Restricting checkout, end-of-aisle, and store entrance sales of food and drinks high in fat, salt, and sugar (HFSS)

Department of Health and Social Care (DHSC)

RPC rating: fit for purpose

Description of proposal

Overall, the proposal is intended to reduce the number of impulse purchases of HFSS goods, which the Department argues are likely to lead to excess weight gain, whilst minimising the distortionary effect on purchases that do not contribute to obesity. It will mandate consistent sales restrictions to ensure that there is a level playing field for businesses. Government intervention will ensure that retailers and out-of-home (OOH) food outlets establish shopping environments that do not encourage excess consumption of HFSS products. No non-regulatory option is presented, however the Department has outlined voluntary action already taken and the limitations it has had. For instance, voluntary bans on HFSS food and drink were not expected to promote the level playing field among retailers needed to reduce overconsumption, and currently are insufficient to tackle the problem. The Department argues that Government intervention is necessary to create consistent sales restrictions that discourage excess consumption of HFSS foods.

The Department presents two policy options, and has not selected a preferred option at this stage. One option is to end the placement of all HFSS food and drink items at store entrances, checkouts and end-of-aisles (including gondola ends) in retailers and OOH food outlets. The other is to end the placement of HFSS products included in Public Health England's sugar and calorie reduction programme and the Soft Drinks Industry Levy (SDIL) at store entrances, checkouts and end-of-aisles in retailers and out-of-home food outlets.

Impacts of proposal

Over the 25 year appraisal period, estimated costs include: lost retailer profits of £0.7 billion: lost profits for the OOH food sector of £0.4 billion; and lost profits of £0.4 billion for UK business activity of manufacturers of HFSS products. The latter is offset by an equivalent increase in profits for other food manufacturers. Other expected costs to businesses include familiarisation, and costs for planning and implementing new store layouts. Retailers and OOH food businesses would face transitional costs of around £30 million and £5 million respectively. The opportunity cost to DHSC of enforcing these regulations is estimated to be around £18 million.

Other key non-monetised costs would be seen where retailers, OOH food outlets and manufacturers, would face additional losses in profits from reduced sales of HFSS items located at store entrances. Since the size and composition of the OOH sector is more difficult to establish, because there are high levels of business turnover in the sector and different data sources covering different sections of the eating out market, these have not been monetised by the Department. Retailers would experience reduced revenue from manufacturers of HFSS products no longer paying for the preferential location of their items.

The expected benefits of the regulations include the health benefits that would accrue because of lower calorie consumption amongst overweight and obese people. This would be equivalent to £2.5 billion over the assessment period of 25 years. Social care savings would amount to £0.3 billion and a reduction in premature mortality would deliver an expected additional £0.1 billion of economic output. This will be a qualifying regulatory provision that will score 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 will specifically 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 campaign – Chapter 2.

The Department has set out clear plans to fill significant gaps in its analysis and support further policy development by gathering information via its consultation. For instance, the Department is considering options around exclusion of loose food items; very small outlets; and businesses that exclusively sell HFSS food and drink products, such as chocolatiers and ice cream parlours. It plans to collect information from the consultation to support further appraisal of these options. The Department is also seeking additional evidence about the number of food retailers and OOH outlets, as well as the sales uplift generated by location promotions. However, there are areas of the analysis which are currently insufficient and must be addressed by the Department at consultation and final stage for improvement.

The following points should be addressed at consultation stage and ensure consultee input, and where indicated, addressed at the final stage as well:

1. **Rationale:**
    a. The rationale for intervention is sufficient and the Department addresses how this proposal will reduce impulse buys of HFSS foods. It argues that this approach will target behaviours of overweight and obese people in particular and is therefore more appropriate than some other policy options (for example taxation of HFSS foods). However, it would benefit from more evidence to support this argument. The Department should also do so at final stage, or explain why it cannot and adjust its argument appropriately.
    b. 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. At consultation stage the Department has stated a preference for regulating the placement of HFSS foods that are included in Public Health England’s sugar and calorie reduction programme, or within the scope of the SDIL. The calculations presented here suggest that this option has a lower Net Present Value (NPV) than the alternative of regulating the placement of all HFSS products. The Department should explain why it believes this choice to be appropriate.
    b. Although the Department sets out a range of regulatory options, it does not present any non-regulatory options. Normal practice at consultation stage would be to present a range of regulatory and non-regulatory options. The RPC notes a reference has been made to voluntary approaches by retailers. The IA would benefit from more discussion on these approaches to assist the consultation. The Department should explain clearly at final stage why it has chosen to exclude non-regulatory options.
    c. 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.

3. **Missing Costs:**
   a. The Department should discuss ongoing monitoring costs which businesses will incur in the IA, with regards to all of the options presented. This should be consulted on at this stage and must be monetised at final stage.
   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 it must not be included in the EANDCB. Ideally, the Department must 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.

4. **Further evidence to support calculations:**
   a. The Department presents limited evidence to underpin its suggestion that its preferred option would have a substantial behavioural effect. Since some chain supermarkets already have policies which mean they do not put HFSS goods at the end-of-aisles or checkouts already, the Department should use the consultation to test the scale of the effect it expects and draw upon data from supermarkets who have already implemented this policy.
   b. It should be clearer how much consumption of HFSS goods would change or reduce if there was an end to HFSS product placements, taking into consideration that pester power may still be as prevalent. This aspect could be tested for 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 shops. 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.

5. **Calculations:**
   a. The SDIL forms part of the counterfactual for this IA, as the HFSS volume promotion restrictions will be implemented against the background of the SDIL. The Department must ensure it has not

double counted costs and benefits that would arise in any case as a result of the SDIL. The IA would benefit also from a summary of the success so far of the SDIL policy.

b. DHSC proposes to reimburse local authorities for the costs of imposing this policy. Where the policy is placing an additional cost on a local authority, DHSC have converted this reimbursement into an opportunity cost. This approach is acceptable to use for DHSC budgetary purposes, but it should be including the actual costs to DHSC here, and not the opportunity costs in this IA. Furthermore, previous advice from HM Treasury has 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 not be used therefore in regulatory impact assessments at consultation or at final stage.

c. The Department appear to have used the multiplier again by treating DHSC spending as NHS spending. Here, there are expected savings to the NHS from the proposal which the Department have stated if reinvested would create other benefits which the Department have quantified in 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 of the 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.

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. Therefore, the NPV calculations would be affected, 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, 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 33 of the IA the Department estimates the impact on shareholders. This is 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 on non-UK businesses, and should be excluded from the EANDCB.

9. **Missing Costs:**
    a. The Department considers the cost of managers' time spent on sharing information with staff but does not appear to include the cost of the staff members' time. The Department must take into consideration the time taken out of a work day for employees to attend assemblies where managers of each chain store explain the changes to end-of-aisle and checkout product placements, especially for larger stores. The Department must use the consultation to ascertain the cost of employee's time and provide more discussion at final stage.
    b. The Department must analyse the impacts of the regulation on seasonal sales more carefully. For instance, lost sales and profits around particular celebrations such as Christmas, Diwali or Eid may be more significant, because businesses rely more on product placement strategies in stores, which the Department proposes to regulate.

c. The opportunity costs of store planning, adjustments and familiarisation must be taken into consideration, and the Department must attempt to monetise these costs.
d. In paragraph 174 the Department appears to assume that there would be an equal and offsetting increase in profits for manufacturers of other goods. At final stage, the Department will need to present clear and compelling evidence as to why it believes this to be the case. It will also need to explain clearly whether these gains are direct or indirect, and to treat them appropriately within the EANDCB.
e. It is unclear in some instances whether the Department has taken into account 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. The Department must seek evidence for the consultation and provide a clear explanation of such costs.
f. The Department should consider the impact on other firms, such as Civil Society Organisations who have food operators, that would be caught by this measure potentially where they have HFSS products at checkout. These may need to be considered for exemption or mitigation.

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.

11. Limited evidence to support calculations:

a. There is limited evidence to suggest that the volume of sales of checkout products will remain at 7.1 per cent of total sales if HFSS products are replaced with non-HFSS products. The Department should provide evidence to support this assumption at final stage, or clarify the evidence presented in the IA. For example, in paragraph 70, the Department calculates the difference in sales of alcoholic and nonalcoholic beverages at the end of aisles as a proxy for this effect. However, it is not clear whether this figure is necessarily a good proxy for the effects on HFSS goods, which have rather different characteristics as impulse purchases. The Department should discuss at final stage the degree to which its chosen proxy is appropriate.

b. The Department must use stronger evidence to show a link between impulse buying and obesity. It is unclear whether the right people will be targeted as 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.
c. The assumption that 49.9 per cent of products on end-of-aisles are HFSS, because this is in line with the overall market share, currently appears to be unjustified. It is likely that HFSS goods take up a higher proportion of end-of-aisle or checkout space. If it is not possible to refine this assumption, sensitivity analysis needs to be used to test its impact on the Department's analysis at final stage.
d. Likewise, in paragraph 121 the assumption that HFSS items removed from checkouts continue to generate 30% of their sales needs to be evidenced more clearly or tested more thoroughly at consultation. In paragraphs 92 and 143, the Department must justify the assumption that it takes 2 minutes per product to assess HFSS status and record the outcome, which is based on limited evidence (especially for the more complex assessment required to test whether a product is included in Public Health England's sugar and calorie reduction programmes). This assumption has a significant effect on the Department's calculations and must be evidenced appropriately at final stage.
e. At final stage the Department must address the illustrative assumption made in paragraphs 127-128. It has presented illustrative costs based on a 1 percentage point profit margin difference despite having no evidence on the different profit margins delivered by HFSS products and other goods.
f. It is unclear how the total number of QALYs has 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 should include a table or a breakdown of calculations to make this clear at final stage.

The RPC suggest the following additional improvements to the IA:

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.
2. All calculations should be checked along with the tables of information which include some discrepancies. For example, Table 3 of the UK grocery sales does not add up to 100 per cent, there could be some rounding issues.
3. The IA would benefit from a separate section relating to the SDIL and literature on the achievements it has made so far, and to ensure that it clearly shows that the costs and benefits have not overlapped. For example, this section might include evidence from the SDIL should be used to gather information about reformulation, and what has happened in similar situations in the past.
4. Similar policies have been introduced in European countries; the Department should therefore draw on this international evidence base to improve its assessment.

Departmental assessment

Classification	Qualifying regulatory provision
Equivalent annual net cost to business (EANCB)	£77.3 million (initial estimate)
Business net present value	-£1,180million
Overall net present value	£3,340 million

RPC assessment

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

Regulatory Policy Committee

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