

## Introducing a 21:00-05:30 watershed on TV and online ban for paid advertising of food and drink that are high in fat, salt and sugar (HFSS)

<b>Lead department</b>	Department for Digital, Culture, Media & Sport (DCMS), Department of Health and Social Care (DHSC)
<b>Summary of proposal</b>	A proposal to introduce a ban on paid online advertisement for HFSS products and to introduce a 21:00 to 05:30 watershed for advertisement on broadcast television for HFSS products.
<b>Submission type</b>	Impact assessment (IA) – 12/03/2021
<b>Legislation type</b>	Secondary legislation
<b>Implementation date</b>	2022
<b>Policy stage</b>	Final
<b>RPC reference</b>	RPC-DCMS-4344(2)
<b>Opinion type</b>	Formal
<b>Date of issue</b>	17 June 2021

### RPC opinion

<b>Rating<sup>1</sup></b>	<b>RPC opinion</b>
<b>Fit for purpose</b>	The IA is now fit for purpose after being revised in response to the RPC's initial review notice (IRN) As originally submitted, the IA was not fit for purpose because it did not correctly calculate the EANDCB or explain why some small and micro businesses (SMBs) could not be exempt.

### Business impact target assessment

	<b>Department assessment</b>	<b>RPC validated</b>
<b>Classification</b>	Qualifying regulatory provision	Qualifying regulatory provision
<b>Equivalent annual net direct cost to business (EANDCB)</b>	£6.0 million (initial IA estimate) £185.5 million <sup>2</sup> (final IA estimate)	£185.5 million (2019 prices, 2020 pv)
<b>Business impact target (BIT) score</b>	£928.0 million	£927.5 million
<b>Business net present value</b>	-£643.0 million	
<b>Overall net present value</b>	£1,585 million	

<sup>1</sup> 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.

<sup>2</sup> The IA presents this as £199 million in 2022 prevent value (pv)

## RPC summary

<b>Category</b>	<b>Quality</b>	<b>RPC comments</b>
EANDCB	<b>Green</b>	The EANDCB analysis and calculation is now fit for purpose as it no longer includes indirect impacts; is consistent in its use of profit and revenue; and includes impacts that were previously missing from the calculations, such as the impact of advertising HFSS products on adults' consumption. As a result of addressing issues raised in the RPC's IRN the EANDCB has increased by £179.5m. The Department should further improve the IA by considering how existing voluntary measures adopted by some online businesses could affect the proposal's counterfactual.
Small and micro business assessment (SaMBA)	<b>Green</b>	The SaMBA is now fit for purpose. The revised IA justifies the decision not to exempt small and micro broadcasters, online platforms and advertising agencies. The IA sufficiently discusses mitigation but could be improved by explaining what mitigations were considered and why they are not considered to be appropriate.
Rationale and options	<b>Satisfactory</b>	The revised IA explains why voluntary and industry-led proposals have not been selected as the preferred option. If possible, the rationale should be strengthened by providing evidence to demonstrate that television advertising contributes to childhood obesity.
Cost-benefit analysis	<b>Weak</b>	The IA does not provide sufficient evidence to support several assumptions underpinning the cost-benefit analysis (particularly assumptions used to calculate health benefits). However, the Department uses sensitivity analysis effectively to demonstrate the proposal's impacts where uncertainty is present. The IA should also provide further evidence to support the enforcement costs estimate.
Wider impacts	<b>Good</b>	The IA contains good analysis of the wider impacts of the proposal, including possible impacts on equality, competition, innovation and indirect business impacts.
Monitoring and evaluation plan	<b>Satisfactory</b>	The Department commits to a post-implementation review. The RPC is pleased to see that the IA considers the impacts of the COVID-19 pandemic. The IA also discusses areas that the Department will assess to determine the effectiveness of the policy, but it could be improved by explaining how the Department intends to collect data and evidence in these areas.

## Response to the IRN

As originally submitted, the IA was not fit for purpose for several reasons, mainly relating to the EANDCB calculation the SaMBA.

The IRN identified the following issues with the original IA:

- it treated indirect benefits as ‘mitigation’ of the direct costs, effectively incorrectly categorising them as direct benefits (e.g. indirect benefits relating to product reformulation and replacement of advertisements for HFSS products with advertisements for non-HFSS products);
- some impacts were missing (e.g. the impact on adult consumption);
- the IA suggested that advertisers would benefit from the ban;
- it made inconsistent use of the terms *profit* and *revenue*; and
- it did not sufficiently justify its approach in using a 25-year appraisal period and a 100 year “*cohort*” approach.

The Department has now adequately addressed these points as detailed in the EANDCB section below.

Further, the SaMBA did not explain why SMBs in certain sectors could not be exempt from the policy. The IA now discusses the rationale for not exempting small and micro broadcasters, online platforms and advertising agencies and considers mitigation.

As well as the red-rated points, in the IRN the RPC identified other areas for improvement. The revised IA has sufficiently addressed some of these, but other areas still require improvement, as noted in this opinion.

## Summary of proposal

### Summary of policy

The proposal is to introduce a 21:00 to 05:30 television watershed and a total online ban on advertising for HFSS food and drinks with the aim of reducing calorie intake for children between the ages of 6 and 15. Further, small and micro advertisers (manufacturers, retailers and businesses from the out-of-home sector) will be exempt from the regulation. The IA assumes that reductions in a child’s calorie consumption will reduce the prevalence of obesity in children and will result in those children having lower calorie consumption and lower levels of obesity as adults.

Chapter two of the Government’s Childhood Obesity Plan explains the Government’s ambition to halve childhood obesity and significantly reduce the gap in obesity prevalence between children from the most and least deprived areas by 2030. The policy proposal is one of a number in this sector including restrictions on volume and location promotions for HFSS products. Ofcom is the preferred statutory backstop

regulator for HFSS advertising and will be able to delegate day-to-day monitoring and enforcement to an appropriate regulator.

### **Summary of impacts**

The IA uses the terms “*impact*” and “*impression*” to describe an individual viewing a single advert one time on television and online respectively. The IA estimates the number of impacts and impressions on children from HFSS advertising and uses academic studies to determine the calorie effect of each impact or impression. It then uses a model to translate the average calorie reduction into quantifiable benefits of reduced obesity-related morbidity and mortality, resulting in NHS savings and other economic benefits.

The IA identifies costs to business including transition costs associated with familiarisation with the new regulation and staff training. The IA also uses a return-on-investment approach to estimate the lost profit for advertisers including manufacturers, retailers and businesses in the out-of-home sector as a result of the proposal.

## **EANDCB**

The RPC now considers the EANDCB analysis to be fit for purpose. Following the IRN, the Department revised its approach to the calculation, resulting in an EANDCB of £185.5 million (up from £6 million in the original IA). The IA no longer appears to suggest that advertisers benefit from the restrictions. The revised approach also separates the indirect benefits from the direct costs and captures the impact on businesses in the out-of-home sector such as restaurants.

The new approach analyses advertising campaigns between 2014 and 2017 using “*long term returns, net of advertising costs as the derived profit*” of advertising expenditure (paragraph 400). This approach also ensures that the EANDCB figure includes previously missing or unmonetised costs such as the impact on the out-of-home sector and impacts from reduced adult consumption. The IA also now uses the terms *profit* and *revenue* consistently. While this approach appears to capture the impact of adult consumption reductions, the IA could be improved by exploring this impact in more detail.

### **Modelling**

In the IRN the RPC stated that the IA must include further justification for the use of a mixture of the 100-year “*cohort approach*” and the 25-year appraisal period. The revised IA explains that the Department chose this approach as it captures the health benefits of reduced obesity for individuals both in childhood and adult life, thereby avoiding the risk of significantly underestimating the total health benefits (paragraph 346). The revised IA states that this approach is consistent with the obesity related IAs for other policies that form part of the Childhood Obesity Plan. The IA also explores the use of a 10-year appraisal period within the sensitivity analysis.

### **Counterfactual**

In the IRN, the RPC also stated that the Department should explain whether recent voluntary bans on HFSS advertising adopted by some advertising platforms, such as those introduced by Google and YouTube, were accounted for in the counterfactual given their large market share. The revised IA explains that it was not considered feasible for business effectively to report on targeted bans, which would presumably present difficulties in adjusting the baseline of the proposal to account for recent voluntary bans.

Although the IA does not explore this issue, it seems likely that some advertising platforms have taken voluntary action in anticipation of the proposed regulation. Therefore, it would be appropriate for the associated impacts to be included in the EANDCB. Given this, and the apparent data limitations, the RPC considers the Department's approach to be fit for purpose. However, the IA should explicitly discuss this issue and whether the existing voluntary bans are likely to have already reduced the number of online HFSS "*impressions*" on children and, thereby have reduced the impacts of the proposal.

### **Sponsorship and charity work**

The RPC is pleased that the Department has acted on our advice to clarify whether or not charity work and sponsorship deals on television are in scope of the proposal. The revised IA explains clearly that brands will be able to sponsor if the advert does not include an identifiable HFSS product.

The IA also explains that paid-for advertising of a sporting event or charitable partnership associated to an identifiable HFSS product is in scope of the regulation. While the IA explains that paid-for brand advertising that is not part of sporting event or charity partnerships is in scope of the regulation, the IA should be improved through consideration for the possibility that there could be a movement from product to brand advertising and whether this would benefit larger firms with greater brand recognition.

Further, while the new approach used to calculate the EANDCB figure accounts for the impact on Civil Society Organisations (CSOs), the IA would benefit from demonstrating the magnitude of the costs which are likely to fall on CSOs that currently benefit from sponsorship deals.

### **Familiarisation costs**

The IA states that it was not possible to provide an estimate for the familiarisation costs for online platforms. Therefore, the IA assumes these costs are equal to the costs incurred by broadcasters (paragraph 432). The RPC considers this approach to be proportionate because the estimated cost to business is relatively low at £0.3 million. However, the Department should provide more of a business view as to whether this assumption is valid or evidence to justify the use of this assumption. The IA should also consider whether other online users such as social media influencers may incur familiarisation costs.

## SaMBA

As a result of improvements made in response to the IRN, the RPC now considers the SaMBA to be fit for purpose. The revised IA explains that exempting SMB that are broadcasters, online platforms and advertising agencies would not be appropriate as it would create loopholes that large HFSS advertisers could exploit to continue to advertise online and on television. Further, the revised IA explains that the relatively high market share of SMBs in the broadcasting and online sectors would mean if a SMB exemption were applied, the effectiveness of the proposal in achieving the policy objectives would be significantly reduced. The IA would be improved through further analysis of the impact that exempting these businesses would have on the costs and benefits of the proposal to support the decision not to exempt SMBs.

In the IRN, we stated that the IA must consider and explain whether or not mitigation will be implemented for SMBs and include justification for the approach taken. The revised IA explains that the Department considered possible mitigations for these businesses but should expand on this to explain in more detail what forms of mitigation it considered and why it determined that mitigation was not appropriate.

The RPC is pleased to see that the Department revised the IA to consider the indirect impacts on SMBs. For example, it discusses the impact on small and micro retailers that sell products advertised by larger businesses and may experience a reduction in demand as a result of this policy.

## Rationale and options

### Rationale

In the IRN the RPC noted that the volume of television advertising and incidence of childhood obesity appear to be trending opposite in directions (i.e. television viewership has been falling for children under age 16, whereas the prevalence of childhood obesity has been rising). The RPC stated that the IA should include further evidence of the causal link between television advertising and childhood obesity.

While the RPC acknowledges that the IA contains analysis on the number of “*impacts*” on children from television advertising. If possible, the Department should strengthen the IA’s rationale section by using evidence and perhaps behavioural insights to explain clearly why intervention is needed, despite the falling level of television viewership.

In response to the IRN, the Department has considered other drivers of obesity, to help present a more balanced rationale for intervention, and outlined other actions taken by the Government such as the Government’s Sporting Future strategy. However, it could improve the IA by explaining if and how those policies interact with this proposal.

### Options

In response to the IRN, the Department has also included further detail on an industry-led alternative and explained in more detail why non-regulatory options were

not deemed appropriate (due to the absence of a universal audience measurement and information on who is accessing what content (paragraph 219)). However, the IA could have made more use of recent data on the users of different forms of media content to improve its analysis and to strengthen the evidence supporting the decision of the preferred policy option.

## Cost-benefit analysis

### Policy interactions

The IA usefully provides an overview of other policy areas which are likely to interact with the proposal. The IA states that related policies from the Government's Childhood Obesity Plan "*will likely have interactions with restrictions on HFSS advertising*" (paragraph 10) but that these interactions have not been modelled.

While we acknowledge the difficulties associated with accounting for these effects, the Government has brought forward a number of policy proposals impacting the food and drink industry recently. Therefore, the IA would be improved by including analysis of how those policies interact with this proposal, and by discussing the cumulative impact on business.

### Enforcement costs

In the IRN the RPC stated that the IA should explain how the estimate of 300 enforcement cases per year had been determined and how enforcement would be carried out. The revised IA explains that the cost estimates have been provided by the Advertising Standards Authority (ASA) and Ofcom (paragraph 465) "*based on the cases that were received the last time they made significant changes to regulations in this space (in 2017)*". However, the IA does not consider whether or not this assumption is appropriate by exploring its similarities to the regulatory changes implemented in 2017 and whether the enforcement and compliance landscapes have changed.

The IA could provide more detail on the breakdown of expected enforcement cases between television and online advertising and exploring the similarities and differences of the enforcement approaches in each case. The IA should also explain how regulators will identify breaches of the advertising ban.

Further, the IA states that "*paid-for influencer marketing and Instagram influencer posts sponsored by a brand*" are forms of online marketing communications in scope of the proposal (paragraph 188). As that is the case, the IA should discuss the difficulties associated with enforcement of online activities, especially in the case of online influencers. The IA would be improved through the use of policies designed to clarify "sponsorship" such as the ASA's "influencer's guide"<sup>3</sup> to help in this regard.

### Evidence and data

The original IA stated that "*young people are subject to pressures to behave according to narrow, pre-defined categories which are reinforced by wider structural mechanisms, including but not restricted to, social media use and commercial*

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<sup>3</sup> <https://www.asa.org.uk/uploads/assets/uploaded/3af39c72-76e1-4a59-b2b47e81a034cd1d.pdf>

*drivers, such as product marketing.*” However, it did not consider this effect elsewhere in its analysis.

The Department’s new approach of using return-on-investment to calculate the EANDCB includes this impact. The IA should expressly state that this is the case and discuss the impact of pressures on young people, including the likely magnitude of this effect and if these considerations have impacted the policy development in any way.

### **Behavioural factors**

The IA could do more to incorporate behavioural factors into its analysis in order to improve the robustness of the IA and to help determine how susceptibility to advertising varies with age. For example, the effects of the structuring of adverts to include brief “reminders” before a programme resumes and the behavioural adaptation of audiences to process and respond to such messages.

### **Uncertainty, risks and assumptions**

The revised IA acknowledges that *“there are a variety of sources of uncertainty inherent in the analysis”* and uses sensitivity analysis effectively to demonstrate the impacts of the proposal (paragraph 31). However, the IA’s analysis relies on several assumptions that are not supported by a strong evidence base. These assumptions primarily relate to estimating the health benefits of the proposal. If possible, the Department should seek to strengthen assumptions by collecting further evidence and monitoring of the policy proposal. For example, the IA should seek to strengthen the evidence underpinning the assumptions that:

- there is a causal link between children’s exposure to HFSS advertising and excessive consumption of HFSS food and drink;
- there is no offsetting effect of HFSS consumption through calorie reductions at main meals;
- children who consume fewer calories as a result of the policy will maintain the same average calorie reduction throughout their lives;
- advertiser *“mitigations”* will avoid losses on their return-on-investment at a rate of 20p for each £1 spent on advertising on television or online;
- the relationship between the time a child is exposed to adverts and the effect this policy has on their immediate consumption is linear.

## **Monitoring and evaluation plan**

The RPC commends the Department for considering the impacts COVID-19 may have on the policy when detailing the monitoring and evaluation plan of the proposal. The revised IA explains the areas of the proposal that will be monitored but it should also consider monitoring changes in the volume of HFSS advertising that is displaced to times slots after the watershed and the average calorie intake of children. The IA would also be improved by including more detail on how the Department will collect the data and evidence on the impacts of the policy.



## **Regulatory Policy Committee**

For further information, please contact [regulatoryenquiries@rpc.gov.uk](mailto:regulatoryenquiries@rpc.gov.uk). Follow us on Twitter [@RPC Gov UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](#) or consult our website [www.gov.uk/rpc](http://www.gov.uk/rpc).

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