Regulatory Policy Committee

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

Lead department	Department of Health and Social Care (DHSC)
Summary of proposal	To end placement of HFSS food and drink items, which contribute significant sugar and calories to children's diets and are of most concern for childhood obesity, at store entrances, checkouts and end-of-aisles for large retail businesses.
Submission type	Impact assessment (IA) – 23/10/2020
Legislation type	Secondary legislation
Implementation date	TBC
Policy stage	Final
RPC reference	RPC-DHSC-4332(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 the areas for 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)	£515.4 million (initial estimate) £1,067 million (final estimate)	£1,067 million *(2019 prices, 2020 present value)*
Business impact target (BIT) score		£5,335. million
Business net present value	-£5,496 million	
Overall net present value	£68,152 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.

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RPC summary

Category	Quality	RPC comments
EANDCB	**Green**	The EANDCB analysis is now fit for purpose. In the initial IA it was not fit for purpose because it did not include the cost of store entrance restrictions or costs to businesses with online platforms. 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 it was not fit for purpose because it did not consider impacts on manufacturers, wholesalers, or suppliers. The revised IA includes a detailed description of the impacts of the proposal on small and micro businesses (SMBs), including how they might be disproportionately affected and why certain SMBs have been exempted from the regulation. It also provides more evidence to support the rationale for including of stores belonging to a symbol group and for the size of outlets included.
Rationale and options	**Satisfactory**	The revised IA includes details of the alternatives to regulation that were considered.
Cost-benefit analysis	**Satisfactory**	The revised IA discusses the impacts of Covid-19. It also addresses concerns raised in the IRN around reformulation of products to allow them to be sold in restricted locations, changes in consumer behaviour, unsupported assumptions, double counting and enforcement costs.
Wider impacts	**Good**	The revised IA contains good analysis of the wider impacts of the proposal. The RPC acknowledges the improved analysis of impacts on investment and employment, and of unintended consequences.
Monitoring and evaluation plan	**Satisfactory**	The IA helpfully explains the rationale for reviewing this policy within 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 initial review

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 cost of the store entrances restriction or the costs to businesses with online platforms. Also, the SaMBA did not consider the impact on small and micro wholesalers, manufacturers or suppliers. The Department has sufficiently addressed the concerns raised in the IRN, and the RPC now considers the IA fit for purpose.

EANDCB

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

Unmonetised impacts
The RPC asked the Department to monetise the costs to businesses of not being able to place HFSS products at store entrances, as not monetising these costs could result in the EANDCB being greatly underestimated. The revised IA helpfully uses a proxy for this information, which has been tested with industry. It is now assumed that store entrances generate the same level of sales as end of aisle sales.

In the IRN, the RPC stated that the EANDCB was also 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.

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 77), 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 excluding certain stores under 2000 sq.ft. The IA now helpfully includes a clear breakdown of the number of SMBs and stores which will be affected by the policy, which helps demonstrate the rationale for exempting smaller stores. 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, and the rationale for exempting stores with floor space under 2,000 sq. ft.

In the IRN, the RPC indicated that the IA should consider the impacts on small and micro manufacturers and wholesalers. The revised IA 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. The revised IA explains 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 explanation of therationale and analysis of options in the revised IA to be **satisfactory**.

Options
The RPC welcomes the narrative added to the revised IA describing other 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 believes that the cost-benefit analysis in the revised IA is **satisfactory**.

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 IA now 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 revised IA mentions these costs. However, it does not monetise the reformulation costs because businesses are not required to reformulate 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.

The RPC welcomes the revised IA’s detail on the interaction of this policy with other policies (particularly the proposal to prohibit retailers from making volume promotions of HFSS products) in relation to the risk of double counting costs, but believes the analysis would be strengthened by also ensuring that benefits were not double counted. The revised IA states this has not been possible, due to lack of evidence on the change to consumer calories intake if a product is promoted under the restricted locations and is on volume promotion. However, the revised IA states that the Department intends to explore this area as part of the PIR, by piloting innovative primary research.

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 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 issue, 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

In the IRN, the RPC requested that the IA provide further clarity in relation to certain assumptions. The revised IA helpfully provides further explanation to support those assumptions. A source has also been provided for the assumption of 40% of sales being offset by other HFSS/non-HFSS products.

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 of reducing investment into 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 commends the Department for including evidence from the National Child Measurement Program showing obesity rates are higher in urban areas than in rural areas. The initial IA noted that a greater proportion of rural businesses would be exempt but provided limited analysis as to whether this factor might 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.

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 within 5 years after its implementation. The summary page of the IA states that the policy will be reviewed before 2023, however it is later stated that a 5 year period is appropriate. The department should clarify the timescale of the evaluation. The IA would also 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.

Other 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 (paragraphs 100-102 of the revised IA). The IA would benefit from providing greater detail on the success of those measures in meeting their intended objectives (or explaining 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 to avoid a potential conflict of interest.