

Obesity Action Scotland

Response to the Consultation from UK Government on Total restriction of online advertising for products high in fat, sugar and salt

Closing Date 22nd December 2020

Annex A: consultation questions

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

Yes/No/I don't know

Please explain your answer and provide relevant evidence

Yes we support a total online HFSS advertising restriction. The measure is proportionate to the scale of obesity in the UK, and the consequences for life and long-term health. There is overwhelming evidence that advertising and marketing techniques powerfully influence food preference, choice and consumption in children, harming their health, causing tooth decay and increasing their body weight. We would urge that exemptions and loopholes are minimised as much as possible to ensure this truly is a total online ban.

Obesity Action Scotland (OAS) supports the proposal for the following reasons:

Current rules are weak and do not protect children from seeing HFSS advertising

Under current rules, HFSS advertising is banned in media if it a) clearly appeals to children or b) more than 25% of the audience is under 16 years old. However, due to the difficulty enforcing this online, significant loopholes exist, for example:

- YouTube channels or social media influencers can be popular with people of all ages, leading to large numbers of children being exposed without breaching the current threshold. For example, if a video is watched by 10 million people, a breach does not occur until more than 2.5 million children have seen it
- Demographics of a social influencer's audience are not always available to advertisers. Additionally, children often access content and channels such as YouTube (age restriction of 13) via parents' accounts or watch without being signed in, rendering 'official' viewer demographic records meaningless

We agree with the important points made in the consultation document regarding data transparency, age-gating accuracy and challenges of targeting adults using interest-based factors and other behavioural data as a proxy for age. We believe the research by the Advertising Standards Authority (ASA) using avatars reflecting children provides strong evidence into the unreliability of existing targeting methods. Therefore we strongly agree with the Government's conclusion that a solution building on existing audience-based restrictions would not provide comprehensive protection to children.

A total ban would provide comprehensive protection to children across multiple online channels

Online marketing is complex, comprising many different types of advertising formats. A 9pm watershed on HFSS adverts online would be effective in limiting children's exposure to some types of digital advertising, but not all. For example:

- A wide range of advertising and engagement techniques are used by digital marketers to extend online brand presence, broadly categorised into 'Paid', 'Earned' and 'Owned' media. The introduction of a 9pm watershed on digital advertising would most likely only apply to Paid Media, as most paid media formats are targeted and can be switched on and off at specific times of day
- The reach of Earned and Owned media is often not subject to the same level of advertiser control as Paid media, as Earned and Owned content is shared via social media, surfaced through platform content recommendations, and served in search engine results pages. This type of 'word of mouth' marketing is highly valued by brands as it is seen as more credible.
- Furthermore, as marketers continue to create advertising that appears 'native' to the platform or publisher on which it is served, the line between Paid and Earned media increasingly blurs. This type of advertising is designed to prompt higher levels of audience engagement and social sharing, which extends the potential reach of content beyond any targeting parameters that may have been set

Advertising content is designed to be shared – putting it out of reach of a 9pm watershed

- Any ability to control what time that content is viewed is lost once advertising content is shared by a user. Studies show that HFSS brands often ask users to share or invite others to participate to extend advertising reach
- Organic posts on brands own social media pages can get reach significant numbers of individuals, particularly if they have a large following, despite changes made by social platforms to limit the reach of organic posts. For example on Facebook brands can still expect their posts to be seen by 5.5% of their followers (1). A major fried chicken retailer's UK Facebook page has over 55 million followers, so each post could be reaching over 2 million people
- Brand social media managers will create posts with the best possible chance of getting engagement and being shared more widely, to maximise reach of organic content, e.g. via active customer relationship management, production of viral or 'on-trend' content, partnerships and co-creation, use of UGC, 'news-jacking' and use of cultural moments.
- The UK KFC Dirty Louisiana Burger campaign achieved 75m impressions from a spend (not given) only expected to generate 18m impressions, reaching over 1 in 3 internet users in the UK alone (2), as a recent example. An award entry for the campaign discusses the 'very high levels of earned media obtained by the campaign' and shows how the agency engineered this via internet trend analysis (3)

Overall, we believe that whilst a 9pm watershed would restrict children's exposure to online HFSS advertising, it would be severely limited by the nature of different online advertising platforms and formats. Due to this, we believe that a total restriction of HFSS advertising online is the most effective way to protect children, and fully support its implementation.

Importantly, a total restriction may also bring significant benefits to adult health, as adults are also impacted by such advertising (4), and the high volume of HFSS adverts online is likely to be unhelpful during weight loss attempts.

References

1. Hootsuite blog post (2020). <https://blog.hootsuite.com/facebook-algorithm/>

2. WARC (2018). Effective Social Strategy Report. Lessons from the 2018 WARC Awards
https://www.warc.com/content/paywall/article/warcexclusive/effective_social_strategy_report_lessons_from_the_2018_warc_awards/123652
3. https://www.marketingsociety.com/sites/default/files/thelibrary/KFC%20winner%20Finance%20Director%27s%20Prize_Redacted1.pdf
4. Boyland E (2019). Unhealthy food marketing: the impact on adults
<http://obesityhealthalliance.org.uk/wp-content/uploads/2019/05/JFM-Impact-on-Adults-Boyland-May-2019-final-002.pdf>

Scope

2. We propose that the restrictions apply to all online marketing communications that are either intended or likely to come to the attention of UK children and which have the effect of promoting identifiable HFSS products, while excluding from scope:

- **marketing communications in online media targeted exclusively at business-to-business. We do not seek to limit advertisers' capacity to promote their products and services to other companies or other operators in the supply chain**
- **factual claims about products and services**
- **communications with the principal purpose of facilitating an online transaction**

Do you agree with this definition?

Yes/**No**/I don't know

Please explain your answer and provide relevant evidence

A **total** online ban requires the scope to be wider than that proposed. Some of the exclusions need to be reconsidered or considered in more detail.

A clear definition of 'likely come to the attention' should be given. In our opinion nearly all online content is 'likely come to the attention of children'. The time spent online is increasing and when children frequently share devices with adults or access apps and platforms with a fake date of birth. These challenges are acknowledged within the main consultation document and we would therefore urge that the assumption should be that **all** online content could 'likely come to the attention of children'

We are concerned about the proposed exemptions for the following reasons:

Factual claims about products and services

There is a grey area between what is considered a factual claim and what is a promotional claim. Certain factual claims may be highly influential promotional statements. It is important that we avoid the situation where an advert could appear for an HFSS product with a factual claim alongside it.

We have the following concerns about the proposal:

- Marketers have gained experience at pushing boundaries to create 'factual' claims which have an equally promotional effect, due to a current exemption for factual claims that already exists in other regulated industries

- Marketers will use clever copywriting, attractive imagery and creative techniques to make their content appealing – words are not the only useful format for advertising
- Marketers will create content designed specifically to maximise sharing and engagement with a wider audience

We would therefore urge that the detail provided in the consultation is included in the legislation and the exemptions are clearly defined but very limited. The consultation paper proposes that “advertisers remain able to feature such information on their own websites or other non-paid-for space online under their control, including their own social media channels”. We accept the need to provide factual information on these channels but that information must be only available to those who seek it out and must not be able to be shared beyond the channels under their control.

Communications with the principal purpose of facilitating an online transaction

Although we understand the need for businesses to be able to sell products on their own platforms, we have significant concerns regarding the proposed exemptions:

- Advertising’s role is to facilitate purchase. According to the above definition, a communication of which principal purpose is facilitation of online purchase of HFSS will still be allowed online, creating a challenging loophole
- Food and drink may be bought and sold directly on all major social media platforms, however, it is unclear whether this would be considered a principal function, and is unlikely to be the main reason for use of social media platforms
- Numerous fast food outlets advertise extensively on social media platforms, rely on them to provide sales. This exemptions would allow this to continue, exposing adults and children, without them seeking it out.
- Social media is widely used to promote food products via innovative techniques that disguise advertising content as native content, or gamification which encourages engagement and sharing. These typically include a link to purchase on a website, blurring the line between promotional content and ‘communications with the purpose of facilitating a transaction. Therefore, including social media in the proposed exemption is challenging
- Algorithms on social media can create a feedback loop displaying content similar to that previously interacted with. This will likely target high purchasers of HFSS products who may be more vulnerable to its influence
- Due to the quick changing nature of social media, a simple ‘buy now’ button added to any social media post would comply – therefore, futureproofing is required, with a strict legal definition required to avoid undermining the proposals in their entirety
- Similarly, influencer marketing continues to increase. If influencers included a link to a sales platform, this would simply exemplify them from restrictions
- Emails and push notifications sent to those who have signed up to receive them would be exempt. As advertisers may already have children on their mailing lists who will continue to receive HFSS advertising directly, this is problematic. Push notifications on devices are also displayed to all users; children sharing a device with an adult will remain exposed

It is therefore vital that a clear definition of ‘communications with a principal aim of facilitating an online sale’ is drawn up, aiming to minimise grey areas and providing examples of the type of advertising that would be exempt. Academic and non-governmental organisations should contribute to its development and it should be included in the legislation.

Identifiable HFSS products

Of concern to OAS is that the phrase 'identifiable' products could lead to a loophole in the restriction, allowing brands to promote HFSS products, if they can't be identified as a particular branded product. For example, using cartoon or drawn pictures of products, or emojis that are likely to be HFSS or have the effect of promoting HFSS products: a particularly prevalent tactic with fast food delivery companies.

We would instead like to see the regulation require that any food or drink displayed in marketing communications must be identifiable as a non-HFSS product, with data provided by the advertiser to show the product(s) are defined as 'healthier' using the nutrient profiling model.

Influencer marketing

As previously highlighted, influencer marketing is now a widely used technique used by marketers globally, with a 2018 study finding that 20% of UK PR and marketing professionals planned to spend between £10,000 and £100,000 on influencer marketing over the next year, and 9% planning to allocate a budget > £100,000. According to a report by YouGov/IAB, 50% of brands believe in influencer marketing's ability to drive success (2).

Being a relatively novel industry, regulation has not kept up, with one in four complaints surrounding online advertising submitted to the UK's Advertising Standards Authority (ASA) in 2019 concerning sponsored influencer posts, equating to 4,000 complaints (3). Further to this, YouGov reported that 73% of brand executives described the influencer marketing industry as "murky" (4).

Due to this, we are concerned that influencer marketing could become a significant loophole in the policy where brands continue to work with influencers, but the financial relationship becomes even less transparent, 'gifted' with an expectation of exposure in return. We recommend that the legislation explicitly restricts HFSS brand owners from providing free products to online influencers and celebrities.

Outdoor advertising

We would like to see the scope broadened to include digital outdoor advertising. Outdoor marketing is commonly used by food brands and according to Outsmart, is the most efficient medium for those brands in terms of return on investment having such a wide reach that 98% of people are exposed to some form of outdoor marketing daily (5). Current CAP rules provide extremely limited protection to children with a suggestion that HFSS advertising should not be placed within 100m of a primary school. This guideline is regularly breached (6).

1. <https://www.statista.com/statistics/869362/influencer-marketing-planned-spend-in-the-united-kingdom-uk/>
2. https://www.iabuk.com/sites/default/files/user_attached_file/Influencer%20Marketing%20Marketers%20Survey_0.pdf
3. <https://www.thedrum.com/news/2020/06/03/influencer-posts-dominate-online-complaints-uk-ad-watchdog>
4. <https://yougov.co.uk/topics/resources/articles-reports/2020/05/11/influencer-marketing-spend-drops-trust-influencer->
5. <https://www.outsmart.org.uk/>
6. https://www.sustainweb.org/news/nov18_asarulings/

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

Yes/No/I don't know

Please explain your answer and provide relevant evidence

As described above we are concerned that the scope and exemptions could undermine the principle of a total ban. As the online marketing environment continues to progress and innovate, Government must identify all marketing techniques, communications and platforms likely to be used in the future, in order to future-proof the current policy. Obesity Action Scotland believes that a built-in regular (2-yearly) review mechanism should be included where scope of the restrictions can be amended to capture these innovative techniques that may currently be exempt.

4. If answered yes, please can you give an overview of what these difficulties are? Please provide evidence to support your answer.

Please explain your answer and provide relevant evidence

As described above we are concerned that the scope and exemptions could undermine the principle of a total ban. Please see answer to questions 2 and 3.

5. Do you agree that for the purpose of a total online advertising restriction for HFSS products, the term 'advertiser' should be defined as a natural or legal person, or organisation that advertises a product or service?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

As a major portion of food and drink advertising online is delivered by organisations selling food on behalf of brand owners, it is imperative that the definition of 'advertiser' be broader than the food or drink brand owner themselves, including food delivery platforms such as Just Eat, Deliveroo and Uber Eats along with larger retailers. Numerous smaller retailers also sell branded HFSS food products as part of hampers or gifts, so all players should be captured by the definition to a) create a level playing field and b) ensure that HFSS brand owners don't displace their advertising to third party organisations.

6. Do you agree that for the purpose of appropriate measures, the term "online service providers" should include all internet services that supply services or tools which allow, enable or facilitate the dissemination of advertising content?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

7. Our proposed exemption for factual claims about products and services would include content on an advertiser's social media. Do you agree with this approach?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

We are unclear as to the impact of the exemption for factual claims. We are concerned that factual claims made on an advertiser's social media channel could still have significant reach and it is not clear if the requirement to set social media channels to private would solve this.

Brands post organically on their own social media pages, with these channels playing an important role in marketing strategies. Although social platforms have amended algorithms to limit the reach of organic posts, brands with large followings still get significant reach. For example:

- Brands can still have their posts seen by 5.5% of their followers on Facebook (1). A major fried chicken retailer's UK Facebook page has over 55 million followers, so each post could be reaching over 2 million people.
- Marketers create posts with the best possible chance of engagement and shareability to maximise reach, e.g. via active customer relationship management, viral or 'on-trend' content, partnerships and co-creation, user-generated content, 'news-jacking' and use of cultural moments
- The UK KFC Dirty Louisiana Burger campaign achieved 75m impressions from a spend (not given) only expected to generate 18m impressions, reaching over 1 in 3 internet users in the UK alone, as a recent example. An award entry for the campaign discusses the 'very high levels of earned media obtained by the campaign' and shows how the agency engineered this via internet trend analysis (2)

As outlined in our response to Q2, the feasibility of defining 'factual' content raises concern. If Government proceeds with this exemption, it is vital that a comprehensive definition of 'factual content' is legally set and this is not left to the regulator to issue guidance or reactively judge on a reactive case by case basis. HFSS brands may invest in producing engaging, shareable 'factual' content for their own social media and marketing techniques would become focused on encouraging users to follow them on social media to maximize their 'owned' audience. As we know, brands have no reliable way to know the age of their followers, therefore, this presents challenges for protecting children from HFSS advertising.

It is also very difficult for consumers and consumer organisations to monitor and report breaches of this exemption. The posts could potentially have been widely shared before being challenged and it would also be difficult for a lay person to know what is and is not a factual claim.

References

1. Hootsuite blog post (2020). <https://blog.hootsuite.com/facebook-algorithm/>
2. WARC (2018). Effective Social Strategy Report. Lessons from the 2018 WARC Awards https://www.warc.com/content/paywall/article/warcexclusive/effective_social_strategy_report_lessons_from_the_2018_warc_awards/123652

8. We propose that any advertisers which sell or promote an identifiable HFSS product or which operate a brand considered by the regulator to be synonymous with HFSS products should be required to set controls which ensure that their posts regarding HFSS products can only be found by users actively seeking them on the advertisers own social media page. This could be achieved, for example, by ensuring that the privacy settings on their social media channels are set so that their content appears on that page only. Do you think this would successfully limit the number of children who view this content?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

Different social media channels have different approaches to privacy settings. The main channels are outlined below:

- Instagram – Profiles can be set to private so only profile followers can see content. Any of the profile's posts that are shared by its followers cannot be seen by the person it's been shared with unless they also follow that profile.
- Twitter – Similar to Instagram, Twitter profiles can be set to private with entry granted by the admin.
- TikTok – Similar to Instagram and Twitter, TikTok profiles can be set to private with entry granted by the admin.
- Facebook – There is not really a practical way for advertisers to prevent people who are not following their page from seeing their content: If page content is shared by a follower it could potentially be seen by friends of that follower.
- YouTube – Similar to Facebook, there is no practical way for advertisers to prevent people who are not subscribed to their channel from seeing their content because it can be shared with them by another user. Public content can also be served as a recommendation by YouTube. Again, video content can be age restricted, but in that case, it could still be shared

One of the main challenges of the outline approach is that even with private profiles, the administrator would have to rely on age information provided by the user to know whether a new member or follower is over 16. Challenges associated with age restrictions have been outlined by the Government in the current consultation document and in Obesity Action Scotland's response to the previous consultation.

Additionally, the algorithm approach used by many social media platforms raises concerns. A feedback loop is created, directing advertising content towards users who have previously viewed similar content. In this context, a social media user who follows an HFSS profile, who may be a child, who has previously engaged with HFSS-related content, may continue to be shown other HFSS content – from both the channel they follow and other similar content.

Whilst we both understand and welcome the intention of this approach, we believe there it is required to be developed to protect children, and ensuring the most vulnerable groups are not disproportionately exposed to HFSS marketing. The Government will also need to consider how this would apply to future social media, which may not have privacy functions. The regulation must make it clear that any advertiser wishing to use their own social media channel to promote HFSS products can only do so on channels where this feature is supported.

Defining brands as synonymous with HFSS

As existing ASA guidance is vague, we have significant concerns about leaving the regulator to define when a brand is considered synonymous with HFSS products. Current guidance states, "...it is for the ASA to decide on a case by-case basis whether an advertisement has the effect of promoting an HFSS product and should therefore be subject to the HFSS product advertising rules."⁽¹⁾ It is unrealistic to determine the application of restrictions on a case by case basis, simply due to the significant number of brands that exist.

Additionally, ASAs impartiality to make an objective judgement on whether a brand should be defined as 'synonymous with HFSS' must be questioned, due to previous incidents. In 2018, the Obesity Health Alliance in England submitted a complaint about a TV ident on a children's TV channel featuring a chocolate cereal 'coco pops granola', a variation of the product coco-pops. While

the cereal product itself wasn't classed as HFSS, OHA considered the product name, branding and advertising content to reflect the main HFSS coco-pops product to the extent that it was having the effect of promoting an HFSS product. Whilst ASA initially upheld the complaint, after lengthy correspondence from Kelloggs UK's legal team (2), it backtracked in the following months. An industry-funded regulator such as ASA should not, therefore, be using their judgement to make define brands as synonymous with HFSS.

Defining a brand as being 'synonymous with HFSS' remains a vital, as yet unanswered question. Due to this, the Government should convene an expert panel, excluding food industry representatives, to develop a clear definition, based on objective data such as product sales or sales weighted-averages with brands whose sales is weighted towards HFSS products in their portfolio defined as HFSS brands. This definition should be legally written into the regulations to be applied by the regulator.

Lastly, it remains unclear if the described social media settings would actually prevent onwards sharing, thus we must ensure that the implemented controls are adequate to achieve the aim of a total online ban.

1. <https://www.asa.org.uk/asset/6B42B9F3-96EC-4A66-A9B50F0E21D845BF/>
2. <http://obesityhealthalliance.org.uk/2018/11/21/oha-statement-coco-pops-granola-advert-ruling-reversal-food-companies-fight-rulings-childrens-health-will-pay-price/>

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 segment of the online advertising environment?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

No operator or segment of the online advertising environment is likely to have a competitive advantage, if comprehensive definitions of what is in scope of the restrictions are made. The online environment is fast-moving and innovative, making it important that a regular review process (we propose a 2-yearly review) is built into the regulations and written into the legislation, allowing scope to be monitored and amended in order to close any emerging loopholes.

10. If answered yes, are there steps that could be taken when regulating an online restriction to reduce the risk of competitive distortions arising?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

11. We are proposing that broadcast video on demand (BVoD) is subject to a watershed restriction as Project Dovetail will mean they have BARB equivalent data. Do you know of other providers of online audience measurement who are able to provide the same level of publicly available assurance with regard to audience measurement?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

We are concerned that this consultation does not afford the opportunity to review and comment on Government plans to restrict HFSS advertising on BvOD platforms. Our views are as follows:

- If BVoD is subject to a 9pm watershed on HFSS advertising this should be applied to two ways:
- It should apply to programmes that were originally broadcast on live TV between 5.30am-9pm regardless of the time they are being watched on BvOD.
- It should apply to all content viewed on BvOD between the hours of 5.30-9pm even if it was previously shown post 9pm on live TV.
- Consideration needs to be given to how BVOD would be regulated. Due to advertising being dynamically served on this platform, it will be significantly more challenging to identify issues of non-compliance.

12. If answered yes, do you think that platforms or advertisers using those forms of audience measurement should be subject to a similar approach as BVoD?

Yes/**No**/I don't know

There are a limited number of commercial TV channels in the UK: BARB data provides comprehensive coverage of these, meaning that a single data set can provide reliable TV viewing figure data, also meaning all data are comparable. In the online environment, where there is limitless advertising content, we believe it would be impossible to achieve this. If the Government indicated that platforms or advertisers could develop their own audience measurement approaches, it is likely that different platforms would develop different approaches, i.e. data would not be able to be compared accurately. The purchase of multiple data sets from different providers would also be a barrier to researchers and NGO who wish to analyse the data.

Enforcement and liability

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

Please explain your answer and provide relevant evidence

Obesity Action Scotland support an approach to enforcement that encompasses the principles below:

- Regular proactive monitoring to identify non-compliance: The success of this restriction cannot rely on reactive complaints alone. Proactive monitoring should be carried out by an independent group with full details on breaches published and pursued for enforcement.
- Fines for repeat non-compliance: The existing approach to 'enforcement' of the CAP rules by ASA is weak and does not act as a deterrent for repeat offenders. An example of this is Mondelez who ASA have repeatedly engaged with to 'informally resolve' likely breaches which has not resulted in changes to their advertising practices. To prevent significant non-compliance, financial penalties are needed as a meaningful deterrent.
- Full transparency: Full details on all complaints, investigations and resolutions should be publicly available and regularly analysed to identify any improvements needed in the legislation.

14. Should the statutory "backstop" regulator for HFSS marketing material be:

a) a new public body

b) **an existing public body**

c) I don't know

Please explain your answer and provide relevant evidence.

Should the final proposals lead to the creation of new central government arm's length bodies, then the usual, separate government approval process would apply for such entities. This equally applies to proposals elsewhere in this document. In the long-term a comprehensive new approach to regulation of all types of harmful marketing would be welcomed. However, OAS would not want the need to set up a new body to act as a barrier to bringing in the restrictions by the end of 2022 as per the Government's commitment.

15. If answered b, which body or bodies should it be?

Please explain your answer and provide relevant evidence

In the short-term it would be appropriate for Ofcom to be appointed as the 'backstop' regulator.

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

Yes/No/I don't know

OAS do not think that ASA should be responsible for the day-to-day regulation of a total online HFSS advertising restriction because we have concerns about the impartiality of ASA. For example, the way that ASA are reporting breaches makes it impossible to understand the extent and prevalence of the breaches, does not allow public scrutiny, and 'hides' those that breached the code. Specifically, the ASA rarely fully investigates HFSS advertising complaints, choosing instead to 'informally resolve' them. Informally resolved complaints are not being published on ASA website and there is no record of them. Therefore, there should be a requirement for ASA to regularly publish full details of complaints received and how they have been resolved. As a minimum it is vital that full details are made public; even on complaints that are informally resolved, so ASA's approach to regulation is transparent and can be scrutinised by stakeholders.

In order that day-to-day regulation is effective, it is vital that key definitions are clearly laid out in the legislation. These include (but are not limited to), the following:

- What constitutes a factual claim
- What constitutes a communication with the purpose of fulfilling a transaction
- Defining a brand as synonymous with HFSS
- Repeated breach
- Severe breach

In the long-term OAS would like to see a comprehensive new approach to regulation of all types of harmful marketing. However, we would not want the need to set up a new body to act as a barrier to bringing in the restrictions by the end of 2022 as per the Government's commitment.

17. Do you agree with our proposal that advertisers are liable for compliance with a total online HFSS advertising restriction.

Yes/No/I don't know

Please explain your answer and provide relevant evidence

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

a) **Prohibited**

b) Subject to appropriate measures (I think they mean measures which prevent the dissemination of advertising in breach of the restriction, but this basically mean prohibition, so I don't understand)

c) Neither

d) I don't know

Please explain your answer and provide relevant evidence

A prohibition provides more clarity and is subject to less ambiguity than 'appropriate measures' which is subject to interpretation.

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

Please explain your answer and provide relevant evidence

20. Do you consider that the sanctions available (voluntary cooperation and civil fines in instances of repeated or severe breaches) are sufficient to apply and enforce compliance with a total online HFSS advertising restriction?

Yes/No/**I don't know**

Please explain your answer and provide relevant evidence

Detailed definitions of what constitutes a repeated and severe breach should be laid out in the legislation.

In addition to fines, detailed information on all breaches should be made publically available.

21. Do you consider that the imposition of civil fines by the statutory regulator is sufficient to enforce compliance with the appropriate measures requirements?

Yes/No/**I don't know**

Please explain your answer and provide relevant evidence

The level of civil fines should be laid out in the legislation. Fines should be proportionate to the size of the business to act as a deterrent to larger companies.

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

Yes/No/**I don't know**

Please explain your answer and provide relevant evidence

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

Please explain your answer and provide relevant evidence

The government should provide a tailored package of support for SMEs to support compliance, and should ensure that the definition of HFSS is as clear as possible.

24. We note the challenges of applying statutory regulation to overseas persons. It is our intention to restrict the HFSS adverts seen by children in the UK. From your sector or from your perspective do you think any methods could be used to apply the restriction to non-UK online marketing communications served to children in the UK?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

It is likely that brand owners with a global presence and social media sites registered outside of the UK will still be able to use their global platforms to target UK children. The regulations must include a requirement for UK brand teams to ensure global operations are not proactively targeting UK audiences.

25. Do you see any particular difficulties with extending the scope to non-UK online marketing communications as well as UK communications?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

In order to avoid loopholes, all companies advertising in the UK should abide by UK law.

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

Yes/No/I don't know

Please explain your answer and provide relevant evidence

27. Do you think these restrictions could disproportionately affect UK companies?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

Public sector equality duty

28. Do you think that a total restriction on HFSS advertising 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/No/I don't know

Please explain your answer and provide relevant evidence. Please state which protected characteristic/s your answer relates to.

The United Nations Convention on the Rights of the Child came into force in the UK in 1992. The Convention is a recognition that children need special protections, and that adults and governments

must work to ensure these. Restrictions on HFSS marketing will have a significant positive impact on child health.

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

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

Yes/No/I don't know

Please explain which aims it would help achieve and how

Could the proposals be changed so that they are more effective? Please explain what changes would be needed?

The proposals should be extended to include digital outdoor advertising as detailed in our response to Q2.

Socio-economic impact

30. Do you think that the proposals in this consultation could impact on people from more deprived backgrounds?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

This policy will have a more positive effect on people from lower socio-economic backgrounds who are more likely to have excess weight. According to the latest data from the Scottish Health Survey obesity prevalence for children living in the most deprived areas was 25 % compared to 23% in the least deprived areas; a difference of 12%. The inequalities gap in prevalence of overweight and obesity in Scotland's children has been growing over recent years, widening by 5% between 2018 and 2019. (1)

Recent research from Cancer Research UK found teens from the most deprived communities were 40% more likely to remember junk food advertisements every day compared to teens from better-off families (2). This, combined with their already recognised greater risk of unhealthy weight outcomes suggest that they would potentially have the most to gain from regulation designed to reduce junk food advert exposure.

An Australian modelling study (3) which sought to estimate the cost effectiveness of legislation to restrict HFSS TV advertising before 9.30pm, and examine the health benefits and healthcare costs savings by socio-economic status (SES) showed that legislation to restrict HFSS TV advertising is likely to be cost-effective, with greater health benefits and healthcare cost-savings for children (aged 5-15) in low SES groups.

Tooth decay is the most common non-communicable disease world-wide and it is the main reason child in Scotland need an operation under GA (2016 figures showed that 26% of all hospital general anaesthetics for 5 to 9 year old children was for the extraction of teeth). This figure represents a small fraction of the total pain, misery, disruption, embarrassment and disfigurement that Scottish children still suffer from this entirely preventable disease.

The International Dental Federation (FDI) 'sugar and caries' document states:

- 'Sugar is the leading risk factor for caries'.
- 'Without sugar, dental caries does not occur.'
- 'Caries is entirely preventable, yet it is the most widespread noncommunicable disease and the most common disease of childhood.'

1. Scottish Health Survey 2019 <https://www.gov.scot/publications/scottish-health-survey-2019-volume-1-main-report/>

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

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

Annex B: evidence note consultation questions

31. Do the calculations in the evidence note reflect a fair assessment of the transition costs that your organisation would face?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

32. Is the time allocated for businesses to understand the regulations a fair assessment?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

33. Are there any ongoing costs that your organisation would face that are not fairly reflected in the evidence note?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

34. Is the assessment on the number of online impressions a fair assessment?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

35. It is estimated that a significant proportion of HFSS advertising online will be displaced to other forms of media. Do you think the level of displacement is correct?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

But which ones if there is 9pm watershed as well? Paper/outdoor? Need to read evidence note

36. It is assumed that the level of displacement to other forms of media would be the same under the options outlined in the evidence note. Would you agree with this approach?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

37. Do you have any evidence on how competition may vary between the options in the evidence note? This can be any form of competition, for example competition between HFSS brands or competition between other forms of advertising.

Please explain your answer and provide relevant evidence

No

38. Do you have any additional evidence or data that would inform:

- a) our understanding of children's exposure to online adverts?
- b) how different types of online advert (for example static display and video adverts) can have different effects on children's calorie consumption?
- c) the estimates for additional calorie consumption caused by HFSS product advertising online?
- d) the long-term impact of HFSS advertising exposure during childhood (for example on food behaviours and preferences later in life)?
- e) the health benefits of either option in the evidence note?
- f) how consumer spending habits will change as a result of these restrictions?
- g) how advertisers might adapt their marketing strategies in response to further restrictions in HFSS advertising?
- h) the impacts on the price of advertising slots, and how this might vary under both options?

Please provide the relevant evidence or data