Regulatory Policy Committee

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

Lead department	Department of Health and Social Care (DHSC)
Summary of proposal	A proposal to require retailers to end all volume offers on HFSS products which contribute significant sugar and calories to childrens' diets, excluding small and micro businesses (SMBs).
Submission type	Impact assessment (IA) – 23/10/2020
Legislation type	Secondary legislation
Implementation date	TBC
Policy stage	Final
RPC reference	RPC-DHSC-4333(3)
Opinion type	Formal
Date of issue	16 November 2020

RPC opinion

Rating[1]	**RPC opinion**
Fit for purpose	The IA is now fit for purpose, after being revised in response to the initial review notice (IRN) issued by the Regulatory Policy Committee (RPC). The RPC commends the Department for addressing almost all of the areas of improvement identified in the IRN.

Business impact target assessment

	Department assessment	**RPC validated**
Classification	Qualifying regulatory provision (IN)	Qualifying regulatory provision (IN)
Equivalent annual net direct cost to business (EANDCB)	£45.5 million (initial IA estimate) £53.5 million (revised IA estimate)	£53.5 million
Business impact target (BIT) score		£267.5 million
Business net present value	-£148 million	
Overall net present value	£2,916 million	

[1] The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the Better Regulation Framework. The RPC rating is fit for purpose or not fit for purpose.

RPC summary

Category	Quality	RPC comments
EANDCB	Green	The EANDCB analysis and calculation is now fit for purpose. In the initial IA it was not fit for purpose because it did not include costs to businesses with online platforms and did not provide a full EANDCB figure. The revised IA also clarifies that civil society organisations (CSOs) are exempted from the policy, but should explain the rationale for their exclusion.
Small and micro business assessment (SaMBA)	Green	The SaMBA is now fit for purpose. In the initial IA, the SaMBA did not include impacts on manufacturers, wholesalers, or suppliers. The revised IA includes a detailed description of the impacts of the proposal on SMBs, explaining how they might be disproportionately affected and why certain SMBs have been exempted from the policy. It also provides more evidence to support the rationale for including stores belonging to a symbol group in the policy.
Rationale and options	**Satisfactory**	The revised IA describes alternatives to regulation that were considered.
Cost-benefit analysis	**Satisfactory**	The revised IA discusses the impacts of Covid-19. It also considers the costs and challenges businesses may face when reformulating of products to allow them to be sold under volume promotions. The Department intends to consult further on enforcement costs, and will resubmit the IA to the RPC if its estimates change.
Wider impacts	**Good**	The IA contains a good analysis of the wider impacts of the proposal, including sections on Investment and Distributional Impacts.
Monitoring and evaluation plan	**Satisfactory**	The IA helpfully explains the rationale for reviewing this policy 5 years after implementation. It would benefit significantly from including a formal plan explaining explicitly how the policy will be monitored and evaluated through a post-implementation review (PIR).

Response to IRN

The RPC reviewed the initial IA and issued an IRN, stating that it was not fit for purpose because the EANDCB did not include the costs of the policy to businesses with online platforms, and the EANDCB figure was not complete. Also, the SaMBA did not consider the impacts on small and micro wholsalers, manufacturers or suppliers. In the revised IA, the Department has sufficiently addressed the concerns raised in the IRN, and the RPC now considers the IA to be fit for purpose.

EANDCB

The RPC has rated the EANDCB analysis as **green.**

Unmonetised impacts
In the IRN, the RPC stated that the EANDCB was not fit for purpose because it did not include the costs to businesses with online platforms. After subsequent stakeholder engagement, the Department has monetised transition costs for online businesses and businesses with an online offering.

Retailers will be prohibited from advertising volume offers of HFSS products online. The IA would have benefited from including a more detailed analysis of the impact of this restriction. However, the RPC acknowledges the Department's clarification that calculations of the "impact on sales and profit include both products bought in stores and online" (see paragraph 234), and notes the limitations on data available to the Department. The IA also now provides further context explaining the Government is committed to introducing online and TV restrictions together by the end of 2022. The RPC expects submission of an IA on that measure in due course.

EANDCB Calculation
In the IRN, the RPC stated that the Department needed to clarify calculations for retailers' lost profits. The RPC commends the Department for clarifying its calculations by adding Table 16 to the revised IA showing the price elasticity of demand of volume promotions and price promotions.

The RPC noted in the IRN that the EANDCB was a partial figure and had not been assessed for all businesses, and that a full figure was required at this stage. The RPC commends the Department for providing a full estimate in the revised IA and also for including a clearer explanation of all costs included in the EANDCB.

Impact on CSOs
The initial IA stated that CSOs had been deemed out of scope, but did not explain why. The revised IA now expressly states that "*Civil society organisations such as voluntary bodies or charities are excluded from the restriction*" (see paragraph 83), but would benefit from explaining the rationale for excluding them.

SaMBA

The RPC has rated the SaMBA as **green.**

The RPC welcomes the expanded analysis of costs faced by SMBs and the explanation of the rationale for their exclusion. The IA now helpfully includes a clear breakdown of the number of SMBs affected by the policy, which helps demonstrate the rationale for exempting some SMBs. The revised IA also provides more evidence to support the rationale for not exempting SMBs which are part of a symbol group (stores that trade under a common fascia) from the policy.

In the IRN, the RPC indicated the IA should consider the impacts on small and micro manufacturers and wholesalers. The IA now discusses the costs likely to be faced by such firms, using results from stakeholder engagement, but has not included the figures in its analysis due to data limitations.

The RPC agrees that the impacts on ingredient suppliers are indirect, so those costs should not be included in the calculation of the EANDCB. In the revised IA the Department has provided narrative explaining the likely impact of this policy on small and micro ingredient suppliers and how they could be disproportionately affected,but has not quantified the impact due to insufficient data and evidence.

Rationale and options

The RPC considers the analysis of the rationale and options in the revised IA to be **satisfactory**.

Options
The RPC welcomes the narrative added to the revised IA describing other non-regulatory options that the Department considered, such as education initiatives, social marketing and voluntary approaches, and their respective merits and limitations in achieving the policy objective.

Cost-benefit analysis

The RPC considers the cost-benefit analysis in the revised IA to be **satisfactory**.

Reformulation Costs
In the IRN the RPC noted that the IA did not consider the difficulties manufacturers were likely to face in trying to reformulate certain HFSS products such as confectionary to avoid being captured by these restrictions. The revised IA explains that manufacturers may be able to use innovative technologies to reformulate some HFSS products, but recognises reformulation is unlikely for certain products. The IA also now mentions other incentives for businesses to reformulate HFSS products such as social responsibility and consumer demand for healthier products. The IA could be improved further by including evidence from consultation to support these statements.

In the IRN, the RPC asked the Department to consider the reformulation costs associated with revising labels and advertising. The IA now mentions these costs. The Department has not monetised the reformulation costs because businesses are not required to reformate products (i.e. it is voluntary), and therefore these are indirect costs. The IA could be improved by including additional analysis as to the magnitude of possible reformulation costs and whether these costs might deter businesses from undertaking reformulation.

Evidence and data

The RPC welcomes the revised IA's analysis of the effects of the Covid-19 pandemic. However, the IA could be improved further by considering the consequences of recent trends (more online purchases; overall greater purchases; and larger purchases on fewer occasions) becoming permanent. In particular the Department should consider the impact on low income families and whether the policy objectives would still be achieved.

The revised IA also helpfully includes additional data on the composition of the market (see paragraphs 167-168 and Table 11), including a clear break down of micro, small, medium and large businesses and the number of businesses of each size assumed to have an online capacity.

The IA relies heavily on two sources of evidence, the Kantar report on take home grocery sales, which was used to calculate retailers' estimated sales losses, and the Kantar World Panel Data, a database purchased by the Department. The Department stressed how essential this research was for its calculations due to lack of publicly available alternatives. In the IRN the RPC suggested that the Department publish these sources to improve transparency for stakeholders and Parliament. The Department has advised the RPC that it will publish the Kantar report before the IA is published, but that it is unable to publish the purchased Kantar World Panel Data.

The RPC also commends the Department for including additional sources in the revised IA. However, the IA could be strengthened by mentioning any other views or evidence that differ from those described in the IA (e.g. from consultation responses or other sources).

Enforcement costs

The RPC stated in the IRN that the IA should include further information on enforcement costs, noting that the Department had not yet consulted on how to enforce the policy. The Department plans to consult on this matter, but does not expect significant changes to the current estimates. The revised IA states that if these figures change, the Department will submit a revised IA to the RPC for scrutiny.

Assumptions

The IA assumes that 50% of non-food and beverage stores sell HFSS products. The IA states that this assumption is not based on evidence, and explains how it was determined. The RPC acknowledges the constraints faced by the Department due to lack of information gathered from consultation.

Wider impacts

The RPC considers the revised IA's analysis of wider impacts to be **good**.

Investment

The RPC welcomes the revised IA's acknowledgement of the wider economic impacts of the loss of profits for retailers, namely its possible effect on reducing investments in machinery, premises or staff and consequent impacts on aggregate demand and employment in the economy. The RPC accepts that it is not proportionate to monetise these impacts due to the wide range of relevant factors contributing to their value.

Distributional impacts
The RPC's IRN stated that the IA should include more analysis of the potential impact on low income households of possible price increases as a result of policy. The RPC commends the Department for its additions to the Inequality Test section (see table 45) of the IA and evidence showing households with an income of over £30,000 a year are more likely to buy products on promotions. However, the revised IA could have gone further to look at the spend on volume promotions as a proportion of disposable income.

The RPC also commends the Department for including evidence from the National Child Measurement Program showing obesity rates are higher in urban areas than in rural areas. On first submission the IA noted that a greater proportion of rural businesses would be exempt but provided limited analysis as to whether this factor would reduce the success of the proposal in meeting its policy objectives. The revised IA provides evidence suggesting the potential impact of exempting more rural businesses may be mitigated by the lower obesity rate in rural areas compared to urban areas.

Indirect benefits
The RPC noted in the IRN that reinvestment benefits were not clearly classified as potential indirect benefits, contingent on government spending decisions. The revised IA makes this clear (see paragraphs 333 and 454).

Monitoring and evaluation plan

The RPC considers the monitoring and evaluation plan in the revised IA to be **satisfactory.**

The RPC welcomes the revised IA's explanation of the rationale for reviewing this policy 5 years after its implementation. However, the IA would benefit from including a detailed explanation of how the proposal will be monitored and evaluated through a PIR. Also, in carrying out the PIR, the Department should seek to verify whether or not all non-monetised costs described in the IA were in fact negligible.

Additional comments

International comparisons
The RPC's IRN noted that the IA did not include any international comparisons. The RPC welcomes the revised IA's discussion of measures implemented by EU countries and a city council relating to advertising and controls on marketing (see paragraphs 63-65). The IA would benefit from providing greater detail on the success those measures had in meeting their intended objectives (or explain why such evidence was not available).

For further information, please contact regulatoryenquiries@rpc.gov.uk. One committee member did not participate in the scrutiny of this case due to a potential conflict of interest.