

## **Response from the Scottish Obesity Alliance**

The Scottish Obesity Alliance is a forum for organisations to collaborate to influence policy and practice on obesity prevention in Scotland. It is composed of 27 leading national health charities, medical royal colleges, campaign groups and professional bodies with an interest in health and public health. The Alliance works together to influence the Scottish and UK Governments policies on healthy weight and obesity.

### **Consultation questions**

*1. Do you support the proposal to introduce a total online HFSS advertising restriction?*

**Yes/No/I don't know**

*Please explain your answer and provide relevant evidence*

The Scottish Obesity Alliance supports the Government's proposal to introduce a total online advertising restriction for food and drinks high in fat, sugar and/or salt (HFSS), as part of a comprehensive approach to reduce obesity, dental decay and other diet-related diseases. While we supported Government's proposal for a 9pm 'watershed' for HFSS advertising, we believe this would introduce several loopholes, which would be easily exploited when applied to the online environment, making the proposals ineffective online. Thus, stronger online restrictions are required.

Our concerns are:

- 1. The current approach to restricting children's exposure to HFSS advertising online is ineffective**
  - The existing rules ban HFSS advertising in media that appeals to children or where more than 25% of the audience is under 16 years old. This is extremely hard to enforce in the online environment and creates significant loopholes. It is also very difficult to accurately ascertain the demographics of viewers online and Ofcom data shows that users continually misreport their age in order to set up social media profiles (1), effectively invalidating any 'officially' recorded demographics.
  - The ASA's research using child mimicking avatars provides strong evidence into the unreliability of existing targeting methods (2), proving that existing measures do not protect children.
  
- 2. A total restriction would provide comprehensive protection to children across multiple online channels**

- Online marketing is made up of many different formats of advertising. A 9pm watershed on HFSS adverts online would be effective in limiting children's exposure to some types of digital advertising, but not all. For example, a 9pm watershed would likely only apply to paid media, which can be turned on and off at certain times of the day; however, advertisers employ techniques across Paid, Earned and Owned media, which would be unlikely to be captured by this.

### **3. Online advertising content is designed to be shared – putting it out of reach of a 9pm watershed**

- After content is shared online by an individual user, the content can be viewed at any time, with no way to control this. As brands online, including HFSS brands, frequently ask their audience to 'like and share' or invite their friends to participate to extend advertising reach, a 9pm watershed would not be effective.

We agree with the points raised in the consultation document regarding data transparency, age-gating accuracy and the challenges of targeting adults by using interest-based factors and other behavioural data as a proxy for age.

While we support these proposals, and the document cites a comprehensive list of outlets, we would like to see the scope extended to include all digital advertising, including billboards, streaming services and podcasts. Outdoor marketing is a common and effective technique used by food brands, exposing 98% of people to some form of outdoor marketing every day (3). Current rules provide only limited protection to children, suggesting that advertising should not be placed within 100m of a primary school, and these guidelines are often breached (4). Recent research has found outdoor HFSS adverts to be disproportionately placed in areas with higher levels of social deprivation, adding to existing inequalities in childhood obesity (5). Extending the scope to include all digital outdoor HFSS advertising would provide an extra layer of protection to children when they are outside their home.

Additionally, the coronavirus pandemic has provided a clear imperative to focus on the prevention of ill-health. Evidence emerging during the pandemic has shown:

- A clear link between obesity and severity of COVID-19 outcomes (6)
- Increased consumption of sugary snacks during the lockdown period (7)
- A serious impact on access to services, including weight management and dental (8)

Due to a backlog of patients who could not be treated during the initial lockdown, coupled with the reduced capacity resulting from ongoing infection prevention and control measures, access to dental services remains severely limited. The British Dental Association estimates that over 19 million fewer treatments have been carried out than expected between March and October (8). With limited access to health-related services, and many local public health programmes suspended, stringent national measures to protect public health are more important than ever.

Adults are also impacted by HFSS online advertising (9) and the high volume of HFSS adverts online is likely to be particularly unhelpful when adults are making weight loss attempts. We believe a total restriction would also bring significant benefits to adults' health.

Finally, certain messages surrounding calories, weight loss and perceived healthy eating can have a damaging impact on those with eating disorders. Measures such as the proposed advertising ban may, therefore, be less likely to trigger or stigmatise people with eating disorders, provided that the intervention is delivered with a focus on encouraging a healthy, balanced diet, avoiding stigmatising messaging.

1. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/190518/children-media-use-attitudes-2019-chart-pack.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/190518/children-media-use-attitudes-2019-chart-pack.pdf)
2. <https://www.asa.org.uk/uploads/assets/uploaded/14be798d-bd30-49d6-bcfbc9ed7e66e565.pdf>
3. <https://www.outsmart.org.uk/>
4. [https://www.sustainweb.org/news/nov18\\_asarulings/](https://www.sustainweb.org/news/nov18_asarulings/)
5. Palmer et al (2020) <https://arxiv.org/abs/2007.04611>
6. Obesity Action Scotland (2020) Obesity and COVID-19. Evidence briefing. <https://obesityactionscotland.org/media/1529/obesity-covid-august-update.pdf>
7. <http://obesityhealthalliance.org.uk/wp-content/uploads/2020/05/OHA-polling-data-summary-final.pdf>
8. <https://www.bda.org/news-centre/press-releases/Pages/Dentists-Government-holds-the-key-to-restore-services-to-millions.aspx>
9. Boyland E (2019). Unhealthy food marketing: the impact on adults <http://obesityhealthalliance.org.uk/wp-content/uploads/2019/05/JFM-Impact-on-Adults-Boyland-May-2019-final-002.pdf>

## Scope

*2. We propose that the restrictions apply to all online marketing communications that are either intended or likely to come to the attention of UK children and which have the effect of promoting identifiable HFSS products, while excluding from scope:*

- *marketing communications in online media targeted exclusively at business-to-business. We do not seek to limit advertisers' capacity to promote their products and services to other companies or other operators in the supply chain*
- *factual claims about products and services*
- *communications with the principal purpose of facilitating an online transaction*

*Do you agree with this definition?*

*Yes/**No**/I don't know*

*Please explain your answer and provide relevant evidence*

We have concerns about the possibility of loopholes that could dilute the effectiveness of the policy if the government is to go ahead with the proposed exemptions as they stand. These exemptions risk advertisers being able to continue to advertising harmful HFSS products to children using highly influential ‘factual claims’ or facilitating online transactions. It could be argues that a significant proportion of all online HFSS advertising falls within one of these categories.

Our main concerns surround:

**1. Business-to-business communications**

- Companies could simply ‘tag’ companies in posts to continue advertising their products, meaning users of the platform on which it occurs could still be exposed to this content

**2. Factual claims about products or services**

- The wording of this question makes it unclear whether factual claims would only be allowed on companies’ own channels, which is stated in the consultation document. This would need clarification.
- Many claims that are ‘factual’ are also highly influential marketing techniques. For example, factual claims about products and services could cover anything from companies using public polling data highlighting that consumers prefer their product, to companies extensively posting content on social media and other platforms to say they’ve won an award for their HFSS products.
- An exemption for factual content is already in place for other regulated industries, meaning that content marketers are experienced at pushing the boundaries to create ‘factual’ content that has a promotional effect. This raises significant concerns for us.

**3. Communications with the principal purpose of facilitating an online transaction**

- We are concerned that this exemption would present a clear and significant loophole, as many brands could argue that they fall into this category. Companies already use social media platforms to promote their products, and Instagram has a ‘swipe up’ function which leads viewers of a video or ad to external websites. There is also nothing to stop a brand adding a ‘buy now’ button to their advertising, and continue with established practices.
- A person may ‘opt-in’ to email communications from a food, drink or delivery company but may then be inundated with discounts and push notifications which could drive purchasing. This must not be exempt from the proposed restrictions. This does not account for the fact that advertisers may already have children on their mailing lists who will continue to receive direct HFSS advertising, or that push notifications would be displayed to all users of a device, which may include children. We do not believe that this should be exempt.

**4. Identifiable HFSS products**

- The phrase 'identifiable' products could lead to a loophole in the restriction where brands can promote HFSS products, providing they can't be identified as particular branded product, for example, using animations of products, or emojis that are likely to be HFSS or have the effect of promoting HFSS products.
- Therefore, we would like to see the definition of 'Identifiable HFSS products' developed independently by experts, and to advertise, companies must have data demonstrating that their products are 'non-HFSS' and pass the UK Nutrient Profiling Model.

## 5. Influencer marketing

- Brands already use influencer marketing, a well-established global marketing technique, and this is expected to grow (1). Reports vary on influencer marketing budgets within the UK; however, a recent study found that 20% of UK PR and marketing professionals planned to spend between £10,000 and £100,000 on influencer marketing over the next 12 months (2), with 50% of brands believing in influencer marketing's ability to drive success (3). One in four complaints about online advertising submitted to the UK's Advertising Standards Authority (ASA) in 2019 took issue with sponsored influencer posts, equating to 4,000 complaints (4). In addition YouGov reported 73% of brand executives describing the influencer marketing industry as "murky" (5).
- If the exemption for 'Communications with the principal purpose of facilitating an online transaction' was to be implemented, if influencers included a link to a sales platform, this would simply exemplify them from restrictions

1. Schomer, A. Influencer Marketing: State of the Social Media Influencer Market in 2020; Business Insider: New York City, 2019
2. Statista (2018) Planned budget for influencer marketing in the United Kingdom (UK) in 2018 <https://www.statista.com/statistics/869362/influencer-marketing-planned-spend-in-the-united-kingdom-uk/>
3. Iab UK (2019) Influencer Survey: Marketer Perception and Attitudes [https://www.iabuk.com/sites/default/files/user\\_attached\\_file/Influencer%20Marketing%20Marketers%20Survey\\_0.pdf](https://www.iabuk.com/sites/default/files/user_attached_file/Influencer%20Marketing%20Marketers%20Survey_0.pdf)
4. The Drum (2020) Influencer posts dominate online complaints to UK ad watchdog <https://www.thedrum.com/news/2020/06/03/influencer-posts-dominate-online-complaints-uk-ad-watchdog>
5. YouGov (2020) Influencer marketing spend drops as trust in influencer marketing fluctuates <https://yougov.co.uk/topics/resources/articles-reports/2020/05/11/influencer-marketing-spend-drops-trust-influencer->

3. Do you foresee any difficulties with the proposed approach on types of advertising in scope?

**Yes/No/I don't know**

*Please explain your answer and provide relevant evidence*

Please see our response to question 2.

In addition:

- Due to the fast-moving nature of the online environment, marketers are adept at coming up with new marketing techniques to support these changes. This presents Government a challenge to future-proof this policy by identifying all available types of marketing and platforms that will be used in the future. To support this, it is vital that a review process be included in the new regulation, to evaluate the scope of the restrictions every two years, allowing adjustment to capture new marketing techniques and platforms.
- We are concerned that the industry may seek to exploit loopholes (as outlined in our answer to question 2), delay implementation and/or attempt to skew the narrative or talk down the need for restrictions (please refer to our answer to question 4).

*4. If answered yes, please can you give an overview of what these difficulties are? Please provide evidence to support your answer.*

*Please explain your answer and provide relevant evidence*

Following the announcement of the current consultation, the Food and Drink Federation (FDF), UK Hospitality, ISBA and the Advertising Association wrote a letter to Prime Minister Boris Johnson pleading for more time to answer the consultation (1). It stated that the ban is 'a disproportionate proposal with an impossibly short time period given for responses given the level of technical detail sought' – despite the proposed restrictions first being proposed in the Childhood Obesity Plan chapter 2 (2018). A joint statement from IAB UK, ISBA, IPA and the Advertising Association in response to the launch of this consultation reiterated the points raised in the joint letter, stating 'the proposal to completely outlaw online advertising of certain food and drink is a severe and disproportionate measure that goes far beyond the Government's objective of protecting children' (2).

Many articles from the advertising industry have attempted to reshape the narrative and confuse the public on the necessity of restrictions, with many stating they wouldn't be able to advertise olive oil or avocados and would lose their jobs. These statements are untrue. Similarly, the CEO of the Advertising Association said:

*'Existing UK rules mean that ads for HFSS products cannot be targeted at children in any media and are among the strictest in the world. Children are protected up to the age of 16 – significantly higher than most countries, where rules apply only to under 12s. The UK's self- and co-regulatory system has been in place for over 50 years and is the international gold standard.'*(3)

We are concerned that this skews the narrative and denies the problem at hand. We do not agree that current rules are enough to protect children from harmful exposure to HFSS advertising online.

1. Food and Drink Industry Letter to Boris Johnson. Twitter. (November 22<sup>nd</sup> 2020)  
<https://twitter.com/FDFCorpAffairs/status/1330563884135145475>
2. IAB UK (2020) Industry responds to launch of Government's HFSS consultation  
<https://www.iabuk.com/news-article/industry-responds-launch-governments-hfss-consultation>
3. Advertising Association (2018) 10 Key facts about advertising in the UK  
<https://www.adassoc.org.uk/our-work/10-key-facts-about-hfss-advertising-in-the-uk-2/>

*5. Do you agree that for the purpose of a total online advertising restriction for HFSS products, the term 'advertiser' should be defined as a natural or legal person, or organisation that advertises a product or service?*

**Yes/No/I don't know**

*Please explain your answer and provide relevant evidence*

Yes; however, it is vital that organisations who sell food on behalf of brand owners, for example Just Eat, Deliveroo and Uber Eats are covered by this restriction, as well as smaller retailers who sell branded HFSS food products as part of hampers or gifts, and recipe boxes can form partnerships with manufacturers of HFSS products. It is important that the definition creates a level playing field and helps prevent displacement of advertising to third party organisations.

*6. Do you agree that for the purpose of appropriate measures, the term "online service providers" should include all internet services that supply services or tools which allow, enable or facilitate the dissemination of advertising content?*

**Yes/No/I don't know**

*Please explain your answer and provide relevant evidence*

*7. Our proposed exemption for factual claims about products and services would include content on an advertiser's social media. Do you agree with this approach?*

**Yes/No/I don't know**

*Please explain your answer and provide relevant evidence*

Companies have significant following on social media, and factual claims could reasonably include everything from public polling data, to awards, to health and nutrition claims. Companies also use their channels for virtue-signalling posts and short videos. For example, PepsiCo recently posted a video detailing how they are helping their customers to eat a healthy balanced diet, while continuing to sell HFSS products (1).

Our concerns include:

- Many claims that are 'factual' are also highly influential marketing techniques. For example, factual claims about products and services could cover anything from companies using public polling data highlighting that consumers prefer their product, to companies extensively posting content on social media and other platforms to say they've won an award for their HFSS products.
- An exemption for factual content is already in place for other regulated industries, meaning that content marketers are experienced at pushing the boundaries to create 'factual' content that has a promotional effect. This raises significant concerns for us.
- Larger companies have existing accounts with large numbers of followers generated through online advertising and other paid-for initiatives. They will not lose these and will therefore be able to continue directing content towards them.

As outlined in our response to question 2, the feasibility of defining 'factual' content raises concern. It would also be difficult for a lay person to know what is and is not a factual claim, and for consumers/consumer organisations to monitor and report breaches of this exemption. There is the potential for posts to be widely shared, prior to being challenged. If Government proceeds with this exemption, it is vital that a comprehensive definition of 'factual content' is legally set and this is not left to the regulator to issue guidance or reactively judge on a reactive case by case basis. HFSS brands may invest in producing engaging, shareable 'factual' content for their own social media and marketing techniques would become focused on encouraging users to follow them on social media to maximize their 'owned' audience. As we know, brands have no reliable way to know the age of their followers, therefore, this presents challenges for protecting children from HFSS advertising.

1. PepsiCo UK News (2020). Twitter

[https://twitter.com/pepsico\\_uk/status/1331937943091617792](https://twitter.com/pepsico_uk/status/1331937943091617792)

*8. We propose that any advertisers which sell or promote an identifiable HFSS product or which operate a brand considered by the regulator to be synonymous with HFSS products should be required to set controls which ensure that their posts regarding HFSS products can only be found by users actively seeking them on the advertisers own social media page. This could be achieved, for example, by ensuring that the privacy settings on their social media channels are set so that their content appears on that page only. Do you think this would successfully limit the number of children who view this content?*

Yes/**No**/I don't know

*Please explain your answer and provide relevant evidence*

We have concerns about the ability of regulators to effectively define brands as 'synonymous with HFSS products', as there is currently no standard definition, and the Advertising Standards Authority makes decisions on a case-by-case basis (1). The size of the UK online advertising market makes this decision-making process unworkable. The

definition of 'brands synonymous with HFSS' must be independently developed by experts, not left to the regulator.

Different platforms have different approaches to privacy settings – for example, Instagram profiles can be set to private and content cannot be seen or shared by others unless they follow that account, whereas on Facebook, if content is shared by the follower of a page, it can potentially be viewed by friends of the follower. Additionally, due to the algorithms used by social media platforms, if a social media user follows an HFSS food profile (e.g. a fast food company) they will not only see the majority of content created by that profile, but the media platform will identify them as a user with an affinity for fast food and serve them related content. This is particularly concerning as it means that if a child has liked or engaged with HFSS related content once, they could continue to be bombarded with other HFSS content. This must be addressed in the final restrictions.

1. CAP. Identifying brand advertising that has the effect of promoting an HFSS product. Advertising Guidance <https://www.asa.org.uk/asset/6B42B9F3-96EC-4A66-A9B50F0E21D845BF/>

*9. In your sector or from your perspective, would a total restriction of online HFSS advertising confer a competitive advantage on any particular operator or segment of the online advertising environment?*

Yes/**No**/I don't know

*Please explain your answer and provide relevant evidence*

Provided the definition of what is and is not in scope is comprehensive, no operator or segment of the online advertising environment is likely to have a competitive advantage. The online environment is a fast-moving, innovative space and so it is important that a regular review process is built into the regulations so the scope can be monitored and emerging loopholes closed.

*10. If answered yes, are there steps that could be taken when regulating an online restriction to reduce the risk of competitive distortions arising?*

Yes/No/I don't know

*Please explain your answer and provide relevant evidence*

*11. We are proposing that broadcast video on demand (BVOD) is subject to a watershed restriction as Project Dovetail will mean they have BARB equivalent data. Do you know of other providers of online audience measurement who are able to provide the same level of publicly available assurance with regard to audience measurement?*

Yes/**No**/I don't know

*Please explain your answer and provide relevant evidence*

We are concerned that this consultation does not afford the opportunity to review and comment on Government plans to restrict HFSS advertising on BvOD platforms. Broadcast video on demand is a significant source of exposure for children and must be subject to tight

restrictions. If BVoD is subject to a 9pm watershed on HFSS advertising this should be applied to two ways:

- To programmes that were originally broadcast on live TV between 5.30am-9pm regardless of the time they are being watched on BvOD
- To all content viewed on BvOD between the hours of 5.30-9pm even if it was previously shown post 9pm on live TV.

Consideration needs to be given to how BVOD would be regulated. Due to advertising being dynamically served on this platform, it will be significantly more challenging to identify issues of non-compliance. From the detail provided in this consultation, if streaming platforms such as Netflix and Amazon Prime introduced advertising, it is unclear who would be responsible for monitoring this.

*12. If answered yes, do you think that platforms or advertisers using those forms of audience measurement should be subject to a similar approach as BVoD?*

*Yes/No/I don't know*

### **Enforcement and liability**

*13. What sanctions or powers will help enforce any breaches of the restriction or of the appropriate measures requirements by those in scope of this provision?*

*Please explain your answer and provide relevant evidence*

The Scottish Obesity Alliance supports an approach that includes the following principles:

- A governance mechanism to provide the necessary scrutiny of compliance to these restrictions is vital. Currently, ASA is reactive to complaints rather than proactively protecting the public, partly due to a lack of resource. Monitoring and evaluation should ideally be done proactively and transparently.
- Full details on all complaints, investigations and resolutions should be publicly available.
- Fines for repeated non-compliance. For example, Mondelez, who ASA have repeatedly engaged with to 'informally resolve' likely breaches, has not resulted in changes to their advertising practices. To prevent significant non-compliance, financial penalties are needed as a meaningful deterrent.

*14. Should the statutory "backstop" regulator for HFSS marketing material be:*

*a) a new public body*

***b) an existing public body***

*c) I don't know*

*Please explain your answer and provide relevant evidence.*

To avoid any further delay in implementation, in the short term, we believe that OfCom is best placed to act as a backstop regulator. However, longer term a new independent authority is needed, reporting directly to Parliament with cross-party buy-in and no political

or industry interference. All health policies should ultimately be purpose-driven, and this new authority should be able to govern based on agreed, purpose-driven values.

*15. If answered b, which body or bodies should it be?*

*Please explain your answer and provide relevant evidence*

Ofcom may be best equipped to take on this role in the short-term, to avoid delay in implementation. Ofcom has existing experience as co-regulator of television advertising, and are already required to provide annual reports to DCMS which are laid before Parliament. This process could be enhanced, if appointed, to provide a mechanism to report transparent information on number of complaints, investigations and resolutions.

*16. Do you agree that the ASA should be responsible for the day-to-day regulation of a total online HFSS advertising restriction?*

Yes/**No**/I don't know

*Please explain your answer and provide relevant evidence*

We have serious concerns about ASAs current methods of working and the potential for these to be improved once the proposed restrictions come into play.

Our concerns include:

- The ASA rarely fully investigates HFSS advertising complaints, choosing instead to 'informally resolve' them.
- There is no official record detailing the nature of the complaint on the ASA website, which means the advertising practices of brand owners is not open to independent scrutiny from stakeholders. This creates a false impression of the level of compliance with the CAP code and is used by lobbyists in the food and advertising industries to argue against the need for stronger restrictions.
- There is no public 'naming and shaming' for the brand owners breaching the code, which removes the incentive to adhere to the rules. This results in the same companies repeatedly breaking the rules with no sanctions.
- Some companies do not recognise ASA's role and refuse to comply with them, as they perceive them to have very little power or influence. However, if restrictions were mandatory and penalties were in place for non-compliance, this could potentially enable them to be more effective in their role.

In the long-term we would like to see a comprehensive new approach to regulation of all types of harmful marketing. If ASA is responsible for the day-to-day regulation, we consider it vital key definitions are clearly laid out in the legislation, so judgement is not left to the ASA. These include (but are not limited to), the following:

- What constitutes a factual claim
- What constitutes a communication with the purpose of fulfilling a transaction
- Defining a brand as synonymous with HFSS

- Repeated breach
- Severe breach

In the long-term, the Scottish Obesity Alliance would like to see a comprehensive new approach to regulation of all types of harmful marketing. However, we would not want the need to set up a new body to act as a barrier to bringing in the restrictions by the end of 2022 as per the Government's commitment.

*17. Do you agree with our proposal that advertisers are liable for compliance with a total online HFSS advertising restriction.*

**Yes/No/I don't know**

*Please explain your answer and provide relevant evidence*

While we agree that advertisers should be liable for compliance we believe that instigators should also bear responsibility, as should any actor who displays the advertising on their forum/format, where they have a reasonable opportunity to determine or vet such advertising (as suggested within the consultation document).

*18. Do you consider that online service providers should be prohibited from running advertising that breaches the restriction or should be subject to a requirement to apply appropriate measures?*

**a) Prohibited**

*b) Subject to appropriate measures*

*c) Neither*

*d) I don't know*

*Please explain your answer and provide relevant evidence*

Prohibited is clear and easily understood by all; 'subject to appropriate measures' is open to interpretation, which paves the way for loopholes.

*19. If answered b, please expand on what you consider these measures should be.*

*Please explain your answer and provide relevant evidence*

*20. Do you consider that the sanctions available (voluntary cooperation and civil fines in instances of repeated or severe breaches) are sufficient to apply and enforce compliance with a total online HFSS advertising restriction?*

**Yes/No/I don't know**

*Please explain your answer and provide relevant evidence*

We would like detailed definitions of what constitutes a repeated and severe breach to be laid out in the legislation, so this is not left to the regulator's judgement. We would also like to see detailed information on all breaches made publically available going forward.

*21. Do you consider that the imposition of civil fines by the statutory regulator is sufficient to enforce compliance with the appropriate measures requirements?*

**Yes/No/I don't know**

*Please explain your answer and provide relevant evidence*

The level of civil fines should be laid out in the legislation so that this is not left to the regulator's judgement. Fines should be proportionate to the size of the business to act as a deterrent to larger companies.

Alongside fines for non-compliance, we believe that the public shaming of those that breach the rules can be an effective deterrent for larger companies, who may see infrequent fines as a general business cost. This is meant to be the approach of ASA but it is currently proving ineffective due to its limited scale. Therefore, we strongly believe there should be a public record of offences and offenders to discredit those who repeatedly offend if this becomes an issue, alongside a wider campaign to publicly highlight those that routinely break the rules online.

*22. Would a total restriction on HFSS advertising online have impacts specifically for start-ups and/or SMEs?*

Yes/No/**I don't know**

*Please explain your answer and provide relevant evidence*

*23. What, if any, advice or support could the regulator provide to help businesses, particularly start-ups and SMEs, comply with the regulatory framework?*

*Please explain your answer and provide relevant evidence*

The Government should provide a tailored package of support for SMEs to support compliance, similar to the package that was offered by TfL upon the introduction of their restrictions. This support would be necessary in many cases to give companies a level playing field. Government should also ensure that the definition of HFSS is as clear as possible.

*24. We note the challenges of applying statutory regulation to overseas persons. It is our intention to restrict the HFSS adverts seen by children in the UK. From your sector or from your perspective do you think any methods could be used to apply the restriction to non-UK online marketing communications served to children in the UK?*

Yes/No/**I don't know**

*Please explain your answer and provide relevant evidence*

We think it is extremely likely that brand owners with a global presence and social media sites registered outside of the UK, will still be able to use their global platforms to target UK children. We would like to see the regulation include a requirement for UK brand teams to ensure global operations are not proactively targeting UK audiences.

*25. Do you see any particular difficulties with extending the scope to non-UK online marketing communications as well as UK communications?*

Yes/No/**I don't know**

*Please explain your answer and provide relevant evidence*

26. Do you see any difficulties with the proposed approach in terms of enforcement against non UK based online marketing communications as opposed to UK based ones?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

27. Do you think these restrictions could disproportionately affect UK companies?

Yes/No/I don't know

Please explain your answer and provide relevant evidence

### **Public sector equality duty**

28. Do you think that a total restriction on HFSS advertising 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 don't know

Please explain your answer and provide relevant evidence. Please state which protected characteristic/s your answer relates to.

The United Nations Convention on the Rights of the Child came into force in the UK in 1992, recognising that children need special protections, and that adults and governments must work to ensure these. Restrictions on HFSS marketing will have a significant positive impact on child health. Children from lower socio-economic backgrounds are more likely to have overweight or obesity, with P1 pupils in Scotland (1) and reception and year 6 pupils in England (2) living in the most deprived areas being twice as likely to have obesity as their peers living in the least deprived areas. Marketing influences children's food choice and consumption, altering their food preference. HFSS marketing is often popular with children, leading them to 'pester' parents to buy the advertised unhealthy products (3-6). It has been found that marketing influences teens from the most deprived communities more, where they are 40% more likely to remember junk food advertisements every day compared to teenagers from less deprived communities (7).

1. ISD Scotland (2019) Body Mass Index of Primary 1 Children in Scotland School Year 2018/19 <https://www.isdscotland.org/Health-Topics/Child-Health/Publications/2019-12-10/2019-12-10-P1-BMI-Statistics-Publication-Report.pdf>
2. NHS Digital (2020) National Child Measurement Programme, England 2019/20 School Year <https://digital.nhs.uk/data-and-information/publications/statistical/national-child-measurement-programme/2019-20-school-year>
3. Boyland E, Nolan S, Kelly B (2016). Advertising as a cue to consume: a systematic review and meta-analysis of the effects of acute exposure to unhealthy food and nonalcoholic beverage advertising on intake in children and adults Am J Clin Nutr.
4. Hastings, G. (2006) The extent, nature and effects of food promotion to children: a review of the evidence. WHO 16. 11. McDermott L et al. (2006))

5. WHO (2008) The extent, nature and effects of food promotion to children : a review of the evidence to December 2008  
[https://www.who.int/dietphysicalactivity/publications/marketing\\_evidence\\_2009/en/](https://www.who.int/dietphysicalactivity/publications/marketing_evidence_2009/en/)
6. Cairns, G. et al (2013) Systematic reviews of the evidence on the nature, extent and effects of food marketing to children. A retrospective summary  
<https://www.sciencedirect.com/science/article/pii/S0195666312001511>
7. Cancer Research UK (2018). A Prime Time for Action.  
[https://www.cancerresearchuk.org/sites/default/files/executive\\_summary\\_-\\_a\\_prime\\_time\\_for\\_action\\_.pdf](https://www.cancerresearchuk.org/sites/default/files/executive_summary_-_a_prime_time_for_action_.pdf)

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

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

Yes/**No**/I don't know

*Please explain which aims it would help achieve and how*

*Could the proposals be changed so that they are more effective? Please explain what changes would be needed*

### **Socio-economic impact**

30. Do you think that the proposals in this consultation could impact on people from more deprived backgrounds?

**Yes**/No/I don't know

*Please explain your answer and provide relevant evidence*

As outlined above, children living in areas of higher deprivation are much more likely to have overweight or obesity than children living in the areas with least deprivation. This is also the case with adults in Scotland (1). Dental decay is also strongly correlated with socio-economic deprivation, for both adults and children (2, 3). Measures to improve child health through restricting advertising are therefore likely to more positively impact the health of those living in more deprived areas.

- Recent research from Cancer Research UK found that teens from the most deprived communities were 40% more likely to remember junk food advertisements every day compared to teens from better-off families (4). This, combined with their already recognised greater risk of unhealthy weight outcomes suggest that they would potentially have the most to gain from regulation designed to reduce junk food advert exposure.

- An Australian modelling study (5) which sought to estimate the cost effectiveness of legislation to restrict HFSS TV advertising before 9.30pm, and examine the health benefits and healthcare costs savings by socio-economic status (SES) showed that legislation to restrict HFSS TV advertising is likely to be cost-effective, with greater health benefits and healthcare cost-savings for children (aged 5-15) in low SES groups.
- Children from more deprived backgrounds suffer greater extent and severity of preventable tooth decay, with consequences such as missed school, difficulty eating, pain, sleeplessness and increased disruption to family life, including time off work for parents.

In combination with measures such as the Soft Drinks Industry Levy and restrictions on TV advertising and promotions, the total online restriction of HFSS advertising can drive a shift towards healthier choices and a resulting reduction in health inequalities.

1. Scottish Government (2020) Scottish Health Survey 2019 - volume 1: main report <https://www.gov.scot/publications/scottish-health-survey-2019-volume-1-main-report/>
2. <https://digital.nhs.uk/data-and-information/publications/statistical/children-s-dental-health-survey/child-dental-health-survey-2013-england-wales-and-northern-ireland>
3. <https://digital.nhs.uk/data-and-information/publications/statistical/adult-dental-health-survey/adult-dental-health-survey-2009-summary-report-and-thematic-series>
4. Cancer Research UK (2018). A Prime Time for Action. [https://www.cancerresearchuk.org/sites/default/files/executive\\_summary\\_-\\_a\\_prime\\_time\\_for\\_action\\_.pdf](https://www.cancerresearchuk.org/sites/default/files/executive_summary_-_a_prime_time_for_action_.pdf)
5. Brown V, et al. The Potential Cost-Effectiveness and Equity Impacts of Restricting Television Advertising of Unhealthy Food and Beverages to Australian Children. *Nutrients* 2018, 10(5), 622; <https://doi.org/10.3390/nu10050622>

#### **Annex B: evidence note consultation questions**

*31. Do the calculations in the evidence note reflect a fair assessment of the transition costs that your organisation would face?*

*Yes/No/I don't know*

*Please explain your answer and provide relevant evidence*

*32. Is the time allocated for businesses to understand the regulations a fair assessment?*

*Yes/No/I don't know*

*Please explain your answer and provide relevant evidence*

*33. Are there any ongoing costs that your organisation would face that are not fairly reflected in the evidence note?*

*Yes/No/I don't know*

*Please explain your answer and provide relevant evidence*

*34. Is the assessment on the number of online impressions a fair assessment?*

*Yes/No/I don't know*

*Please explain your answer and provide relevant evidence*

*35. It is estimated that a significant proportion of HFSS advertising online will be displaced to other forms of media. Do you think the level of displacement is correct?*

*Yes/No/I don't know*

*Please explain your answer and provide relevant evidence*

*36. It is assumed that the level of displacement to other forms of media would be the same under the options outlined in the evidence note. Would you agree with this approach?*

*Yes/No/I don't know*

*Please explain your answer and provide relevant evidence*

*37. Do you have any evidence on how competition may vary between the options in the evidence note? This can be any form of competition, for example competition between HFSS brands or competition between other forms of advertising.*

*Please explain your answer and provide relevant evidence*

*38. Do you have any additional evidence or data that would inform:*

*a) our understanding of children's exposure to online adverts?*

*b) how different types of online advert (for example static display and video adverts) can have different effects on children's calorie consumption?*

*c) the estimates for additional calorie consumption caused by HFSS product advertising online?*

*d) the long-term impact of HFSS advertising exposure during childhood (for example on food behaviours and preferences later in life)?*

*e) the health benefits of either option in the evidence note?*

*f) how consumer spending habits will change as a result of these restrictions?*

*g) how advertisers might adapt their marketing strategies in response to further restrictions in HFSS advertising?*

*h) the impacts on the price of advertising slots, and how this might vary under both options?*

*Please provide the relevant evidence or data*

Our members who support this response include:

Action on Sugar  
Association for the Study of Obesity, Scotland Network  
British Dental Association Scotland  
British Dietetic Association, Scotland Board  
British Medical Association Scotland  
Cancer Research UK  
Chest Heart Stroke Scotland  
Children in Scotland  
Children's Health Scotland  
Diabetes Scotland  
Glasgow Centre for Population Health  
Heads of Planning, Scotland  
Improvement Service  
Obesity Action Scotland  
Paths for All  
Public Health Scotland  
Royal College of Anaesthetists  
Royal College of Nursing  
Royal College of Paediatrics and Child Health  
Royal College of Physicians Edinburgh  
Royal College of Physicians and Surgeons of Glasgow  
Royal College of Psychiatrists  
MRC/CSO Social and Public Health Sciences Unit, University of Glasgow  
The Breastfeeding Network Scotland  
The British Psychological Society  
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