



HM Government

Introducing further advertising restrictions on TV and online for products high in fat, sugar and salt (HFSS)

Published 18 March 2019

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1. Executive summary

Childhood obesity is one of the most pressing public health challenges that we face. In June 2018 as part of [Childhood Obesity: a plan for action, chapter 2](#) the Government set a national ambition to halve childhood obesity by 2030 and significantly reduce the gap in obesity between children from the most and least deprived areas.

To deliver this we must ultimately reduce the number of calories our children are consuming. There is a clear link between high sugar intake and excess calorie consumption, which increases the risk of weight gain and obesity,¹ and the evidence shows that on average overweight and obese children are consuming up to 500 extra calories per day.²

The factors that influence obesity are complex and there is no single solution. We all need to play a part in ensuring that the healthiest choice is the easiest choice. As part of this, Government is consulting on introducing further advertising restriction on adverts for products that are high in fat, sugar and salt (HFSS). We are concerned that despite existing restrictions, children see a significant level of HFSS adverts through the media they engage with the most and that this can shape their food preferences and choices and, over time, lead to obesity.

This document seeks views on options across broadcast and online media in order to reduce children's exposure to HFSS advertising. We want to ensure that any future restrictions are proportionate, and targeted to the products of most concern to childhood obesity. We also want to ensure that they can be easily understood by parents, so that they are supported in making healthier choices for their families.

Published alongside this consultation document is a consultation impact assessment (IA) which models the impact of possible policy options, considering the health benefits for children and the impact on advertisers, broadcasters and the food and drink industry. Through the consultation IA we invite views on the methodology, assumptions and figures included within this consultation IA. We also welcome views on the Equality Analysis published alongside Chapter 2 of the Childhood Obesity Plan. There is also detail on how this policy may impact on the Public Sector Equality Duty in section 7.

A list of definitions used throughout the consultation document and IA can be found in Annex A.

2. Policy context

Childhood obesity in the UK

Childhood obesity is one of the biggest health problems this country faces. More than one in five children in England are obese or overweight by the time they start primary school, and this rises to more one third by the time they leave.³ This challenge disproportionately affects children in the most deprived areas, with those growing up in low income households more than twice as likely to be obese as those in higher income households.⁴ Children from black and minority ethnic families are also more likely than children from white families to be overweight or obese and this inequality gap is increasing.⁵

Obesity damages children's mental health, with those who are overweight or obese more likely to experience bullying, stigmatisation and low self-esteem.⁶ It also puts their physical health at risk. Obese children are more likely to develop Type 2 diabetes in childhood,⁷ and are far more likely to go on to become obese adults,⁸ with a higher risk of developing life-threatening conditions such as some forms of cancer, Type 2 diabetes, heart disease⁹ and liver disease.¹⁰

Childhood obesity also has significant financial costs. It is estimated that obesity-related conditions are currently costing the NHS £6.1 billion per year.¹¹ The total costs to society of these conditions have been estimated at around £27 billion per year¹² with some estimates placing this figure much higher.¹³

We know that childhood obesity is a complex problem caused by many different factors. No one policy and no one sector will reduce childhood obesity on its own. To tackle childhood obesity the UK Government has now published two chapters of the Childhood Obesity Plan, setting an ambition to reduce childhood obesity levels by 50% by 2030 and to significantly reduce the gap in obesity between children from the most and least deprived areas.

A critical part of delivering this goal is reducing excessive calorie intake. We make numerous decisions about the food we eat, and every day we are presented with encouragement and opportunity to eat the least healthy foods. This can be through the advertisements our children see on TV and online, the range of foods sold in our local shops or delivered straight to our doors, and the food that is promoted in-store and online. All of this is intended to influence the choices we make about the food we buy our children and the purchasing choices children make themselves.

That is why in [Chapter 2 of the Childhood Obesity Plan](#), Government set out plans to consider further advertising restrictions alongside a range of other policies. Evidence commissioned for this consultation from Kantar Consulting shows that despite strict

restrictions already being in place to govern advertising around children's programming, which have driven down exposure, children still see a significant volume of HFSS product advertising in the media that they engage with the most.

The Scottish Government is also concerned about levels of HFSS advertising. In its recent obesity strategy 'A healthier future: Scotland's diet and healthy weight delivery plan', it called on the UK Government to act on advertising of foods high in fat, sugar and salt (HFSS) to children. Recognising that this is a UK-wide challenge, Government is working closely with the devolved administrations to ensure our approaches are aligned as much as possible.

The role of diet and calorie overconsumption

Children in the UK do not have healthy balanced diets, and they consume too many calories¹⁴, more sugar than recommended¹⁵ and not enough portions of fruit and vegetables.¹⁶ In particular, children between 11-18 years old consume more than twice the recommended sugar intake.¹⁷ On average, compared with those with healthy body weights, overweight or obese children consume between 146 and 505 kcals more than they need per day for boys, and between 157 and 291 kcals per day for girls.¹⁸ Overweight and obese individuals are also more likely to under report the number of calories they are eating. Therefore this number could be higher.¹⁹ There is a clear link between high sugar intake and excess calorie consumption, which increases the risk of weight gain and obesity.²⁰ Despite the complexity of its drivers, at its root obesity is caused by consistently consuming more calories than we need to maintain our bodies through activity. Taking action to help reduce this excess calorie consumption will decrease obesity prevalence and obesity related ill health.

The evidence for action

Influence of HFSS product advertising on children

Evidence suggests that HFSS product advertising is more prevalent on TV than other food and drink product advertising.²¹ Evidence also suggests that children's exposure to HFSS product advertising can affect what children eat and when they eat.²² This can happen both in the short term, increasing the amount of food children eat immediately after being exposed to a HFSS advert,^{23 24} and in the longer term by shaping children's food preferences from a young age.^{25 26} It is not possible to reliably quantify the impact on food preferences because advertising is so widespread in society. However, reviews of the evidence have assessed the immediate impact of exposure and have concluded that these effects on increased consumption are statistically significant and independent of other influences.²⁷ This is supported by a systematic review and meta-analysis of studies

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conducted in the UK and other countries which found that advertising exposure caused an increase in food consumption for children.^{28 29}

Based on research commissioned to inform this policy consultation, we estimate that introducing a watershed across broadcast TV and online media could remove around 8 billion calories per year in total from children's (across all 4-15 year olds) diets by direct influence on children's consumption. In addition to this there will be multiple indirect health benefits from such restrictions, which it has not been possible to model. Advertising can shape children's preferences and choices gradually over time, as well as in the immediate term. Whilst the evidence isn't conclusive, were the reduction in HFSS advertising exposure to have an impact on adult's purchases and consumption then this would generate significant additional health benefits. Furthermore, we would expect that in response to a watershed, industry would reformulate some products to make them healthier, in order to be able to advertise products more freely. This means that a watershed may have benefits over and above those quantified here.

Intervention could also help to deliver the Government's ambition to reduce the obesity rate gap between the most and least deprived areas, with the potential for the greatest benefits amongst the most deprived children amongst whom obesity is most prevalent. Ofcom's 'Children and Parents: Media Use and Attitudes Report' suggests that children from low socio-economic groups are less likely than average to be aware of sponsored links on digital advertising.³⁰ Furthermore, there is evidence to suggest that less affluent viewers are exposed to more HFSS food advertising on broadcast TV compared to the most affluent viewers.³¹ Compared to the average, children aged 5-15 in the most deprived households spend more time watching TV on a TV set and more time online, while those in more affluent households spend fewer hours online or gaming.³² This link is important, as children from low income households are twice as likely to be obese as those from high income households. Further restrictions on advertising may have the greatest impact on children who are already overweight and obese, with a recent review suggesting that these children consume significantly more calories than non-overweight children after being exposed to HFSS advertising.³³ This suggests that individuals in more deprived communities may be more affected by less healthy food advertising on broadcast TV.

3. Children's media consumption

Broadcast media habits

Despite a decline over recent years - BARB data (the British Audience Research Board, the body that provides the industry standard television audience measurement service for broadcasters and the advertising industry) shows that children aged 4-15 watched 43% less broadcast TV in 2017 than they did in 2010³⁴ - children still spend a significant amount of time watching broadcast TV. This is particularly the case for of younger age groups where it remains the main form of media. Ofcom research shows that children's viewing peaks in the hours after school, with the largest number of child viewers concentrated around family viewing time, between 6pm and 9pm.³⁵ In this period children are watching programming not specifically aimed at them, with half of children's viewing taking place during adult commercial programming where restrictions on HFSS advertising are weaker. BARB data also shows that of the time children spend watching broadcast TV, 62% is watched with an adult, 13% with other children and 25% alone.³⁶

Analysis commissioned for this consultation based largely on publicly available data estimated the broadcast HFSS advertising market to be worth £215m in 2017. It also determined that children still see significant levels of HFSS product advertising on broadcast TV, with an estimated 3.6 billion child impacts on broadcast TV in 2017,³⁷ or more than two hours per child per year (139 minutes). The picture online is much more uncertain but Kantar Consulting's initial estimate suggests there were 0.7 billion child impressions in 2017,³⁸ and that HFSS advertising spending online amounted to £53m.

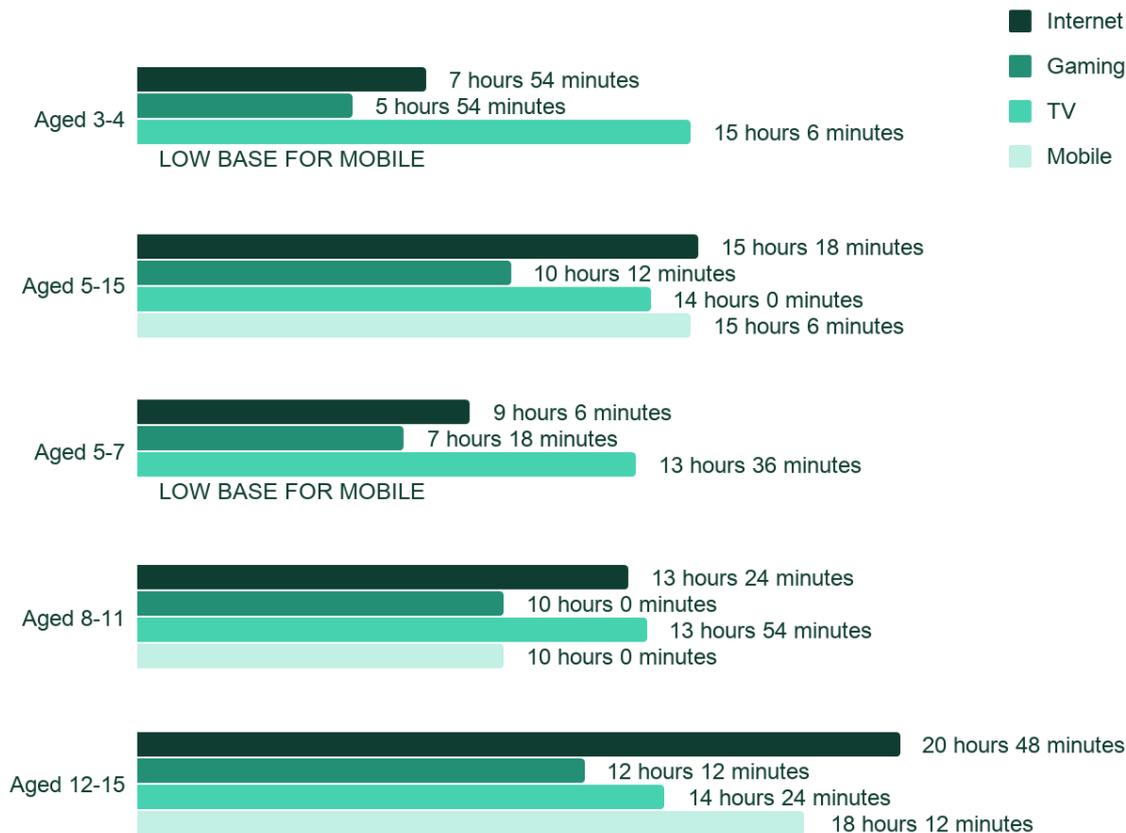
Yet while the TV set remains the home of broadcast TV, how children watch and what they watch is changing. As technology develops a TV set can now be used to watch non-broadcast content, with many different services competing for viewers, including broadcast on demand players (BVoDs) like All4 or ITV Hub, subscription video on demand providers (SVoDs) like Netflix, and video sharing platforms (VSPs) such as YouTube.³⁹ With TV content also available on smartphones, tablets and even watches, choice is proliferating, and so Government is clear that action to reduce childhood exposure must reflect the new media landscape.

The consultation IA published alongside this document contains more detail on the current evidence underpinning the potential Government action and it is intended to be read alongside this document. This is a highly complex area and we welcome further evidence to inform the analysis in addition to views on the methodology, assumptions and figures included.

Online media habits

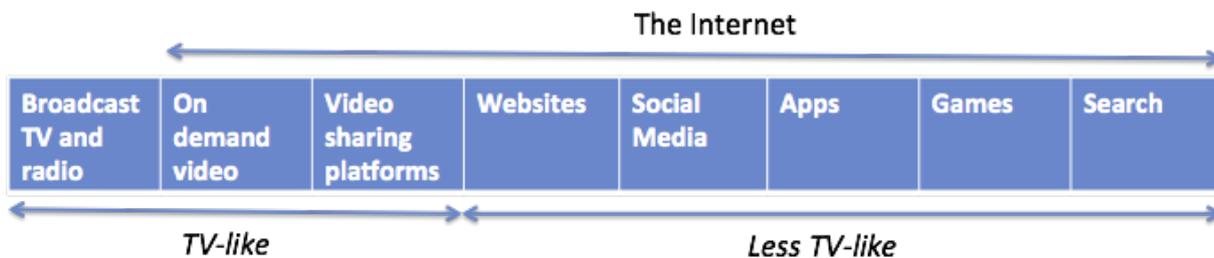
Such has been the pace of change that Ofcom has found that children aged 12 to 15 now spend more time online than watching broadcast TV,⁴⁰ while 12-15s are more likely to recognise the name 'YouTube' than 'BBC'.⁴¹ In 2017 96% of 5-15s had access to the internet at home, with 92% of this age group using the internet.⁴² Tablets are used by a large number of children (65% for 3-4s, 75% for 5-7s, 80% for 8-11s and 78% for 12-15s), while mobile phone use is also significant (68% for 5-15s).⁴³ It is reasonable to expect that this trend of increasing online use will continue in the years ahead. Evidence also suggests that combining online with broadcast marketing is likely to amplify the effectiveness of advertising.⁴⁴

Figure 1. Estimated weekly hours of media consumption at home or elsewhere, among users, by age.⁴⁵



The online world involves many different types of media including: websites, games, on demand players, Video Sharing Platforms (VSPs), social media and other services offering many different types of content and experience.

Figure 2. The spectrum of broadcast and online



Radio and online audio services, including music streaming services and podcasts, are also part of children’s media consumption. While less than a third of under 16s use a radio set,⁴⁶ increasing numbers of children are listening to radio online. Research from Radio Joint Audience Research in 2017 found that 74% of 9-14 year olds listen to radio weekly.⁴⁷

Regulatory landscape

Broadcast advertising on TV and radio in the UK is regulated by the Advertising Standards Authority (ASA), the industry’s independent regulator, through a system of co-regulation with Ofcom. The ASA enforces the UK Code of Broadcast Advertising (BCAP Code), which is drawn up, and regularly reviewed, by an industry committee and incorporates all relevant legislation, and sets standards for accuracy, honesty and social responsibility to which advertisers are expected to adhere. Updates to the Code are subject to public consultation, consideration by an expert consumer advisory body, the Advertising Advisory Committee, and approval by Ofcom. If a complaint is made about an advert shown on broadcast TV, the ASA will consider that complaint against the Code and may subsequently require the broadcaster to withdraw, change or reschedule the advert. UK broadcasters are required as a condition of their broadcast licences to enforce ASA rulings. Broadcasters who do not comply may be referred to Ofcom by the ASA and Ofcom can impose fines and, in extreme cases, withdraw broadcast licences.

Since 2007, the scheduling of HFSS advertising around programming commissioned for or likely to appeal particularly to children has been prohibited. To determine whether a programme is likely to appeal particularly to children, broadcasters rely on ‘audience indexing’ in which BARB audience data is used to determine which programmes would attract a high percentage of children compared to the total audience watching; the ‘particular appeal’ prohibition applies throughout the broadcast day, including after 9pm.

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HFSS product placement in all broadcast TV programmes produced under UK jurisdiction is also prohibited by the Ofcom Broadcasting Code.

However, despite this regulatory protection we know that children watch all types of TV programming, not just shows aimed directly at them. The current system of BARB audience indexing also only considers the proportion of the total audience that are children, rather than the total number of children watching. Children's viewing time peaks between 6-9pm, a time period where the TV shows most likely to be broadcast are not children's programming, but instead 'family' or adult programmes. This means that some of the shows most watched by children, such as X Factor, Saturday Night Takeaway, or Great British Bake Off, are not captured by current restrictions.

In April 2018, the Broadcasting Committee of Advertising Practice (BCAP), responsible for drawing up the BCAP Code, launched a call for evidence on the current HFSS restrictions on broadcast TV. Government awaits the outcome of this review and will consider its findings as part of this consultation.

Non-broadcast advertising in the UK - including online, cinema, print, out of home and direct marketing - is regulated by the ASA mainly through a system of self-regulation by the Committee of Advertising Practice (CAP).⁴⁸ The ASA enforces the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code) which sets out the advertising rules in the same way as the BCAP Code does for broadcast, though there are important structural differences in the overall system.⁴⁹

From July 2017, following public consultation, the CAP Code introduced new HFSS rules which aligned non-broadcast advertising with broadcast advertising. The new rules prohibit HFSS advertising in media of particular appeal to children, or where more than 25% of the audience is under 16 years old.

Most online display advertising is served based upon demographic and behavioural data gathered on individual users including on social media websites. Such advertising can be targeted to audiences that share common demographics (e.g. age, gender, location) or web-browsing interests (e.g. an interest in cars). It can also limit the distribution of advertising to times of day and frequency, and to certain publishers. For such advertising, the 25% rule is not relevant. If known data (demographics) and/or inferred data (web browsing interests) clearly identifies members of the audience as being under 16 years old, HFSS advertising must not be targeted at them. CAP has produced a guidance note to help advertisers comply with this requirement.⁵⁰

Other online advertising continues to be contextually targeted, meaning that it is targeted to be relevant to the content of the website upon which it appears. In these circumstances, the 25% rule does apply and the advertiser must consider the totality of audience information to demonstrate that no more than 25% of the audience are under 16. This restriction applies, for example, to contextually placed advertising in search,

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advergaming, social influencer videos, online apps, native advertising, search and other online advertising formats.

Given children are spending increasing time online, substantial levels of children's exposure to HFSS advertising may arise in content which does not breach the 25% audience threshold but which is nonetheless seen frequently by a high number of children.

The broader issue for HFSS rules online is the use of targeting tools to exclude children, which are subject to a number of uncertainties, including:

- the use of devices, online profiles and accounts shared between adults and children;
- the communal viewing of content;
- the false reporting of users' ages; and
- predictive inaccuracy in using interest-based factors and other behavioural data as a proxy for age.

Unlike in broadcast, there is no comprehensive, independently verified means of audience measurement online, which makes the rules more dependent on the accuracy of the tools used by each advertiser, and limits transparency. Almost a quarter of 8-11 year olds have a social media profile,⁵¹ even though the minimum age for many sites is 13, while recent Australian research found an average targeting accuracy of only 59% in consumer profiles.⁵² If targeting online is, while directionally accurate, of limited specific reliability, it is likely that children are seeing HFSS adverts where this is not the intent of the regulatory system.

The Committee of Advertising Practice (CAP), authors of the CAP Code, conducted a one year on review of these rules in July 2018. Government awaits the outcome of this review and will consider its findings as part of this consultation.

It is also worth noting the complexity of the online advertising landscape, which incorporates content which has the effect of advertising (e.g. influencers), as well as more traditional forms of advertising such as banner or video ads. It also affords a more active role for consumers, with online users able to seek out content and publish adverts themselves. Near limitless advertising inventory with low barriers to entry makes the task of effective monitoring and complaints-led regulation more difficult.

The ASA has sought to keep pace with this complexity and these challenges, for example with guidance to social media influencers on making advertising clearly identifiable. More recently, in November 2018 the ASA launched their new strategy 'More Impact Online'⁵³ which aims to put the protection of consumers online at the heart of its work over the next

five years, and makes innovative commitments to explore, for example, the use of machine learning and AI to improve regulation.

Public service broadcasters and special interest channels

Any additional HFSS advertising restrictions will have an economic impact on the media platforms that host advertising and it is important to consider this.

The public service broadcasters (PSB) are prescribed in legislation as those providing Channel 3 services (ITV, STV, UTV), Channel 4, Channel 5, S4C and the BBC. The PSBs make a significant economic impact, spending £2.6bn⁵⁴ a year on original UK programming, as part of a mixed ecology that includes other commercial broadcasters. The PSBs also provide considerable cultural benefit as they differ from other broadcasters in having set obligations to produce certain types of content, including impartial national and local news, current affairs, and content that informs our understanding of the world, stimulates knowledge and learning, reflects the UK's cultural identity and represents diverse and alternative views.⁵⁵

The media landscape is changing fast, with new technology, changing consumption habits and increasing international competition from the likes of Netflix and Amazon Prime. It is important to consider the impact of additional advertising restrictions in this context. As part of this consultation Government therefore welcomes views on how the options proposed would positively or negatively impact on PSBs.

The Government also wants to consider the potential impact of additional restrictions on special interest channels which promote the interests of a particular group of society or interest. These channels, including minority ethnic broadcasters and local TV services, play a key role driving future economic growth and social wellbeing, acting as a driver of growth in the media and creative industries, helping to increase local employment and skills, boosting local businesses, and playing a vital role in contributing to local democracy as well as supporting the plurality of the media.

As part of this consultation Government welcomes views on how the options proposed would positively or negatively impact on special interest channels, as well as the wider broadcasting and media sectors.

4. Scope of consultation

Objective of consultation

The main aim of this consultation is to gather views on reducing children's exposure to HFSS advertising, to reduce children's overconsumption of these products. We also want to ensure that any potential future restriction: drive reformulation of products by brands. We want to ensure that any potential future restrictions would be proportionate and targeted to the products of most concern to childhood obesity, and limit the advertising children see. We also want to ensure that any potential future restrictions would be easily understood by parents, so that they can be supported in making healthy choices for their families. Together, these objectives have informed our approach to key questions around the scope of the consultation, and our policy will be led by the evidence.

We have made clear that any potential measures on broadcast need to be considered alongside similar protections online. Critical to this is understanding that there are significant differences between advertising on the different media, with digital channels offering the ability to be more targeted to individuals. We are therefore approaching this consultation with a focus on the outcome. We are open to considering different mechanisms for different media, reflecting the different technological capabilities on offer. We are mindful however that there are wider questions in relation to the reliability of targeting online, and we welcome evidence here.

Media in scope

In scope

In Chapter 2 of the Childhood Obesity Plan, the Government committed to "consult on introducing a 9pm watershed on broadcast TV advertising of HFSS products and similar protection for children viewing adverts online". Therefore, the primary focus of this consultation is broadcast TV and online given that these are the main sources of children's media consumption.

Whilst broadcast TV advertising is easily identifiable - with Ofcom requiring that broadcasters ensure that editorial content is distinct from advertising - online advertising is more diverse. For this consultation, Government defines online advertising as any content published online commissioned by an advertiser which has the effect of advertising a product or service. This might include - but not be limited to - display advertising, influencer marketing, advergames, apps, advertising on a marketer's own website or in

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other non-paid-for space online under their control, promoted and sponsored social media content and search results, and advertising on audio streaming services.

Out of scope

This consultation does not explicitly consider or propose further restrictions on other forms of advertising regulated by the BCAP (radio) and CAP Codes (including print, outdoors, direct marketing and cinema). As committed to in Chapter 2, the National Institute for Health Research Obesity Policy Research Unit will continue to review the evidence base of the effect of marketing and advertising on children, including in these areas.

However, we also recognise the possibility that advertising restrictions for broadcast TV and online could displace advertising revenue to other channels, potentially weakening the effectiveness of the policy. On that basis, Government welcomes views on whether additional advertising restrictions should also apply to these media.

Existing advertising rules

For the purposes of this consultation Government does not propose to amend the current advertising restrictions for programmes directed to or of particular appeal to children on broadcast TV. Any further restrictions, if deemed necessary, would be implemented alongside these existing restrictions.

Government is not at this stage considering changes to the rules governing brand advertising for both broadcast and non-broadcast. Existing rules in relation to children's programming and programming of appeal to children prohibit brand adverts that have the overall effect of promoting HFSS products. In determining whether brand advertising should be subject to restriction, the ASA takes into account a variety of factors, including the brand's provision of non-HFSS products or goods and services other than food and soft drink products, its association with significant initiatives relating to education, sport, community etc, and the content of the advertisement (for example, the use of celebrities or brand-generated characters which are very strongly associated with a particular product). We intend that these rules will be retained alongside any potential further restrictions to HFSS product advertising. We will monitor the evidence base on brand advertising of HFSS products.

Wider online regulation

There are structural differences between the regulatory systems applied to broadcast TV and online advertising, which are not in scope of this consultation.

Wider questions about ensuring that the principles that govern advertising in traditional media also apply and are enforced online is a key priority of the Government's Digital Charter - a broad, ongoing work programme to make the UK the safest place to be online and the best place to start and grow a digital business.

The government will shortly publish an Online Harms White Paper which will set out new requirements for online platforms to take more responsibility for the safety of their users.

In addition, the Government has announced that it will conduct a review of how online advertising is regulated, starting in the coming months. This review will seek to assess the impact of the online advertising sector on both society and the economy, and consider the extent to which the current regulatory regime is equipped to tackle the challenges posed by rapid technological developments seen in online advertising.

The proposals being consulted on in this document largely operate within the existing co and self-regulatory framework. They are separate to possible longer-term changes resulting from cross-cutting action on online harms, and the online advertising review. We will ensure that any measures are carefully aligned to strengthen protections, while ensuring proportionality for business.

Food and drink in scope

A clear, workable definition of what food and drink products are in scope is critical to delivering any further advertising restrictions. It is needed to make implementation of any measures easier for the food and drink industry, regulators and the advertising industry, as well as helping parents understand the action that Government has taken.

We propose that the 2004/5 Nutrient Profiling Model (NPM) should be used as the basis for all consultation options to define food and drink products high in fat, sugar or salt because it is based on scientific evidence and it is already used by industry to determine which products can and cannot be advertised to children. Please see Annex C for further details on the 2004/5 NPM.

We propose that further advertising restrictions are limited to the top contributors of sugar to children's diets, and products that contribute significantly to children's calorie intake, as determined by PHE's sugar and calorie reduction programme or in scope of the Soft Drinks Industry Levy (SDIL). Please refer to Annex B for the categories of foods included within the reformulation programmes. These categories are defined through the National Diet Nutrition Survey data and, in the case of PHE reduction programmes, have been refined through engagement with industry and NGOs. Similarly, the scope of the SDIL was subject to public consultation.

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The 2004/5 NPM, the categories used in SDIL and sugar reduction programmes are already used by the food and drink industry and the NPM is currently also used by the advertising industry and ASA.

We are aware of the good progress made by some parts of the food and drink industry in these product categories and therefore through aligning we aim to incentivise the reformulation of products of most concern to childhood obesity through making these products healthier.

This approach allows brands that have a range of products to shift towards advertising healthier products within their range or brand advertising. If this is the case it could reduce the potential economic impact on the advertising and food and drink industries whilst shifting advertising towards healthier products.

We know that not all products included in the reformulation categories and the SDIL would be classed as HFSS, either due to the nature of the products (for example natural plain yoghurts within the yoghurts category) or due to reformulation efforts to improve the nutritional quality of the products (for example sugar-free soft drinks). It is not our intention to restrict adverts for products that are not classified as HFSS by the 2004/5 NPM.

Furthermore, it is not our intention to restrict adverts of products outside these categories such as plain meat, oily fish, fruit and vegetables, as our aim is to maximise advertising of these products to help support achievement of a healthy diet in line with Government recommendations.

We also considered a narrower approach to focus only on products regarded as 'junk food'. There is no commonly agreed way to do this, but the World Health Organization identified the five most popular HFSS advertising categories as confectionery, soft drinks, crisps/savoury snacks, fast food and pre-sugared breakfast cereals. However, this would exclude other product categories that are of concern for childhood obesity.

HFSS definition

On this basis, Government proposes that the definition of HFSS used for this consultation is the 2004/05 NPM, applying to products that are in scope of the sugar and calorie reduction programmes and the SDIL. Any products that fall outside of this definition would be exempt from any further advertising restrictions. This is a starting point for the consultation options on broadcast and the default definition applying to all online options.

As part of this consultation we invite views on the products that should be in scope of the restrictions and on the most appropriate model to define HFSS food and drink.

5. Broadcast consultation options

Consultation options

Option 1 - introduce a 9pm – 5:30am watershed on broadcast TV

Under this option, HFSS food and drink in scope could not be advertised between 5:30am and 9pm, the same hours as the editorial watershed.

A watershed is a well-established concept in broadcasting in the context of editorial. Ofcom's Broadcasting Code already sets out the requirement for a broadcast TV watershed for content designated unsuitable for children under that Code (e.g. violent content).

We propose that the 2004/5 Nutrient Profiling Model (NPM) should be used in the same way it currently applies to HFSS restrictions, where food products in scope that score less than 4 and drinks in scope that score less than 1 are able to advertise freely. Food and drink products that are not part of the sugar and calorie reformulation programmes and SDIL would not be included within further advertising restrictions. Please see Annex C for further details on the 2004/5 NPM.

A prohibition could be introduced via a Ministerial direction to Ofcom or by regulation. It would work in a similar way to existing advertising rules on television whereby most adverts are cleared before broadcast by Clearcast, responsibility for compliance is shared between the advertiser and the broadcaster, and complaints for potential breach by viewers are referred to the ASA.

We recognise that some channels and programmes have extremely low levels of children viewing. To ensure a proportionate response we propose that this option would include an exemption for low child audiences. We suggest setting this level at 1% of the total children's audience; that is, fewer than 90,000 child viewers given that there are approximately 9 million 4-15 year olds in the UK.⁵⁶ Channels or programmes with smaller child audiences than this would still be subject to the existing prohibitions around children's programming where applicable. We would welcome views on this proposal level and whether it should apply to channels, programmes, or both.

Option 2 - a ladder of advertising restrictions to incentivise reformulation

This option would implement a ladder system to determine what products can and cannot be advertised between 5:30am-9pm. This would be to reward companies that are reformulating their products or already have healthier products on the market, by giving them advertising freedoms.

Government proposes that this ladder system would apply to products included in PHE's sugar and calorie reduction programme and the SDIL. Recognising that reformulation is achievable in all product categories set out in PHE's programme and SDIL, the ladder system would be created using the 2004/5 Nutrient Profiling Model (NPM). Please see Annex C for further details on the 2004/5 NPM.

This ladder approach would create three bandings for food products based on NPM score, as outlined in table 1: products in the first group would have full advertising freedoms; the second group, with reformulated or healthier products, would be granted an advertising freedom; and the last group would not be allowed to advertise before the watershed. The bandings would be set at levels that would encourage reformulation and therefore could be tightened over time to ensure they remained a driver for reformulation and reflected the distribution of products on the market. The thresholds outlined in table 1 were determined based on the distribution of NPM scores across the food in scope of this consultation.

For soft drinks the Government does not suggest a ladder system, instead proposing to apply the 2004/05 NPM as is currently done for children's programming, outlined in table 2. This is because the majority of this market has already reformulated to below a score of 1 on the NPM and is therefore able to advertise freely. There are some drink products that remain on the market that score between 1 and 2. Therefore the Government deems that the existing system constitutes a reformulation incentive.

Table 1: Ladder System for Advertising Restrictions- food products

Able to advertise at any time	Partially restricted advertising prior to 9pm watershed	Not allowed to advertise pre 9pm watershed
Food products that score less than 4 on 2004/05 NPM Drinks that score less than 1 on 2004/05 NPM	Food products that score between 4 and 9 on 2004/05 NPM	Food products that score above 9 on 2004/05 NPM Drinks that score 1 and above on 2004/05 NPM

Table 2: System for drinks

Able to advertise at any time	Partially restricted advertising prior to 9pm watershed	Not allowed to advertise pre 9pm watershed
Drinks that score less than 1 on 2004/05 NPM	Not applicable	Drinks that score 1 and above on 2004/05 NPM

With this option, the thresholds defining the ladder could be shifted over time to keep pace with the market and PHE’s reduction and reformulation programme. We welcome views on whether the thresholds should be static, or decrease over time. We also welcome views on what advertising freedoms could be granted to healthier or reformulated products, for example the ability to advertise between 10am-3pm or additional advertising minutage prior to the 9pm watershed. We welcome views on what this advertising freedom for the middle group could look like, and how this system could be enforced. We also seek views on how this option could be implemented and the degree of complexity versus option 1.

Similar to Option 1, we recognise that some channels and programmes have extremely low levels of children viewing. To ensure a proportionate response we propose that this option should include an exemption for low child audiences. We suggest setting this level at 1% of the total children’s audience, i.e. fewer than 90,000 child viewers. We would welcome views on this proposal level and whether it should apply to channels, programmes, or both.

Option 3 - no watershed

Under this option no additional advertising restriction for broadcast HFSS advertising would be introduced. We would welcome views and evidence on what action could be taken by the sector or regulators in order to meet our objectives of reducing children’s exposure to HFSS advertising, driving reformulation, ensure proportionality, targeting to products of most concern to childhood obesity and being understandable by parents. We welcome views on what could be effective, evidence supporting this, and how any steps could be implemented and measured.

6. Online consultation options

Government is committed to consulting on similar protection online to a 9pm watershed on broadcast TV. Evidence on the extent of HFSS advertising online is more limited and less reliable than on broadcast. There is lower transparency in the system - reflecting little independent public data, widespread personalisation of advertising, the sheer scale of digital marketing and the novelty of current self-regulatory arrangements (which were only introduced in their current form in 2017).

Research commissioned for this consultation using the limited data available suggests that children's exposure to HFSS advertising online may currently be considerably lower than on broadcast TV. The picture is complicated by limited evidence on the effectiveness of the recently introduced system of online regulation for HFSS products.

However, it also recognises that online advertising is a fast-moving market. In particular, the evidence demonstrates that children are spending more time online, and as the digital sphere expands, we want to future-proof the system. We also want to ensure that there isn't displacement of HFSS advertising from broadcast TV to online, should further restrictions be applied on broadcast.

There is scope to strengthen existing restrictions to limit exposure and future risk. As noted earlier, HFSS adverts can be shown contextually where a quarter of an audience is under-16. Further, concerns were highlighted about the accuracy and transparency of online targeting - including regarding the shared use of devices/profiles, and predictive inaccuracy.

As with broadcast TV, in considering the options below we are seeking to meet the objectives of reducing children's exposure to HFSS advertising and driving reformulation. We also want to limit future risk of increased exposure, while ensuring there is an equivalence with the options presented for broadcast TV advertising. Overall, we recognise that online regulation is much newer and we would welcome further views and evidence.

Government proposes that only products in scope of PHE's sugar and calorie reduction programme and SDIL are in scope of further online advertising restrictions. We propose that the 2004/5 Nutrient Profiling Model (NPM) would be used to define food and drink products HFSS as part of the following options. Please see Annex C for further details on the 2004/5 NPM.

Option 1 - introduce a 9pm-5:30am watershed online

Under this option, HFSS food and drink in scope could not be advertised between 5:30am and 9pm.

As set out above, the watershed is an established concept in broadcasting. Under this option, the same time-based approach would be applied online - with new rules to require that HFSS advertising online - including banner and video advertising (for example Video on Demand) - would not be shown between 05.30 and 21:00. This approach is premised on the view that online targeting is inaccurate and does not limit children's exposure to HFSS advertising effectively,

A prohibition could if necessary be introduced via primary legislation. It would work in a similar way to existing advertising rules on digital advertising, whereby brands and marketers are responsible for compliance, and complaints for potential breach are referred to the ASA.

A watershed for HFSS advertising online would be a world first, and our starting point is that all online advertising of HFSS products would be in scope of the restriction. However, we recognise that a watershed may be difficult to apply for particular types of advertising, for example in areas like viral marketing, some influencer marketing and advertising claims on advertisers' own websites and social media space. As part of this option, Government therefore welcomes views on the scope of a watershed restriction.

We also recognise that marketers and platforms target online advertising based on data about the audience or user. In line with our thinking on a broadcast watershed option, our intent is that advertising is restricted to children, not adults.

We therefore also welcome views on whether any exemptions should be granted where advertisers can provide exceptionally high standards of evidence that children will not be exposed to HFSS advertising and how any exemptions should be applied.

Option 2 - strengthen current targeting restrictions

The current online advertising restrictions set out in the CAP Code are relatively new, but have been applied in a growing number of cases, with successful complaints about child exposure being made to, and upheld by, the ASA.

However, as noted, the rules afford wide discretion to advertisers in what evidence they provide that children are being excluded from behaviourally-targeted advertising. In addition, the rules allowing children to see contextual HFSS advertising where under-16s make up less than a quarter of the audience could - like family viewing on broadcast - mean substantial numbers of under-16s seeing HFSS adverts on popular sites.

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Given concerns about the limitations of targeting discussed above, but noting the less well-developed body of evidence on HFSS exposure online than for broadcast, this option replicates the key features of the existing system, but would further strengthen them. It could if necessary be implemented through primary legislation.

One possibility is that the prohibition on advertising HFSS products to online audiences where children make up more than 25% of the audience is lowered to 10%. This would be a significant reduction, reducing the acceptable level of child audience by over half, without being set so low that advertisers would feel unable to advertise online. We seek views on whether this is the right level.

This option also seeks to raise the bar on ensuring that only adults are reached for personalised advertising. For advertising targeted at audiences that share common demographics or web-browsing interests, this option would prescribe a list of specific sources of evidence that advertisers must use to prove they have excluded under-16s, over and above those which are already suggested (but not mandated) by the ASA at present. These specific sources of evidence would include data actively provided by users in social media or other 'logged in' environments, or inferred from user behaviours according to a clear methodology. Where the prescribed sources of evidence are not available to advertisers, and advertisers were not able to provide evidence that the audience was less than 10% children, HFSS advertising would be prohibited.

We welcome views on the approaches described above.

Option 3 - Mixed option

The term 'online' encompasses a wide range of types of advertising and platform. This option considers treating different online sub-sectors differently.

For video advertising (whether appearing on VoD platforms and VSPs - YouTube, Facebook Video, All4, ITV Hub - or alongside static content), which is consumed and viewed in a similar way to broadcast advertising, there may be greater risk of displacement of HFSS advertising from broadcast. There is therefore an argument to treat it like broadcast and introduce a 9pm – 5:30am watershed before which HFSS advertising would be prohibited. For other types of advertising, a targeting restriction as set out in Option 2 may be more appropriate, given the points noted above in respect of option 2.

We therefore welcome views on a mixed option - combining a watershed for video advertising online, and a targeting restriction for all other online advertising. We also invite views on whether there are other ways in which online restrictions could be combined differently across parts of the online market, to help ensure appropriate action in each area.

Option 4 - no government intervention

The government would welcome views and evidence on what further action could be taken by the sector or regulators to meet our objectives of reducing children's exposure to HFSS advertising. We welcome views as to what could be effective, with evidence supporting this and how this could be implemented and measured.

7. Implementation and next steps

There are several implementation routes available depending on the result of this consultation. We are aware that displacement is a potential risk of taking forward action in one type of media at a different time to another which would undermine the policy objectives given children's changing media habits. We would therefore introduce any advertising restrictions arising from this consultation to online and broadcast simultaneously. We are interested in hearing your views on whether this is the right approach.

8. Public Sector Equality Duty

To assess the potential impact of the policies included in [Chapter 2 of the Government's Childhood Obesity Plan](#) against the Government's duties under the Equality Act 2010 a separate [Equality Analysis](#) has been produced.

Since it has been published we have identified three areas that may be a concern as part of PSED for this consultation;

- Small minority ethnic channels – may be negatively affected by loss of advertising revenue advancing which may impact on the equality of opportunity in relation to race.
- Public Service Broadcasters - further restrictions on the PSBs may impact on their ability to meet cultural obligations on programming which may negatively impact on fostering good relations and promoting understanding between groups of people of different race within the UK.
- Phenylketonuria (PKU) – Exposure to aspartame may negatively impact on people living with this genetic condition which is classed as a disability.

We are inviting views as part of the consultation on PSED requirements and steps that could be taken to mitigate the impact.

9. How to respond to the consultation

The consultation will run for 12 weeks and will close 10 June 2019.

Our preferred method of response is via Citizenspace, the Government's consultation hub. To help with your response you will find a list of all consultation questions in Annex D and all impact assessment questions in Annex E. These are the questions as they will appear on citizenspace.

If you do wish to send an email response, please send these to childhood.obesity@dhsc.gov.uk

If you wish to send a hard copy responses can be sent to:

FAO HFSS Watershed consultation
Obesity Food and Nutrition Team
Department of Health and Social Care
39 Victoria Street
London
SW1H 0EU

Please note that these responses must reach us by the 10 June 2019.

We will publish the Government's response to this consultation on the GOV.UK website, summarising the responses received and setting out the action we will take, or have taken, in respect of

Annex A - Key terms

Media and advertising	
Advertiser	A company, person, or organisation that advertises a product or service.
ASA	The Advertising Standards Authority (ASA) is the independent regulator for advertising in the UK. The ASA enforces the Advertising Codes (BCAP Code and CAP Code), which reflect and supplement relevant legislation, and set standards for accuracy, honesty and social responsibility to which advertisers are expected to adhere, and include specific conditions on advertising to children. The Codes are reviewed and updated regularly. The ASA's rulings are transparent and accountable - they are all published with reasoning on the ASA website, and are subject to review by an Independent Reviewer.
BARB 120 Index	An index rating system using Broadcasters Audience Research Board (BARB) audience data to determine whether programming attracts an audience of under 16s in a greater proportion than that age group's presence in the population as a whole. The 120 Index can therefore be used to determine whether such programming is of particular appeal to children, and so whether or not it should be subject to HFSS advertising restrictions (in cases where such programming has not been commissioned for children, and so already subject to such restrictions).
BCAP Code	The UK Code of Broadcast Advertising, which applies to broadcast TV and radio. It is enforced by the ASA through a system of co-regulation with Ofcom. UK broadcasters are required by a condition of their broadcast licences to comply with ASA rulings on the BCAP Code, and any who refuse to comply with these rulings risk being referred to Ofcom, which can impose fines and even withdraw broadcast licences.
Brand advertising	In the HFSS context, under current ASA guidance, if an advertisement features a brand name, a product that is not readily identifiable, or a range of products which do not promote a specific HFSS product, and the brand generally is synonymous with an identity other than the provision of HFSS products, it is unlikely to be considered an HFSS product advertisement. In determining whether the brand is synonymous with an identity other than the provision of HFSS products, the ASA will take into account the company's provision of non-HFSS products or goods and services other than food and soft drink products, or its association with significant initiatives relating to education, sport, community etc. If a brand advertisement features, for example, a celebrity or a brand-generated character which is very strongly associated with a specific HFSS product, it can still be subject to

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	the HFSS restrictions.
Broadcast television	All UK commercial television services licensed by Ofcom. This does not include on demand services (also regulated by Ofcom) or 'live streams' via social media.
CAP Code	The UK Code of Non-Broadcast Advertising and Direct & Promotional Marketing, which applies to non-broadcast media, including online, print, outdoors, video-on-demand, direct marketing and cinema. It is enforced by the ASA through a system of self-regulation, which has a range of sanctions it can apply to non-compliant advertisers, including referral to Trading Standards, who act as a legal backstop.
Children	For the purposes of this consultation, children are defined as anyone under the age of 16.
Cinema advertising	This term covers advertising submitted for theatrical release (cinema exhibition), excluding film trailers, public information films and campaigning films. This content is covered by the CAP Code. Cinema advertising is subject to a pre-clearance process conducted by the Cinema Advertising Association (CAA). A list of forthcoming HFSS proscribed films that may not carry such advertising is held by members of the CAA, based upon their British Board of Film Classification rating and an assessment of their appeal to children. Advertising designed to target under 12s can only be shown before films rated 15 or above.
Direct marketing	Direct mailings addressed specifically to the recipient, including letters, emails, faxes and text messages.
Media platforms	A service, site, or method that delivers media to an audience, either online or in broadcast.
Online advertising	The use of online services to deliver marketing messages. Online advertising includes any material which has the effect of advertising a product or service and over which the advertiser has direct control. This might include - but not be limited to - display advertising, influencer marketing, advergames, apps, advertising on a marketer's own website or in other non-paid-for space online under their control, promoted and sponsored social media content and search results, and advertising on Video on Demand platforms and audio streaming services.
Outdoor advertising	Posters on billboards, poster sites, third party ads in 'paid-for' space in ambient media including, but not limited to, public vehicles, projections onto buildings, but not point of sale advertising. The content of outdoor advertising is subject to CAP Code rules, which restricts HFSS advertising in areas where children make up 25% or more of the audience, reflecting areas where there is heavy child footfall. The ASA does not specify particular types of audience data that marketers should use, but

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	marketers should take care if, for example, the advertising site is located near a school. Many outdoor media owners apply a '100 metre rule', meaning they will not place HFSS advertising within 100 metres of a school boundary. While this is not an explicit requirement under the CAP Code, the ASA has previously taken the application of the rule into consideration when assessing whether an ad has been responsibly placed.
Print advertising	Advertising (including third party advertising, a publisher's own advertising, inserts, business classified ads (but not private ones), and 'advertorial' content) featured in national and regional newspaper titles, magazines, leaflets, brochures, catalogues, and certain other printed materials. Print advertising is subject to CAP Code rules.
Product advertising	In the context of HFSS, this is an advertisement which promotes a product that is clearly identifiable as a specific HFSS product.
Product placement	<p>The inclusion of, or reference to a product, service or trade mark in a programme or other editorial content outside of traditional advertising, in return for payment or giving of other valuable consideration.</p> <p>In broadcast television, the Ofcom Broadcasting Code already prohibits the product placement of HFSS products in all television programmes produced under UK jurisdiction.</p> <p>In broadcast radio, the Ofcom Broadcasting Code prohibits product placement in radio services primarily aimed at children or in children's programming included in any service.</p> <p>In non-broadcast media subject to CAP Code rules, guidance is provided to advertisers designed to ensure that readers are not confused about whether the copy is marketing or editorial in nature. In summary, an "advertisement feature, announcement or promotion, the content of which is controlled by the marketer, not the publisher, that is disseminated in exchange for a payment or other reciprocal arrangement", would be considered advertising and so subject to CAP Code rules. While "advertisement feature" is not defined in the guidance, it would ordinarily include any paid-for product placement.</p>
Public Service Broadcasters (PSBs)	In this context this term refers to all UK commercial public service broadcasters - the BBC, Channel 4 Corporation (C4C), Channel 5, the holders of the Channel 3 licences (ITV, STV and UTV), and S4C.
Radio	Commercial and community radio services licensed by Ofcom, whether broadcast live or streamed online after broadcast.
Radio advertising	Advertising featuring on commercial and community radio services licensed by Ofcom.
Sponsorship	Sponsorship is an arrangement or contract between a brand and

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	another party. Advertising restrictions do not apply to these arrangements but to the methods used to communicate this arrangement or contract.
Television advertising	Any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property rights and obligations, in return for payment. The Ofcom Broadcasting Code requires that broadcasters must ensure that editorial content is distinct from advertising.
Video on Demand (VoD)	On-demand programme services currently regulated by Ofcom, including Broadcaster Video on Demand (BVoD) which are the free VoD services provided by linear broadcasters, including ITV Hub, All4, My5, Sky On Demand.
Video sharing platforms (VSPs)	A commercial service addressed to the public: where the principal purpose of the service (or an essential functionality of such service) is devoted to providing programmes and user-generated videos to the general public, in order to inform, entertain or educate; which is made available by electronic communications networks; and where the content is organised in a way determined by the provider of the service, in particular by displaying, tagging and sequencing.
Watershed	The existing watershed only applies to television. Material unsuitable for children should not, in general, be shown before 2100 or after 0530.

High, Fat, Salt and Sugar (HFSS) and nutrition	
Calorie and Sugar Reduction Programmes	As part of the 2016 Childhood Obesity: A plan for action Government announced that Public Health England (PHE) would launch a sugar reduction programme to challenge all sectors of the food industry to reduce the sugar content in their products by 20% by 2020 and deliver a 5% reduction in the first year. The to children's sugar intakes. In 2017, PHE announced a calorie reduction programme which, again focusing on the food categories that contribute the largest amount of calories to children's diets. This programme aims to reduce the amount of calories in these products by 20% by 2024. This programme has not yet officially started, with consultation

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	with key stakeholders on-going. PHE is expected to publish confirmed categories in early 2019.
HFSS	In the context of this consultation HFSS stands for food and drink products that are high in fat, salt and sugar.
Nutrient Profiling Model (NPM)	The NPM is used to define what products are 'healthier' and 'less healthy' for the purpose of advertising during children's media. It was devised in 2004/5 by the Food Standards Agency and is now administered by Public Health England. The NPM gives an overall score looking at the product, considering the nutritional composition, not just the fat salt and sugar content. Foods with a score of 4 points or above, and drinks scoring 1 or more points, are classified as HFSS for advertising purposes.
Soft Drink Industry Levy	The Soft Drinks Industry Levy is a levy that all producers and importers of sugar sweetened beverage in the UK must pay for selling drinks that are high in added sugar. The levy came into effect on 6 April 2018 and applies to drinks which have had sugar added during production and which contain at least 5 grams (g) of sugar per 100 millilitres (ml) in its ready to drink or diluted form.
World Health Organization's big five	According to a review quoted by the World Health Organization, five product categories dominate food advertising aimed at children (soft drinks, pre-sugared cereals, confectionery, snacks and fast food restaurants).

Annex B - Products included in PHE reduction programmes and SDIL

Please note the calorie categories are currently under informal consultation with Industry and stakeholders and the list presented is the preliminary categories that were published in PHE's calorie reduction: the scope and ambition for action. We are expecting PHE to publish the categories of food in scope in mid-2019 and this will inform our final policy position on further advertising restrictions.

<p>Breakfast cereals Yoghurt and fromage frais Biscuits Cakes Morning goods Puddings Ice cream Sweet confectionary Chocolate confectionary Sweet spreads Milk based drinks and fruit juices which are exempt from the SDIL Sugar sweetened beverages with more than 5g added sugar per 100ml Bread with additions (e.g. olives, cheese etc.) Crisps and savoury snacks Savoury biscuits, crackers and crispbreads Potato Products (e.g. chips, croquettes, mashed potato etc.)</p>	<p>Meat, fish and vegetarian pastry pies and other pastry products Cooking sauces and pastes Table sauces and dressings Pasta/ rice/ noodles with added ingredients and flavours Ready meals with carbohydrate accompaniment (potato, rice, noodles, pasta, etc.) – fish, meat and meat alternatives Meal centres without carbohydrate accompaniment (potato, rice, noodles, pasta, etc.) – fish, meat and meat alternatives Prepared dips and composite salads as meal accompaniments (e.g. coleslaw, potato salad, guacamole, salsa etc.) Pizza Egg products/ dishes (e.g. quiche) Food to go e.g. sandwiches, boxed main meals, salads etc. Sausages (raw and cooked) and sausage meat products, frankfurters, hotdogs and burgers</p>
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Annex C - Nutrient Profiling Model

The 2004/5 Nutrient profiling model (NPM) was developed by the Food Standards Agency (FSA) to provide Ofcom, the broadcast regulator, with a tool to differentiate foods on the basis of their nutritional composition. Ofcom uses the outputs from the model to regulate the television advertising of foods to children.

It scores foods based on their nutritional content. The nutrients considered are split into two categories – A and C. The score for ‘C’ nutrients is subtracted from the score for ‘A’ nutrients to give the final score. A higher score indicates a less healthy food.

‘A’ nutrients consist of energy, saturated fat, total sugar and sodium. ‘C’ nutrients consist of fruit, vegetables and nut content, fibre and protein. Therefore, a food scoring highly on ‘A’ nutrients is not automatically classified as less healthy, only if it additionally scores little on ‘C’ nutrients.

Foods scoring 4 or more points, or drinks scoring 1 or more points, are classified as ‘less healthy’. These ‘less healthy’ products provide the definition for HFSS food and drink used in this consultation.

All food and drink are scored, there are no exemptions.

Calculations

There are three steps to working out the score: calculating ‘A’ points, calculating ‘C’ points and combining these into an overall score.

Calculating ‘A’ points

Total ‘A’ points are calculated by the following formula: (points for energy) + (points for saturated fat) + (points for sugars) + (points for sodium). The points for each nutrient are determined based on the amount of each per 100g of the food or drink, according to Table B.1 below.

Table C.1 Points scored by ‘A’ category nutrients per 100g

Points	Energy (kJ)	Saturated Fat (g)	Total Sugars (g)	Sodium (mg)
0	≤335	≤1	≤4.5	≤90
1	>335	>1	>4.5	>90
2	>670	>2	>9.0	>180
3	>1005	>3	>13.5	>270
4	>1340	>4	>18.0	>360

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5	>1675	>5	>22.5	>450
6	>2010	>6	>27.0	>540
7	>2345	>7	>31.0	>630
8	>2680	>8	>36.0	>720
9	>3015	>9	>40.0	>810
10	>3350	>10	>45.0	>900

A maximum of ten points can be awarded for each nutrient.

Calculating ‘C’ points

Total ‘C’ points are calculated by the formula: (points for %fruit, veg and nut content) + (points for fibre [either NSP or AOAC]) + (points for protein). The points for each nutrient are determined based on the amount of each nutrient per 100g/percentage nutrient component of the food or drink, according to Table B.2 below.

Table C.2 Points scored by ‘C’ category nutrients per 100g

Points	Fruit, Vegetable and Nuts (%)	NSP Fibre (grams) (a)	or AOAC Fibre (grams) (a)	Protein (grams) (b)
0	≤40	≤0.7	≤0.9	≤1.6
1	>40	>0.7	>0.9	>1.6
2	>60	>1.4	>1.9	>3.2
3	-	>2.1	>2.8	>4.8
4	-	>2.8	>3.7	>6.4
5	>80	>3.5	>4.7	>8.0

(a) NSP fibre information should be used if possible. However, if this is not available then AOAC fibre information should be used.

(b) If a food or drink scores 11 or more points for ‘A’ nutrients then it cannot score points for protein unless it also scores 5 points for fruit, vegetables and nuts.

A maximum of five points can be awarded for each nutrient/food component. Note the restrictions on points for protein.

Combining points into an overall score

Overall score for a food is dependent on how many ‘A’ points it scores and how many points for fruit, veg and nuts it scores. There are three possible situations.

Less than 11 ‘A’ points

If a food satisfies this criterion then the overall score is calculated as follows:

Total ‘A’ points minus total ‘C’ points = (energy + saturated fat + sugars + sodium) – (fruit, veg and nuts + fibre + protein)

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11 or more 'A' points and 5 points for fruit, vegetables and nuts

If a food satisfies this criterion then the overall score is calculated as the above case.

11 or more 'A' points and less than 5 points for fruit, vegetables and nuts

If a food satisfies this criterion then the overall score is calculated as follows:

Total 'A' points minus points for fruit, veg and nuts and points for fibre = (energy + saturated fat + sugars + sodium) – (fruit, veg and nuts + fibre)

Note that in this case foods are not allowed to score for protein.

Annex D - Consultation questions

Media in scope

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/No/I do not know

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

Cinema/Radio/Print/Outdoor/Direct marketing/ other (please specify)

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
- c) Will reduce economic impact on broadcasters
- d) Will reduce economic impact on advertisers
- e) Reduces risk of displacing advertising spend
- f) Easy for advertisers and regulators to understand
- g) Easy for parents and guardians to understand
- h) Other – please explain

HFSS definition

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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/Disagree/ I do not know

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

Please explain your answer

Broadcast consultation options

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

Option 1/Option 2/Option 3

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

- a) Will reduce children's exposure to HFSS advertising and in turn reduce their calorie intake
- b) Will drive further reformulation of products
- c) Will reduce economic impact on broadcasters
- d) Will reduce economic impact on advertisers
- e) Reduces risk of displacing of advertising spend
- f) Easy to implement
- g) Easy for advertisers and regulators to understand
- h) Easy for parents and guardians to understand
- i) Other - please specify

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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) Programme
- b) Channel
- c) I do not know

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? (Choose only one) Please explain your answer.

- a) Yes
- b) No
- d) I do not know

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.

- a) x% of total audience
- b) x% of total child audience
- c) x number children
- d) Other (please specify)

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.

Yes/No

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.

Static/Decrease/Other

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

14. 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?

Very easy/ Easy/ I do not have a view/Difficult/Very difficult.

15. 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.

- a) Programme
- b) Channel
- c) I do not know

16. 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

- a) Yes
- b) No
- c) I do not know

17. If you selected option 2, and you do not agree that 1% of the total child audience is the appropriate level at which to grant an exemption please propose an alternative level, providing evidence to support your answer.

- a) x% of total audience
- b) x% of total child audience

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- c) x number of children
- d) Other (please specify)

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?

Yes/No/I do not know

If you answered yes, what measures do you propose?

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.

- a) Option 1
- b) Option 2
- c) Option 3

Online consultation options

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

Option 1/Option 2/Option 3/Option 4

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
- c) Will reduce economic impact on broadcasters
- d) Will reduce economic impact on advertisers

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- e) Reduces risk of displacing of advertising spend
- f) Easy to implement
- g) Easy for advertisers and regulators to understand
- h) Easy for parents and guardians to understand
- i) Other - please specify

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?

Yes/No/I do not know

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?

Please explain your answer.

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.

Please explain your answer

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?

Yes/No/I do not know

If you answered yes, please explain what types of advertising should be exempted.

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:

- a) Lowered to 10%

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- b) Lowered to 1%
- c) Disapplied entirely
- d) Not reduced
- e) Other level (please specify)

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?

Yes/No/I do not know

If you answered yes, which sources or standards of evidence do you propose? Please provide evidence to support your answer.

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

Yes/No/I do not know

If you answered no, how would you divide up online advertising in order to apply a watershed or targeting restrictions to different advertising formats/categories platforms/sites?

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?

Yes/No/I do not know

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?

Please explain your answer

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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.

Please explain your answer

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:

- a) Lowered to 10%
- b) Lowered to 1%
- c) Disapplied entirely
- d) Not reduced
- e) Other level (please specify)

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?

Yes/No/I do not know

If you answered yes, which sources or standards of evidence do you propose? Please provide evidence to support your answer.

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?

Yes/No/I do not know

If you answered yes, what measures do you propose?

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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.

- a) Option 1
- b) Option 2
- c) Option 3
- d) Option 4

Implementation and next steps

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/No/I do not know

Public Sector Equality Duty

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/No/I do not know

If you answered yes, please explain your answer and provide relevant evidence.

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

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

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Yes/No/I do not know

If you answered yes, please explain which aims it would help achieve and how.

If you answered no, could the proposals be changed so that they are more effective?

If you think that proposals could be changed to be more effective please explain what changes would be needed.

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/No/I do not know

If you answered yes, please explain your answer and provide relevant evidence.

Annex E - Impact assessment consultation questions

1. Do you have any additional evidence that would improve our understanding of how and where household spend on HFSS products may be displaced?

Yes/No

If you answered yes, please provide additional evidence

2. Our estimates of the impact on retailer and manufacturer profits are based on several assumptions around profit margins and retailer mark-ups. Can you provide us with any evidence that would help to improve these calculations?

Yes/No

If you answered yes please provide any additional evidence.

3. Do these calculations reflect a fair assessment of the transition costs that would be faced by your organisation?

Yes/No

If you answered no, please explain your reasons and provide additional evidence.

4. If your industry faces revenue or sales losses from these interventions, how long do you expect these to last?

5 years/10 years/15 years/other (please specify)

5. We have estimated that a significant proportion of HFSS advertising on broadcast TV or online will be displaced to other forms of media. As an advertiser do you think the level of displacement for radio, print and out of home is correct?

Yes/No

If you answered no, please provide any additional evidence.

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6. We have assumed that HFSS advertising campaigns displaced to non-video forms of advertising (e.g. radio, billboards and direct mail) will have less impact on children's calorie consumption. Do you agree with this assumption?

Yes/No

If you answered no, please provide additional evidence to improve our understanding of how HFSS advertising in non-video media may affect children's food consumption, behaviours and preferences?

7. For all our options we anticipate minimal additional regulatory burdens from further advertising restrictions in terms of regulatory ongoing compliance for broadcasters, advertisers and manufacturers / retailers. Does this assessment seem reasonable?

Yes/No

If you answered no, please provide any additional evidence.

8. We have assumed that advertising agencies would receive lower commissions if manufacturers and retailers spent less on their advertising campaigns, but not if they shift their campaigns to other advertising media. Do you agree with this assumption?

Yes/No

If you answered no, please provide additional evidence to improve our understanding of how advertising agencies revenue may be impacted by further advertising restrictions

9. Do you have any additional evidence that would improve our understanding of the impacts on businesses? Please provide evidence especially for small and micro businesses.

Yes/No

If you answered yes, please provide any additional evidence.

10. Do you have any further evidence or data on the health benefits you wish to submit for us to consider for our final impact assessment?

No/Yes – Please note that this data may be used to in our final impact assessment that will be published.

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Please provide a short summary of the evidence, data, methodology or assumption your response relates to and upload evidence to support your response.

11. Do you have any additional evidence or data that would help us improve our estimates for the additional calorie consumption caused by HFSS product advertising?

Yes/No

If you answered yes, please provide any additional evidence.

12. Do you have any additional evidence or data that would help us improve our assumptions on the levels of HFSS product advertising and its impact on children's food behaviours and preferences?

Yes/No

If you answered yes, please provide any additional evidence.

13. Are you able to provide any additional evidence which would improve our understanding of the long-term impact of HFSS advertising exposure during childhood on food behaviours and preferences later in life?

Yes/No

If you answered yes, please provide any additional evidence.

14. To quantify the impact on food and drink retailers and manufacturers, we have assumed that the calorie reductions are derived from reduced purchasing of HFSS products brought back into the home for consumption. Do you have any evidence or data that can help understand whether a proportion of this reduction would be from consumed outside the home and what impact this would have on the out-of-home sector?

Yes/No

If you answered yes, please provide any additional evidence providing details of the information contained in the data set and the provider.

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15. Do you have any additional evidence that could improve our assessment of how these restrictions may impact HFSS manufacturers and retailers? Particularly learning from the experience of current children's HFSS advertising restrictions.

Yes/No

If you answered yes, please provide any additional evidence.

16. Do you have any evidence or data to suggest how advertising restrictions may impact HFSS product sales of small and micro-businesses?

Yes/No

If you answered yes, please provide details of the information contained in the data set and the provider.

17. Do you have any evidence or data to suggest what proportion of the fewer HFSS calories purchased due to advertising restrictions may be removed from small and micro-businesses?

Yes/No

If you answered yes, please provide details of the information contained in the data set and the provider.

18. Do you have any additional evidence or data that could improve our estimates of how much HFSS advertising is present, across various online platforms and formats (e.g. desktop, mobile, video pre-roll, native, search, sponsorship, other video and other display) and children's exposure to these adverts online?

Yes/No

If you answered yes, please provide any additional evidence.

19. Our evidence on the impact of HFSS advertising on adults is inconclusive. Do you have any additional evidence which would improve our understanding of the impact HFSS advertising has on adult's food consumption, behaviours and preferences and purchases (either for themselves or their children)?

Yes/No

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If you answered yes, please provide any additional evidence.

20. Can you provide us with any additional evidence to improve our understanding of how the pricing of advertising may change under our proposed options?

Yes/No

If you answered yes, please provide any additional evidence.

21. We have assumed that businesses could partially mitigate the impact of advertising restrictions by shifting to brand advertising, reformulating products, or promoting healthier alternatives in the brand. Do you agree with our assessment of the impact on broadcasters and likely mitigations?

Yes/No

If you answered no, please outline your reasons and provide any supporting additional evidence.

22. What mitigating actions would your business most likely pursue?

Shift to brand advertising/reformulate/shift to advertising healthier products/ Will not take any mitigating action/ other - please specify

23. The Department of Culture Media and Sport and the Department of Health and Social Care would welcome any further comments regarding;

- The calculations conducted in the Impact assessment;
- The assumptions made in the Impact assessment.

Annex F - Disclosure of responses

Disclosure of responses and Data Protection.

The information you provide in response to this consultation is managed in accordance with the [Department of Health and Social Care's Information Charter](#).

and the [Department for Digital, Culture, Media and Sport's Information Charter](#).

Your response will be treated in confidence and not shared with any third party. The information you supply will be processed by the Obesity Food and Nutrition policy team in DHSC and the Media and Creative Industries policy team in DCMS in accordance with the Data Protection Act 2018 and the General Data Protection Regulation. Any reports published using this information will be based on aggregated data only and will not contain any personal information that could identify you.

When the consultation ends, we will analyse the feedback received and publish our response to the key points and the government's proposals on the next steps on the DHSC's website: www.gov.uk/DHSC.

If you want some or all of the information you provide to be treated as confidential, it would be helpful if you could clearly identify the relevant information and explain why you consider it confidential.

Please note that DHSC or DCMS may be required by law to publish or disclose information provided in response to this consultation in accordance with access to information regimes: primarily the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Data Protection Act 2018 and the General Data Protection Regulation. If we receive any request to disclose this information, we will take full account of your explanation, but cannot give you an absolute assurance that disclosure will not be made in any particular case. We will not regard an automatic disclaimer generated by your IT system as a relevant request for these purposes.

If, during completion of the survey you decide to withdraw your response, you will need to contact DHSC using our [web contact form](#).

To prevent any risk of tampering with your response data, [consultation responses cannot be edited or deleted once submitted](#). However, under the Data Protection Act 2018 (and the General Data Protection Regulation), you have certain rights to access your personal data and have it corrected or erased (in certain circumstances), and you can withdraw your consent to us processing your personal data at any time.

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You have the right to lodge a complaint to the Information Commissioner's Office about our practices, to do so please visit the Information Commissioner's Office website: <https://ico.org.uk/concerns/>.

Information Commissioner's Office

Wycliffe House Water Lane

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Cheshire SK9 5AF

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Telephone: 0303 123 1113

Textphone: 01625 545860

Monday to Friday, 9am to 4:30pm

If you need any further information please contact us using our [web contact form](#)

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Department of Health and Social Care: Global and Population Health, Obesity Food and Nutrition

Department for Media Culture and Sport: Media and Creative Industries

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