Regulatory Policy Committee

# Restricting volume promotions for high fat, sugar, and salt (HFSS) products

## Department for Health and Social Care (DHSC)

## RPC rating: fit for purpose

## Description of proposal

Overall, the proposals are intended to ensure that shopping environments do not encourage excess consumption of HFSS products. Price promotions, especially volume offers, have been found to cause consumption of HFSS products above and beyond what would be expected as part of a normal response to pricing changes. HFSS products are also more likely to be promoted and deeply promoted, according to the Department. The Department therefore argues that its proposed approach will reduce obesity in the UK, and that this will create significant health benefits.

The Department presents three regulatory options: the first is a ban on all volume offers for HFSS products in both retailers and the out-of-home (OOH) sector. This ban would include free refills of sugar-sweetened beverages (SSBs) that are in scope of the Soft Drinks Industry Levy (SDIL). The second regulatory option would ban all volume offers for HFSS products included in Public Health England's sugar and calorie reduction programme and the SDIL in all retailers who sell food and the OOH sector. This ban would also include free refills of SSBs. The third regulatory option would ensure that no more than 20 per cent of sales from volume offers on food and drink per year could originate from HFSS products included in Public Health England's sugar and calorie reduction programmes and the SDIL.

The second regulatory option, the ban on volume offers for HFSS products included in Public Health England's sugar and calorie reduction programme and the SDIL, is presented by the Department as its preferred option for comparison purposes.

## Impacts of proposal

The Department expects that there will be a significant reduction in profits for OOH businesses and food and drink manufacturers supplying this sector. Over 25 years, expected costs include lost retailer profits of around £175 million and lost manufacturer profits of around £55 million. The Department also expects additional familiarisation and product assessment costs of £3 million for the OOH sector and £2 million for retailers, these figures are being assessed at consultation. The opportunity cost to DHSC of enforcing these regulations is estimated to be around £25 million. There will also be transition costs associated with checking products.

The expected benefits of the proposals derive from increased health benefits as a result of lower calorie consumption amongst overweight and obese people. The Department expects this benefit to be equivalent to £1.7 billion over the 25-year assessment period. Social care benefits would amount to £230 million and because of reduced premature mortality, there would be an expected £45 million of additional economic output. Overall, this will be a qualifying regulatory provision that will scored under the business impact target (BIT).

## Quality of submission

The Department provides a sufficient rationale for intervention and takes into consideration the behavioural changes which will be targeted by the end to volume offers, since this measure will target excess calorie consumption. This measure is just one of a set of wider policies included in the Government's Childhood Obesity: a Plan for action – Chapter 2 campaign.

The Department plans to fill in key evidence gaps with data gathered at consultation. For instance, it is consulting on whether or not to exclude micro businesses, as well as stores which exclusively sell HFSS such as chocolatiers, as they are likely to be disproportionately affected.

Multibuys result in a greater proportion of additional sales than price cuts, as consumers are required to purchase additional quantities of the product to benefit from the discount. The Department has considered the scenario where retailers will respond to an end to volume offers by reducing prices, and has assessed the price elasticity of demand for HFSS products. It finds that consumers are more sensitive to reductions in prices from volume promotions than price discounts. Some consumers may lose out if they usually benefit from the volume promotions which the Department has assessed. Overall, the Department presents a clear analysis of the key impacts of its planned approach however there are some points which should be addressed at consultation stage and must be addressed at final stage.

**The following points should be addressed at consultation stage and ensure consultee input, and as indicated below, at final stage:**

1. **Rationale:**
    a. The department should explain how the regulations specifically target childhood obesity, as this is one of the main aims of the regulation.

2. **Options:**
    a. Although the Department sets out a range of regulatory options and discusses why voluntary commitments have been disregarded as a solution, it does not address non-regulatory options which could also address the problem. For example, the IA should discuss healthy eating campaigns, voluntary industry measures, or education in primary and secondary school systems at this stage. The department should consider at consultation whether these regulatory provisions would be more effective alongside education input into school systems. If this is part of the childhood obesity strategy this should be discussed.
    b. Furthermore, the consultation document appears to rule out the option of banning volume offers on all HFSS products, not just those included in Public Health England's reformulation programmes and the SDIL. The Department should ensure that it consults on all viable options.

3. **Missing Costs:**
    a. The Department has estimated monitoring costs for businesses at £530,000 per annum for retailers in the case of option 4, however they should also discuss at consultation stage any other monitoring costs to businesses for options 2 and 3. The Department should ask consultees to comment on the potential impact of these costs.
    b. Manufacturers are likely to change their marketing strategies in response to the regulations; this will be an indirect cost to business which the Department should discuss, however must not be included in the EANDCB. The Department should clearly discuss which costs are included in the EANDCB. The Department should also discuss the likely impacts of such changes on the expected benefits of the policy.
    c. The possibility that manufacturers may reformulate HFSS products is mentioned briefly, but not analysed fully. The Department must use the consultation to gather further evidence on the implications of reformulation for its cost benefit analysis.

d. The Department should consider the effect of the regulations reducing competition between retailers and manufacturers of HFSS goods and the potential of pushing up prices.

**4. Calculations:**

a. There should be recognition in the IA that the SDIL is part of the counterfactual, as the HFSS volume promotion restrictions will be used in conjunction to this levy. The Department must ensure they have not double counted the costs and benefits related to the policy that could be a result of the SDIL.
b. DHSC proposes to reimburse local authorities for the costs of implementing this policy. Where the policy is placing an additional cost on a local authority, DHSC has converted this reimbursement into an opportunity cost. This approach is acceptable to use for DHSC budgetary purposes, but it should include the actual costs to DHSC, rather than the opportunity costs in this IA. Furthermore, HM Treasury has previously advised that the multiplier used to calculate health benefits is not to be used for, and not intended to be, a true measure of the opportunity costs of the Exchequer funding. It should therefore not be used in regulatory impact assessments.
c. The Department appears to have used the multiplier again by treating DHSC spending as NHS spending. Here, the Department expects savings to the NHS which, if reinvested, would create other benefits. The Department has quantified these benefits in terms of Quality Adjusted Life Years (QALYs). This approach is not appropriate for the impact assessment and should not be used for the quantifying of the benefits Any decision regarding spending on expected savings (on the NHS or otherwise) would be a separate investment decision. At final stage this issue needs to be addressed and this approach must not be used.

**5. Further evidence to support calculations:**

a. On page 34 it is assumed that the cost of product assessment for OOH outlets for licensed restaurants is 0. However, this assumption is should be evidenced with consultation input, since licensed restaurants may have volume offers or free refills on drinks or SSBs which fall under the SDIL and therefore product assessments may incur costs.
b. It should be clearer how much consumption of HFSS goods would change or reduce if there was an end to volume offers, taking into consideration that pester power may still be as prevalent. This aspect could be tested at final stage.

c. The Department at final stage must present more detail surrounding how they intend to shape the exemptions to businesses which primarily sell HFSS goods such as chocolatiers and ice cream parlours. There needs to be a clear plan as to how they will exempt businesses. The department looks at floor space as a particular option however, it is not clear how there is a correlation between floor space and the businesses that the Department would want to exempt. The Department should consult businesses on this.

**The following points must be addressed at final stage:**

**6. Calculations**

a. Furthermore, with regards to transfers received from business to government, the Department has applied a multiplier to the resource gained to them, which is incorrect. This approach would affect Net Present Value (NPV) calculations, and as such this part of the analysis needs to be rectified by the Department at final stage.
b. The regulations the Department want to introduce will have multiple effects on the same sectors of the economy however the interactions of implementing multiple policies have not been assessed in the estimations. The department has stated that there would be double counting of costs however has not justified properly why they have not removed the double counted costs. The department should attempt to monetise the interactions, using sensitivity analysis, and if this is not proportionate explain why.

**7. Appraisal period / Base year**

a. The Department has appraised the options over a period of 25 years, which it argues is appropriate because it captures all the benefits of the policy. It must explain more clearly why it feels a 25-year appraisal period captures all the effects of the policy, and in particular why a longer period is not needed.

**8. Indirect impacts / direct impacts**

a. The Department must make clear which costs to business are direct and which are indirect, ensuring that indirect costs are excluded from the EANDCB at final stage. It must also take care to distinguish clearly between effects on UK-based businesses and those based elsewhere. For example, on page 51 of the IA the Department estimates the impact on shareholders. This seems likely to be an indirect cost, which should not be included in the calculation of the EANDCB. The Department must explain clearly why it believes the cost to be direct or exclude it clearly from the EANDCB. Likewise, some element of this impact is likely to fall upon non-UK businesses, and should be excluded from the EANDCB.

**9. Missing Costs**

a. The costs must be calculated taking into consideration optimism bias.
b. The Department has suggested that restrictions on multibuy promotions had very limited impact on short term sales, but argues that there will nevertheless be significant benefits as a result of the regulations. The Department must set out clear and compelling evidence from consultation to justify this approach. It may also wish to undertake sensitivity analysis and make appropriate use of ranges to reflect the uncertainty around this key assumption.
c. It is unclear in some instances whether or not the Department has considered ongoing product assessment costs to businesses, since over time new products will need to be assessed and new staff will have to be trained to undertake assessments for options 2 and 3. It appears the Department has only monetised the one-off costs of product assessment. The Department must seek evidence from the consultation and provide a clear explanation of such costs.

**10. SaMBA**

a. Overall, the assessment of small and micro businesses and the proposed exclusions from the Department are adequately covered. The Department should, however, explain more clearly why it has chosen to exclude micro businesses but not small businesses. In this context, it would be helpful for the Department to analyse the impacts of the approach on small and on micro businesses separately, and to explain what proportion of the intended benefits would be lost by excluding small businesses, micro businesses, or both.
b. Evidence from the consultation must be sought to strengthen the SaMBA at final stage.
c. The Department should consider whether smaller manufacturing businesses or new entrants to the market would be disproportionately impacted by the regulations since they would not longer be able to compete with other dominant brands on promotions.

**11. Limited evidence to support calculations**

a. The Department must use stronger evidence to show a link between impulse buying and obesity. It is unclear whether or not the right people will be targeted, because regular buyers of HFSS may be more demand inelastic with respect to price as opposed to impulse buyers who would be more demand elastic of price and probably also less likely to be overweight or obese. Therefore, volume may or may not affect consumers in different ways, therefore sensitivity analysis should be used, or consumers should be consulted at this stage. This is likely to affect everyone not just those that are obese so the wider impacts on the population should be discussed.
b. The benefits of the proposal need to be further evidenced. It is unclear how the total number of QALYs have been calculated for each of the options. It is unclear whether this is considering; the proportion of the population who will be affected by the changes; the amount of lives saved; or the number of people who have had improved health. The Department must include a table or a breakdown of calculations to make this clear at final stage.
c. Furthermore, it is unclear how the benefits to the economy of additional output have been calculated and what evidence this is based upon. This needs to be further analysed and evidenced at final stage.

**The RPC suggest the following improvements:**

1. The Department should seek and include more balanced evidence to support their impact assessment. There appears to be no references to studies which question the impacts of the proposed interventions, therefore the evidence seems unbalanced and could be over optimistic.

## Departmental assessment

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| Classification | Qualifying regulatory provision |
| Equivalent annual net cost to business (EANCB) | £11.7 million (initial estimate) |
| Business net present value | -£233 million |
| Overall net present value | £2,940 million |

## RPC assessment

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| Classification | Qualifying regulatory provision |
| EANCB – RPC validated[1] | Not validated at this stage |
| Small and micro business assessment | Sufficient at consultation |

**Regulatory Policy Committee**

[1] For reporting purposes, the RPC validates EANCB and BIT score figures to the nearest £100,000.