.

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

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

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

Agree

The NPM is well established and already used in relation to advertising restrictions, meaning it is well understood by marketers/industry and has a clear evidence base. However, we would like to see the updated version of the NPM (reviewed in 2018) used as soon as is possible, as this takes into account more recent evidence, in particular in relation to free sugars.

Using the (preferably updated) NPM also ensures consistency between advertising formats, and therefore reduces the risk of some displacement of advertising spend.

The NPM restrictions should apply to all HFSS food and drink shown in advertising. The restrictions should be expanded to include delivery services who deliver foods which are HFSS. If they feature an item of food in their advertising, they must be able to demonstrate its NPM score.

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

While we agree that using the NPM 2004/5 to define what products are HFSS is pragmatic and aligns with current approaches, we would like this proposal to be modified so that the updated NPM may be used when it is available.

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

Option 1

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

This option would align with the current practice but still encourage reformulation in order that manufacturers could take their products out of scope. A watershed to protect children from unsuitable advertising or broadcast content is already well established and understood by broadcasters and the public. An Obesity Health Alliance/You Gov national public poll in February 2019 revealed that 72% of adults support the introduction of a 9pm watershed on TV and 70% support similar online [i].

In the UK, evidence presented at the Health and Social Care Committee's Childhood Obesity Inquiry [ii] highlighted the association between HFSS marketing and immediate snack food consumption, greater intake of junk food overall, increased food intake that is not compensated for at later eating occasions and greater body weight.

i - You Gov poll, 2038 adults, 12-13 February 2019, commissioned by Obesity Health Alliance
<http://obesityhealthalliance.org.uk/2019/02/28/protect-children-junk-food-advertising-say-health-experts-parents-agree/>

ii - Boyland, Emma (2018) Written submission from Dr Emma Boyland, University of Liverpool COY0006

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

a) Programmes. We feel that applying this to only channels may miss programmes that children watch on channels not usually associated with them, which could risk children being inadvertently being exposed to advertising of HFSS foods and drinks not meant for them. The Kantar analysis commissioned to inform this consultation states that exempting channels with an average weekly (3min) reach of children below 1% would exempt the vast majority of TV channels including in their analysis –

207 out of 310. It seems unlikely that all these channels do not include individual programmes that would exceed the 1% threshold across their programming.

Should government pursue this approach, we would expect a comprehensive analysis of which channels and programmes would be exempted, and an explanation of how changes in viewership would be monitored going forward to ensure exemptions remained up to date.

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

No. Would suggest a lower limit, as close to zero as possible. 90,000 children is still a significant number, and because of the large number of channels, many with relatively modest audiences, it is likely that 90,000 children would represent a significant proportion of the viewership of some channels.

BARB data obtained by Cancer Research UK (i) covers the average number of child viewers (watching a channel for more than 3 minutes continuously) across 480 channels during one week in March 2019. Just 75 of those channels would meet the threshold for 1% average child viewers (using the BARB March 2019 child universe figures). Around 16 of those 70 are bespoke children's channels, meaning they are already subject to HFSS advertising restrictions. Crucially over 400 channels would fall below 1% threshold, and thus would be exempt from any proposed new restrictions. Around 132 of these of these channels have over 1,000 child viewers (which is the lowest audience number counted by BARB). The number of child viewers across these 128 channels ranges from 4,000 to 93,000 with over a third of the channels having more than 50,000 child viewers a week. The total number of child viewing occasions across these channels across one week is over five million (5,260,000). This represent a very significant loophole and would mean many children viewing advertising for unhealthy food and drink.

i - BARB channel-level data for 25 March 2019 to 31 March 2019, using a similar methodology as outlined in the Impact Assessment. Dataset submitted by Cancer Research UK as an Appendix to their response. The March 2019 BARB child universe means the 1% threshold would be 94k rounded to nearest 1k

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

Number of children/other – this should be as close to zero as possible. We understand there are restrictions on the granularity of data collected but the closer to zero the better.

Alternatively the restriction could apply to channels on the basis of % child viewers of a given channel.

11. If you selected option 2, do you agree with the thresholds suggested for the NPM? If not please explain your reasons with supporting evidence.

N/A

12. If you selected option 2, should the NPM thresholds remain static or decrease overtime to offer rewards in line with reformulation efforts? Please explain your answer.

N/A

13. If you selected option 2, the Government proposes to allow products that fall within the middle threshold some advertising before the 9pm watershed. What advertising freedoms do you think these products could be offered? Please explain your answer.

N/A

14. If you selected option 2, the Government proposes to allow products that fall within the middle threshold some advertising before the 9pm watershed. What advertising freedoms do you think these products could be offered?

N/A

15. If you selected option 2, in your view, how easy would it be to implement a ladder option compared to the approach outlined in option 1?

N/A

16. If you selected option 2, the Government proposes an exemption for when there are low child audiences. Should this exemption apply to channels or programmes? Please explain your answer.

N/A

17. If you selected option 2, 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

N/A

N/A

18. If you selected option 3, are there any alternative measures from broadcasters, regulators or the advertising sector that might help to meet our policy objectives in broadcast?

N/A

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

We do not think Option 2 should be chosen. In our view it will be more complex to administer, less well understood by children and may encourage reformulation only to the point where partial advertising is allowed and not below that point. In addition, it may encourage displacement of advertising from HFSS to those that achieve between 4-9 points using the 2004/05 NPM, and these are not necessarily products that should be recommended to children.

Option 3 is unacceptable, as it does nothing to tackle the enormous existing loopholes that exist in rules designed to prevent HFSS foods being advertised to children. It is well established that restrictions which only apply to children specific channels/programming do nothing to restrict advertising in the programmes which are actually most popular with children.

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

Option 1

21. 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
- e) Reduces risk of displacing of advertising spend
- g) Easy for advertisers and regulators to understand
- h) Easy for parents and guardians to understand

It is vital that restrictions are applied to online at the same standard as broadcast, both for reasons of fairness across the advertising space, and in recognition that an increasing amount of children's media is consumed online or otherwise not in traditional broadcast formats – indeed Ofcom estimates that children spend 20 minutes more per day online than in front of the TV.

In 2018, Cancer Research UK highlighted the association between on-demand streaming services (e.g. You Tube) and high HFSS consumption [i].

Applying the rules in the same way would be easier for all – both advertisers and consumers to understand, and it would be based on existing, well understood rules for broadcast.

i - Cancer Research UK (2018) 10 Years On. New Evidence on TV Marketing and Junk Food Consumption amongst 11-19 Year Olds after Broadcast Regulations.

https://www.cancerresearchuk.org/sites/default/files/10_years_on_full_report.pdf

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

No. There should be a level playing field between broadcast and online and no such exemption should or would exist on broadcast. In particular we do not believe that it is possible for companies to produce exceptionally high standards of evidence based upon the information that are currently able or willing to share. It is unlikely that media giants such as Google or Facebook, who are responsible for a significant proportion of online advertising spend, would be willing to share openly the data on who is viewing their adverts.

The ASA has produced research that found that children deliberately register on social media using false ages, exposing them to targeting from inappropriate adverts. The only way that websites or advertisers could circumvent these issues is by intrusive data collection on children.

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

See above

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

We do not think this is practical in application.

25. If you selected option 1, should exemptions apply to certain kinds of advertising, recognising the practical challenges of applying a time-based restriction for some kinds of advertising?

No.

As much as possible we would expect these rules to apply to every form of advertising.

26. If you selected option 2, where advertisers must consider the totality of audience information to demonstrate that no more than 25% of the audience are under 16, should this threshold be lowered:

N/A

27. If you selected option 2, for behaviourally targeted advertising, advertisers are required to use whatever sources of evidence are available to them to prove they have excluded under-16s. Do you think they should have to provide specific sources of evidence over and above the existing rules?

N/a.

28. If you selected option 3, should a watershed be applied to video advertising online, and a targeting restriction for all other online advertising?

N/a.

29. If you selected option 3, for advertising subject to a watershed, should exemptions be applied to advertisers who can demonstrate exceptionally high standards of evidence that children will not be exposed to HFSS advertising?

N/a.

30. If you selected option 3, what evidence should be required to meet the definition of "exceptionally high standards" for the purposes of securing an exemption?

N/a.

31. If you selected option 3, what exemptions might the government apply to advertisers who can demonstrate exceptionally high standards of evidence? Please describe how they would work and provide supporting evidence.

N/a.

32. If you selected option 3, for advertising subject to a targeting restriction, where advertisers must consider the totality of audience information to demonstrate that no more than 25% of the audience are under 16, should this threshold be lowered:

N/a.

33. If you selected option 3, for advertising subject to a targeting restriction, which has been behaviourally targeted, advertisers are required to use whatever sources of evidence are available to them to prove they have excluded under-16s. Do you think they should have to provide specific sources of evidence over and above the existing rules?

N/a.

34. If you selected option 4, are there any alternative measures from online platforms, regulators or the advertising sector that might help to meet our policy objectives about online advertising?

N/a.

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

Option 2: This option is likely to be more confusing for parents and still leave significant room for advertising to shift from broadcast to online, especially to VOD and other broadcast-like formats.

Option 3: In our view this is the next best option after Option 1 (which has the virtue of simplicity), although if this option is taken we agree that lowering the threshold for children in the audience is needed for some types of advertising.

Option 4: in our view, doing nothing is not an option since the use of self-regulation in industry has had limited effect.

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

Yes. This may also reduce the risk of displacement of advertisements for HFSS products from TV to online media.

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

Yes, as the risk of obesity differs by gender, age, ethnicity and socioeconomic status (NHS Digital, 2018). Dietary intake is also affected by income and age (PHE, 2019). If so, the proposed restrictions could disproportionately benefit those at higher risk. Likewise, children and young people with disabilities are more likely to develop obesity than those without (PHE, 2014) so may potentially disproportionately benefit from these proposals. Given that the proposals are aimed at those aged 18 years and below the potential impact in relation to pregnancy and maternity is likely to be low.

- NHS Digital (2018) National Child Measurement Programme, England – 2017/18 School Year. Available from: <https://digital.nhs.uk/data-and-information/publications/statistical/national-child-measurement-programme/2017-18-school-year>
- PHE (2019) National Diet and Nutrition survey. Years 1 to 9 of the Rolling Programme (2008/2009-2016/2017: time trend and income analyses. Available: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772434/NDNS_UK_Y1-9_report.pdf
- PHE (2014) Obesity and disability. Children and young people. Available from: https://webarchive.nationalarchives.gov.uk/20170110165944/https://www.noo.org.uk/NOO_pub/briefing_papers

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

Yes.

a) Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.

Obesity is a highly visible and stigmatised condition (Gatineau & Dent, 2011), therefore implementing proposals which may help to reduce the prevalence of obesity have the potential to help reduce bias and discrimination.

b) Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?

Since the risk of obesity is impacted upon by age, sex, disability, race, pregnancy and maternity, and discrimination against those with obesity is common, these proposals have the potential to help advance equality of opportunity.

Gatineau M & Dent M (2011) Obesity and mental health. National Obesity Observatory: Oxford, UK.

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

Yes. Obesity is more prevalent in those from lower socioeconomic backgrounds (Bann et al, 2017). Disadvantaged children are also more likely to have poor diets, be less active and to spend more hours watching TV and using computers (Goisis et al, 2016). Although these latter two are important markers for sedentary behaviours, they also expose children to advertising for HFSS products. Therefore these proposals may differentially benefit children from lower socioeconomic backgrounds.

Bann D et al (2017) Socioeconomic inequalities in body mass index across adulthood: coordinated analyses of individual participant data from three British birth cohort studies initiated in 1946, 1958 and 1970. PLoS Med 14(1): e1002214. Available from:
<https://journals.plos.org/plosmedicine/article/file?id=10.1371/journal.pmed.1002214&type=printable>

Goiesis A et al (2016) Why are poorer children at higher risk of obesity and overweight? A UK cohort study. Eur J Public Health 26(1): 7-13. Available from:
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4735508/pdf/ckv219.pdf>

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5th Floor, Charles House, 148/9 Great Charles Street Queensway, Birmingham B3 3HT
email: info@bda.uk.com

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