Regulatory Policy Committee

Mandating Calorie Labelling of Food and Drink in Out-of-Home Settings

Department of Health and Social Care

RPC rating: fit for purpose

The impact assessment (IA) is now fit for purpose as a result of the Department's response to the RPC's initial review. As first submitted, the IA was not fit for purpose.

Description of proposal

A significant proportion of consumers' energy intake comes from eating out-of-home. The Department, in its Impact Assessment (IA) describes the adverse selection problem of consumers having limited access to energy information (such as calorie content), making it difficult for them to make informed choices and identify healthier options. As outlined by the Department, this policy is intended to provide consumers with consistent energy information that will help them make informed choices and identify healthier options when eating out.

The Department's objective is to develop a mandatory calorie labelling scheme across all large businesses in the out-of-home sector (i.e. any outlet where food or drink is prepared in a way where it can be consumed immediately). A further aim of this policy is to encourage businesses to reformulate existing products and design new recipes with lower energy content.

The Department considers 5 options, outlined below:

- option 1 - do-nothing;
- option 2 - mandate that a calorie labelling scheme is adopted by businesses of all sizes, for use across the catering industry;
- option 3 - as option 2, exempting micro businesses;
- option 4 - as option 2, exempting small and micro businesses; and
- option 5 - as option 2, exempting small, micro and medium businesses.

Option 5 is the Department's preferred option to avoid disproportionate impacts on small, micro and medium businesses. The Department estimates that small, micro and medium businesses accounts for 51% of the sector's turnover. Therefore, the Department explains that option 5 will still deliver substantial public health benefits.

Impacts of proposal

The Department explains that in comparison to option 2, option 5 ensures small, micro and medium businesses are not burdened by the policy. The net present value (NPV) over 25 years is £5.6bn, with total costs of £12m and total benefits of £5.6bn.

1. Monetised Costs

All monetised costs to businesses are considered direct costs, which are as follows:

I. One off transition costs:

a. *Familiarisation costs*

The Department states that firms will have to familiarise themselves with the new regulation. The Department assumes one individual familiarising themselves with the regulations will inform two other employees. The Department estimates this cost to be £0.1 million.

b. *Costs of calculating energy values for food and drink products*

To implement calorie labelling, the Department explains that caterers will first need to assess the energy content of each of the items on their menus. The Department estimates that the entire cost will be £0.6 million.

c. *Labelling and other associated costs*

All businesses will need to re-design menus to accommodate energy information. The Department estimates that this cost will be £0.1 million.

II. Calculating Energy Values

After reviewing relevant sources, the Department has assumed that some medium and large businesses will invest in tools to allow them to calculate the calorie content of some recipes. This is estimated to be £0.1 million in the first year of the policy implementation. From the second year onwards, the Department has assumed that some businesses will share this information with individual outlets that do not own a calorie calculator and that 20% of menu items will be replaced by new items or modified each year. The cost of the calorie calculator tool is £0.1 million in year 1 and £0.5 million from year 2 onwards. This cost is expected to be ongoing.

III. Costs to the Government – Enforcement costs

To enforce mandatory out-of-home calorie labelling, businesses would need to be inspected on the presence and accuracy of their labelling. The Department assumes a one-off transition cost to Local Authorities as officers will need to familiarise themselves with the new regulations. The Department estimates this one-off familiarisation cost to be £25,000 and annual enforcement costs of £0.1 million – equivalent to £1.6 million over 25 years. This cost is expected to be ongoing.

2. Monetised Benefits – Health Benefits

The Department has identified health benefits from implementation of this regulation. To quantify the benefits, the Department has estimated an average reduction in calorie consumption per person per day.

I. Quality Adjusted Life Year (QALY) Savings. The Department estimates QALY savings to be £4.6 billion.

II. NHS Savings: The average BMI determines the likelihood of five conditions (diabetes, coronary heart disease, stroke, colorectal cancer and breast cancer) associated with obesity. NHS savings are estimated to be £430 million.

III. Social Care Savings: The costs of social care savings are calculated due to a reduced proportion of overweight, obese, and morbidly obese individuals. This is estimated to be £477 million.

IV. Economic Activity: Reductions in mortality are used to calculate the impact on economic output from an increased workforce. The Department estimates this to be £80 million.

3. Non-monetised Costs

The non-monetised costs to business are:

I. Costs of new businesses in out-of-home sector: The Department recognises the non-static nature of the out-of-home sector, with new businesses forming and existing businesses closing every year. The Department has not monetised this cost due to the changing nature of the out-of-home sector.

II. Costs of Vending machines: The Department has refrained from quantifying costs of providing out-of-home calorie labelling for products sold in vending machines due to the lack of clarity regarding how the labelling process would work in this context.

III. Impact on profits: The Department has identified that firms' profits may change due to consumers switching to less energy dense products sold by the same business, consumers switching to businesses which serve less energy dense products and consumers consuming fewer food and drink products out of home.

IV. Impact of reformulation on costs: The Department has discussed that they expect many businesses to reformulate as a reaction to calorie labelling. The Department has outlined this cost as indirect as it is expected this to be voluntary.

V. Costs to consumers: The Department has identified that businesses might pass on the costs of implementing calorie labelling to consumers in the form of increasing prices.

4. Non-monetised Benefits

Improvements to productivity: With less obesity, there will be fewer people with ill health which will result in a healthier workforce, which is likely to be more productive and take fewer sick days. This benefit has not been monetised.

Quality of submission

The Department's assessment of the overall impacts of the proposals, including the impacts on business, is now fit for purpose. The Department outlines the existing market failure of adverse selection resulting from information asymmetry and has discussed how government intervention is required due to previous efforts being unsuccessful in encouraging the provision of calorie labelling in out-of-home settings. The Department helpfully acknowledges that their preferred option yields a lower NPV than other options considered, but states that it has chosen this option in order to minimise costs incurred by businesses, as well as to ensure the burden of introducing calorie labelling does not disproportionately affect small, micro and medium businesses.

We set out below the points raised in the initial review which the Department has successfully addressed. There are, however, several areas of the IA which the Department should consider improving.

Issues addressed following RPC's initial review

As initially submitted, the IA contained several issues that meant the RPC did not consider it fit for purpose. The initial review notice also highlighted further areas for improvement. In response, the Department has revised the IA. As originally submitted, the assessment was not fit for purpose for the following reasons:

1. **Unjustified Assumptions:** The initial IA did not provide evidence to support its estimates in paragraphs 62 and 63 where the Department estimated that out of 104 businesses considered, the minimum number of outlets for any business was 17, and that 59% of large businesses were assumed to already have calorie information available. The RPC is pleased to see that the Department has provided further evidence to justify these assumptions. However, the Department should still provide further evidence to support its assumption made in paragraph 63 where the Department down-weights the number of medium businesses with calorie information by 50% to further strengthen the rationale for choosing this percentage.

2. **Selection of business categories:** In its initial assessment, the Department provided a table of businesses whose primary function is not to sell food, but still sell food to the public, in table 4 under paragraph 67. The Department selected the respective business categories from the Interdepartmental Business Register from the ONS Nomis Portal. The Department, however, did not select several other business categories that were available on the register, and did not provide explanations to justify their selections. In addition, the RPC also advised that the Department should provide a breakdown of what businesses are included in the respective categories, or explain why they are unable to do so. The Department has now provided an explanation to provide further clarity regarding its selection of business categories. The RPC is also pleased to see where the Department has not included other business categories (due to the Department identifying those businesses which may serve food to the public but are considered unlikely to do so), they have captured this in their sensitivity analysis. However, the RPC recommends that the Department provide further justifications as to why it is unable to provide a breakdown of what businesses are included in the respective categories.

3. **Clarity of treatment of costs associated with reformulation:** In the initial IA, the Department included costs associated with new products and reformulation in the EANDCB but noted elsewhere that reformulation costs will be voluntary. The RPC advised the Department to describe which costs were included in the EANDCB and which were considered voluntary and therefore, indirect. The

Department has now explained that the reformulation costs are voluntary (and so are excluded) and that the costs included in the EANDCB are costs of new and modified products.

Other areas addressed in the final IA

There were several other areas for improvement in the initial IA noted in our initial review. The RPC is pleased to see the Department has now addressed these points, and considers the Department's approach to be proportionate:

a. *profit monetisation*: the RPC advised the Department to provide further analysis on the impacts on profit, even if it was unable to be monetised. The Department has now provided a more explanation of the impact that the measure may have on profit;
b. *rationale for intervention does not achieve both policy aims:* the Department described the issue relating to more children living in deprived areas possibly consuming more fast food and the difficulties parents have in making restaurant decisions. Further clarity was required around how the policy objective would help to reduce fast-food consumption amongst children. The Department has now clarified the policy objective to reduce calorie consumption in the out-of-home setting, not in a specific type of food outlet;
c. *inaccuracies in option summaries*: in the initial IA on the summary page for the Department's preferred option, option 5, the Department mentioned the "other key non-monetised costs by 'main affected groups'" were the same as option 2 and 3, when this was not the case. The Department has now corrected this in the IA;
d. *calculations:* in the initial IA, the Department explained it did not include benefits from reinvestment of NHS savings in the NPV due to difficulties in quantifying this benefit. The RPC advised the Department to exclude this benefit regardless of its impact because any decision of whether or not to re-invest savings in the NHS would be a separate investment decision. The Department has now amended the IA to reflect this point; and
e. *unmonetised benefits:* in the initial IA, the Department discussed benefits which it was unable to monetise without providing any justifications. The Department has now provided further clarity as to why it is unable to monetise these benefits.

Areas for improvement

While the Department has addressed the points identified in the initial review which would have resulted in a red-rated opinion and a number of other points noted above, the IA would be strengthened by further development of the following points identified as areas for improvement:

1. **Unjustified Assumptions:** In the initial IA, the Department expected managers to familiarise themselves with the regulations, but assumed that no other employee will be required to familiarise themselves with the regulation. The RPC is pleased to see that the Department recognises in their revised submission, that multiple employees will need to familiarise themselves with the new regulations. In paragraph 91, the Department assumes that an individual familiarising themselves with the regulations will inform two other employees in the business (for example, a research and development manager sharing this information with other managers or directors). The Department should still provide further justifications to support this assumption that an individual will only inform two other employees.

2. **Interaction with other regulation:** The Department states that "*Due to the substantial number of policies, which are being consulted on as part of Childhood obesity: a plan for action – chapter 2, the potential interactions between options have not been quantified*" in paragraph 210. The RPC recommends that the Department should fully demonstrate the interaction between this policy and the government's other obesity strategy policies and quantify expected impacts where possible.

3. **Inconsistencies in calculations:** In paragraph 6, the Department describes expected costs to out-of-home businesses that include transition costs of £0.9m; however, within this estimate the Department breaks this cost down into familiarisation costs of £0.1m, costs of calculating energy content of products of £0.6m and labelling costs of £0.1m, which totals £0.8m not £0.9m.

4. **Impact on civil society organisations (CSOs).** The initial IA did not provide detail on the possible impacts on CSOs as a result of this measure. The Department has now confirmed that CSOs which sell food to the public will be subject to the new requirements, but has not analysed the impacts

on CSOs, i.e. it has not analysed whether they would experience similar or different impacts compared to large businesses.

Departmental assessment

Classification	Qualifying regulatory provision (IN)
Equivalent annual net direct cost to business (EANDCB)	£0.5 million (initial estimate) £0.6 million (final estimate)
Business net present value	- £10.0 million
Overall net present value	£5,568 million

RPC assessment

Classification	Under the framework rules for the 2017-19 parliament, qualifying regulatory provision (IN)
EANDCB	£0.6 million – subject to validation once the framework rules for the current parliament are set
Business impact target score[1]	£2.5 million – subject to validation once the framework rules for the current parliament are set
RPC rating (of initial submission)	Not Fit for Purpose

Regulatory Policy Committee

One Committee Member did not participate in the scrutiny of this case to avoid a potential conflict of interest.