

# CAP Consultation: food and soft drink advertising to children

Introducing new restrictions on the advertising of food and soft drink products to children

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## Chairman's foreword

**The Committee of Advertising Practice (CAP) is at the heart of the UK's respected and much-emulated self-regulatory system, ensuring that all advertisers behave responsibly for the benefit of society and industry alike. For over half a century, CAP has been responsible for rules that commit advertisers to avoid causing people harm or detriment; protecting children is central to what we do.**

Too many children in the UK are growing up overweight or even obese, potentially damaging their health in later life and imposing a high cost on society. This is a serious problem, which poses a challenge to parents, politicians, public health professionals and regulatory bodies. All of us are looking for solutions.

For our part, CAP has been examining the evidence and what the experts have to say. This consultation pulls together our thinking on what further role advertising self-regulation can reasonably play in helping tackle this deep-seated public health challenge.

In the case of food and soft drink advertising and its effect on children's diets there is some evidence that advertising can influence children's short-term food preferences, but not enough to show material effects on longer-term behaviour and diet. Advertising is just one small factor in a very complex equation.

However, this does not mean we take a 'do nothing' approach. The advertising industry recognises the need to play its part responding to the public health challenge and acknowledging the background of societal concern. CAP itself considers that it is a legitimate policy aim to place appropriate restrictions on advertising to help protect the health and well-being of children and not undermine progress towards improving the nation's diet.

This consultation is intended to enable us to design policy that will proportionately address a societal issue, on the basis of evidence from the widest possible range of relevant sources. Responsible advertising benefits everyone; this consultation and CAP's resulting policy will, I hope, demonstrate that our industry is always prepared to act on its responsibilities.

Finally, I would like to thank those in government, the public health community and industry who have contributed so usefully to the development of this consultation document and CAP's approach to this challenging and important issue.

**James Best**

Chairman  
Committee of Advertising Practice  
May 2016

## Executive summary

**The Committee of Advertising Practice (CAP) is consulting on proposals for further restrictions on the advertising to children of food and soft drink products in non-broadcast media.**

High rates of childhood obesity in the UK are widely considered to be an urgent challenge to children's quality of life, to health services and to the economy. There is increasing concern about how childhood obesity relates to obesity and ill-health in later life. Governments at the UK and devolved levels are committed to strategies for tackling obesity and achieving long-term change. Europe's largest food manufacturers have also committed to change, including a voluntary EU-wide pledge to restrict their advertising in young children's media.

In 2015, the Advertising Association, which brings together all elements of the UK advertising system, and the Incorporated Society of British Advertisers, which represents the UK's largest advertisers, invited CAP to take stock of changes in the political and social context as well as the voluntary initiatives already underway within the food and soft drink industry to change advertising behaviour.

Against this background, CAP wants to ensure its rules continue to respond appropriately to the evidence of advertising's influence on children's food preferences and diet. It has carefully considered that evidence and completed an extensive process of pre-consultation with UK and devolved government, the food marketing industry, the public health community and civil society organisations.

CAP now proposes to:

- **Introduce a new rule** to the UK Code of Non-broadcast Advertising, Direct and Promotional Marketing (the CAP Code) to limit where advertising for food and soft drink products high in fat, salt or sugar (HFSS products) can be placed in all non-broadcast media, including traditional and online media.
- **Explore through consultation** whether the new rule should prohibit HFSS product advertising in media targeted at or of particular appeal to children under 12 or under 16.
- **Apply the existing rules** prohibiting the use of promotions and licensed characters and celebrities popular with children to HFSS product advertising only, allowing more creative ways for healthier foods to be advertised to children.

A decision to implement these new restrictions would reduce children's exposure to HFSS product advertising and reduce opportunities for advertisers to promote HFSS products to children, including online.

CAP considers its proposals strike the right balance, having primary regard to the protection of children and due consideration for the rights of businesses to advertise their products responsibly and the rights of consumers to receive responsible advertising for products that may be of interest to them.

CAP considers the available evidence continues to suggest that advertising has a relatively small effect on children's immediate food preferences. TV is acknowledged to be the most impactful medium; here the direct effect of children's exposure to TV advertising is said to account for some 2% of the variation in food preferences of younger children (aged 2-11). There is no robust evidence that CAP is aware of to suggest that children's exposure to non-broadcast advertising has a similar level of influence.

However, CAP cannot ignore the increasingly acute public policy imperative for more decisive action to head off the public health and economic impacts associated with obesity, a multifactorial issue which demands action from a range of different stakeholders. It also cannot ignore the significant changes in the media landscape over the past decade – the online world has changed the way children interact with the commercial world – and the consensus among stakeholders from across the spectrum on the need for change in advertising regulation.

CAP considers that even a relatively small positive impact from new restrictions could result in a meaningful contribution. Immediately and at the very least, a change in children's media environments brought about by further advertising restrictions could reasonably be expected to contribute by not hindering wider efforts to increase positive messaging to children over their dietary choices and by limiting advertisers' ability to influence children's preferences for and consumption of HFSS products.

Anyone may respond to this consultation. CAP particularly welcomes responses from individuals and organisations who have an interest or expertise in the policy issues involved.

The following chapters set out the relevant background information on CAP's decision to consult, the present rules, the policy issue and the evidence base. Respondents are strongly urged to consider the [Case for regulatory change and CAP policy recommendations](#) chapter for CAP's detailed view on the proposals.

Full summaries of CAP's policy recommendations and the consultation questions are included in the pages that follow the Executive Summary.

The consultation will close at **5pm on Friday 22 July 2016**. For more information on how to respond to the consultation and next steps, see [Annex 9](#).

## In brief: policy recommendations

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CAP will introduce a new rule **prohibiting the placement of HFSS product advertising** in media targeted at or likely to appeal particularly to children.

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CAP will **explore through consultation** whether the new rule should prohibit HFSS advertising in media targeted at or of particular appeal to children under 12 or under 16.

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The new rule will:

- Apply to advertising in media where **more than 25% of the audience** are understood to be under 12 or, subject to the outcome of the consultation, under 16;
- **Prohibit brand advertising** that has the effect of promoting an HFSS product, mirroring present guidance used for TV advertising;
- Cover advertising in **all non-broadcast media** within the remit of the CAP Code, including online advertising; and
- Use the **Department of Health nutrient profiling model** – used for TV advertising – to identify HFSS products.

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CAP will **amend existing rules on the creative content** of food and soft drink advertising – prohibiting licensed characters, celebrities popular with children and promotions directed at children aged 11 and younger – to apply only to HFSS product advertising, allowing more creative ways **for healthier foods to be advertised** to children.

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## In brief: consultation questions

Restrictions on HFSS product advertising	1	<p>(a) Should the CAP Code be update to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?</p> <p>(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?</p>
Selecting a nutrient profiling model	2	Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?
Existing prohibitions on the use of promotions and licensed characters and celebrities	3	There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?
Introducing media placement restrictions	4	<p>(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?</p> <p>(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:</p> <ul style="list-style-type: none"> <li>i) aged 11 or younger?</li> <li>ii) aged 15 or younger?</li> </ul>
Defining the audience	5	<p>It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a “particular appeal” test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media.</p> <p>Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?</p>
Application to different media	6	Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

Please see [section 51](#) for the full consultation questions and guidance to respondents.

## Introduction to CAP and the self-regulatory system

### 1. The Committee of Advertising Practice

- 1.1. CAP is the self-regulatory body that authors the UK Code of Non-broadcast Advertising, Direct and Promotional Marketing (the [CAP Code](#)). Compliance with the Code is mandatory for advertising in the UK or other advertising that targets UK consumers. The Code is enforced independently by the Advertising Standards Authority (ASA).
- 1.2. [CAP members](#) include organisations that represent advertising, direct and promotional marketing and media businesses. By practising self-regulation, the marketing community ensures the integrity of the wider industry. Through their membership of CAP organisations, or through contractual agreements with media publishers and other carriers, advertisers are committed to complying with the CAP Code so that marketing communications are legal, decent, honest and truthful, and consumer confidence is maintained.
- 1.3. Self-regulation is accepted by the Department for Business, Innovation and Skills (BIS) and the Courts as a first line of control for non-broadcast advertising in providing protections for both consumers and the industry. The value of self-regulation as an alternative to statutory control is also recognised in European law, including the legislation governing misleading advertising (Directive [2005/29/EC](#) concerning unfair business-to-consumer commercial practices in the internal market, the “*Unfair Commercial Practices Directive*”).
- 1.4. Further information about CAP is available at [www.cap.org.uk](http://www.cap.org.uk).

### 2. UK Code of Non-broadcast Advertising, Direct and Promotional Marketing

- 2.1. The CAP Code is the rule book for non-broadcast marketing in the UK. It seeks to protect consumers, while protecting the right of responsible marketers to advertise and ensuring that marketing communications respect the principles of fair competition generally accepted in business.
- 2.2. The Code includes rules covering general requirements, such as those ensuring that advertising does not mislead consumers, and specific technical provisions around issues like pricing and promotions. The other overarching aims are to ensure that advertising is socially responsible and that harmful advertising is prohibited. One of the important ways the Code achieves this is through the inclusion of extensive protections for vulnerable groups; the key group identified is children, defined for the purpose of the Code as persons aged under 16.
- 2.3. In addition, there are sector-specific rules to address particular policy issues, such as those related to age-restricted products like [gambling](#), [alcohol](#) or other sensitive products where there is a potential for harm, such as food and soft drink because of concerns about children’s diet.
- 2.4. The CAP Code includes rules that give effect to legislative provisions. Those rules ensure the Code is relevant and they help marketers to satisfy the Code’s general

requirement to comply with the law. In practice, the ASA's administration of rules that reflect legislation is often sufficiently effective that recourse to statutory regulatory bodies and the Courts is considered undesirable and unnecessary. Consumer protection legislation goes far wider and deeper than could be reflected in a self-regulatory code of practice but compliance with the Code goes a long way to ensuring compliance with the law in sectors or on issues it covers. In relation to food advertising, specifically, the Code mirrors provisions relevant to advertising from [Regulation \(EC\) No 1924/2006 on nutrition and health claims made on foods](#).

- 2.5. CAP and the ASA work very closely with statutory bodies that have legal responsibilities for advertising to ensure that the Codes and their enforcement are in line with relevant legislation. Ultimately, the ASA and CAP are both subject to judicial review.
- 2.6. CAP also works with the [Broadcast Committee of Advertising Practice](#) (BCAP), the body that authors the UK Code of Broadcast Advertising (the [BCAP Code](#)), which regulates advertising on TV and radio. BCAP is a co-regulatory body established under a contracting-out arrangement with the [Office of Communications](#) (Ofcom) under provisions of the Communications Act 2003. Although institutionally separate, the Committees often address the same policy issues from the perspective of their respective Codes. They seek to work together, where appropriate, to ensure consistent protections across all UK advertising media.

### 3. Remit of the CAP Code

3.1. The [CAP Code covers](#) a significant majority of business-to-consumer and business-to-business marketing practices. A key underlying principle of the Code is media neutrality: the rules apply equally across all non-broadcast media.

3.2. Non-broadcast media covered by the Code include:

- advertisements in newspapers, magazines, brochures, leaflets, circulars, mailings, e-mails, text transmissions (including SMS and MMS), fax transmissions, catalogues, follow-up literature and other electronic or printed material;
- posters and other promotional media in public places, including moving images;
- cinema, video, DVD and Blu-ray advertisements;
- marketing databases containing consumers' personal information;
- promotional marketing in non-broadcast media; and
- advertorials.

3.3. The Code also applies to online marketing in paid for space, including:

- online advertisements in paid-for space (including banner or pop-up advertisements and online video advertisements);
- paid-for search listings;
- preferential listings on price comparison sites;
- viral advertisements;
- in-game advertisements;

- commercial classified advertisements;
- advergames that feature in display advertisements;
- advertisements transmitted by Bluetooth;
- advertisements distributed through web widgets; and
- online promotional marketing and prize promotions.

3.4. Since March 2011, the CAP Code's remit has [also included](#) online marketing communications in non-paid for space. The Code covers: "Advertisements and other marketing communications by or from companies, organisations or sole traders on their own websites, or in other non-paid-for space online under their control, that are directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consist of direct solicitations of donations as part of their own fund-raising activities."

3.5. The CAP Code does not cover:

- broadcast advertisements (covered by the BCAP Code);
- press releases and other public relations material;
- editorial content; for example, of the media or of books and regular competitions such as crosswords;
- packages, wrappers, labels, tickets, timetables and price lists unless they advertise another product or a sales promotion or are visible in a marketing communication;
- point-of-sale displays, except those covered by the sales promotion rules or the rolling paper and filter rules;
- website content characterised as editorial content, news or public relations material, corporate reports and natural listings on a search engine or a price comparison site; and
- sponsorship; marketing communications that refer to sponsorship are, however, covered by the Code.

## 4. [Evidence-based policy](#)

4.1. CAP is committed to an evidence-based approach to policy-making and has [published guidance](#) on the principles governing how it considers evidence as part of the process of assessing cases for regulatory change. Respondents are encouraged to have regard to the evidence-based policy guidance when considering their responses to this consultation.

## 5. [The Advertising Standards Authority](#)

5.1. The ASA is the independent body responsible for administering the CAP and BCAP Codes and ensuring that the self-regulatory system works in the public interest. In 2014, it [published](#) a new five year strategy dedicated to the ambition of making all UK advertising responsible.

5.2. The ASA receives and investigates complaints from the public and industry. Decisions on investigated complaints are taken by the [independent ASA Council](#). An Independent Review process exists for parties who wish to challenge a ruling

when they believe there are substantial flaws in the final decision and/or in the process by which the final decision has been reached.

- 5.3. If the ASA Council upholds a complaint, the marketing communication must be withdrawn or amended. CAP conducts compliance work, pro-active monitoring and research to enforce the ASA Council's decisions.
- 5.4. Information about the ASA, including the [complaint-handling](#) and [investigations procedures](#) and the [Independent Review process](#), is available on its website, [www.asa.org.uk](http://www.asa.org.uk).

## 6. Sanctions and enforcement

- 6.1. Advertisements that are judged not to comply with the Code must be withdrawn or amended. The [principal sanction available](#) to the ASA is the unwelcome publicity that could result from the rulings it publishes weekly. CAP helps to enforce ASA rulings through its members, for instance, issuing 'Ad Alerts' to media owners warning them of non-compliant advertisers thereby denying access to media space.
- 6.2. CAP also has a [number of sanctions available](#) to it when dealing with rulings concerning non-compliant marketing communications on marketers' own websites; for example, a marketer's name and the fact of their non-compliance may be featured on a dedicated section of the ASA website and, if necessary, in an ASA advertisement appearing on an appropriate page of an internet search website.

## 7. Good regulation

- 7.1. CAP and the ASA have a strong commitment to transparent, proportionate and evidence-based regulation, both in the authorship of the Code and its enforcement. [Our Commitment to Good Regulation](#) sets out six public commitments modelled on the BIS Better Regulation Delivery Office, [Regulators' Code](#). The commitments are to:
  - keep regulatory burdens to a minimum;
  - engage with you;
  - be targeted;
  - share information;
  - provide advice and training support; and
  - be transparent.
- 7.2. Like the BIS Regulators' Code, the commitments do not detract from the core purpose of ensuring that all UK advertising is responsible. It remains important for CAP and the ASA to continue to strike the right balance between those regulated by the system and those protected by the system.

## 8. Funding

- 8.1. The entire self-regulatory system is funded by a levy on the cost of advertising space, administered by the Advertising Standards Board of Finance (Asbof) and

the Broadcast Advertising Standards Board of Finance (Basbof). Both finance boards operate independently of and at arm's length from the ASA to ensure there is no question of funding affecting the ASA's decision-making.

8.2. Information about [Asbof](#) and [Basbof](#) is available on their websites.

## Consultation background

### 9. Introduction

- 9.1. This chapter details CAP's policy objectives and sets out the rationale and factors influencing its decision to launch the consultation. It also outlines the consultation scope and summarises the key legal and regulatory constraints to which CAP is subject.

### 10. General policy objectives

- 10.1. CAP's general policy objective is to set standards to ensure that all advertisements are legal, decent, honest and truthful and prepared with a due sense of responsibility to consumers and to society.
- 10.2. CAP aims to maintain an environment in which responsible advertising can flourish. As such, the CAP Code is based on the enduring principles that advertisements should be responsible, should not mislead, harm or offend and should respect the principles of fair competition generally accepted in business. CAP also intends its rules to be easily understood, easily implemented and easily enforced.

### 11. Consultation objectives

- 11.1. CAP is committed to ensuring that the advertising self-regulatory system continues to strike an appropriate balance in regulating advertising for food and soft drink products, taking an approach that:
- has primary regard to the protection of consumers, in general, and children in particular;
  - has due regard to the right of businesses to advertise their products responsibly; and
  - acknowledges the right of consumers to receive responsible advertising for products that may be of interest to them.
- 11.2. The objective of this consultation is to explore the degree to which advertising for food and soft drink products high in fat, salt or sugar (HFSS products) should be further restricted. The central question is whether new rules should be introduced to limit the placement of HFSS product advertising in non-broadcast media.

### 12. CAP's decision to consult on changes to the Code

- 12.1. Firstly, it is important to acknowledge that CAP has long maintained rules that prevent advertising from condoning poor nutritional habits or unhealthy lifestyles in children (see [section 18](#)).
- 12.2. Secondly, since the rules were strengthened, CAP considers that no significant new evidence on non-broadcast advertising's effect on children has emerged, which might present a clearly evidence-driven basis for regulatory change (see [section 19](#)). Advertising is acknowledged to have some effect on immediate food

preferences, but this is relatively small, particularly when compared to factors like parental and peer influences and the decline in physical activity rates.

- 12.3. The relationship between advertising and the harms associated with poor diet and obesity is not straightforwardly understood: there is no linear relationship that could easily be identified and quantified by academic evidence. In the sections that follow in this consultation document, CAP identifies two important factors that justify consultation:
- 12.4. A growing consensus shared by government, public health and industry bodies on the need for renewed action on obesity to address harms caused to individuals and to lessen the wider costs to society and the economy. The public health community has made strong calls for greater restrictions to be placed on food and soft drink products high in fat, salt or sugar. At the same time, at European and global levels, the largest food manufacturers have put in place voluntary initiatives that further restrict food and soft drink advertising to children.
- 12.5. Far reaching changes in children's media habits and evolving advertising techniques brought about by the internet; the growth of the internet as a medium for commercial communication and the rise of a generation of 'digital natives', who have grown up with online environments, have fundamentally changed children's relationship with media and advertising.
- 12.6. These two factors represent a significant change in the nature of the debate and raise fresh questions over the role of advertising self-regulation in helping to ensure that the nature and balance of food and soft drink advertising targeted at children remains responsible. In response, CAP considers it is appropriate to open a public consultation process to address the matter comprehensively and transparently.

### 13. [Scope of this consultation](#)

- 13.1. The purpose of this consultation is to consider whether it is justified for the CAP Code to:
  - a) differentiate advertising for products high in fat salt or sugar (HFSS products) from advertising for non-HFSS products; and
  - b) on the basis of that differentiation:
    - i. to prohibit the placement of HFSS product advertising in non-broadcast media that are targeted at or are likely to appeal particularly to children; and
    - ii. to apply existing prohibitions on the use of promotions (rule 15.14) and celebrities and licensed characters popular with children (rule 15.15) to non-broadcast advertising for HFSS products only.

## 14. Assessing a case for regulatory change: setting expectations

14.1. In assessing whether to impose new restrictions on advertising, CAP must have regard to the following key legal and regulatory considerations when performing its function:

- the right to commercial freedom of expression (for the purposes of this consultation, the right of businesses to advertise);
- the principle that restrictions must be necessary in a democratic society for a legitimate aim, including the protection of health;
- any evidence of harm, or a real potential for harm; and
- the principle that restrictions that CAP might impose must be a proportionate means of achieving a legitimate aim. CAP must consider whether there are less restrictive alternative means of achieving the aim.

## 15. The legal test that CAP must satisfy

15.1. The principal legal consideration for CAP is Article 10 of the [European Convention on Human Rights](#) (ECHR) concerning freedom of expression, which provides that:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

15.2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

15.3. Article 10(1) of the ECHR protects the right to commercial freedom of expression (for the purposes of this consultation, the right of food and soft drink advertisers to advertise their products in non-broadcast media), but to a lesser degree than political, religious or cultural expression.

15.4. Any restriction imposed must be necessary in a democratic society for one of the legitimate aims listed in Article 10(2), including the protection of health or morals, and/or the protection of the reputation or rights of others. For the purposes of this consultation, such aims might encompass playing a contributory role in protecting children from forming poor dietary habits linked with significant, adverse health outcomes such as obesity or tooth decay.

15.5. Any restrictions that CAP might impose must be a proportionate means of achieving a legitimate aim. CAP must have regard to whether there are less restrictive alternative means of achieving the aim. The greater the impact of the restriction – on free speech or lost revenue for example – the greater the need for

robust evidence to justify it. CAP must therefore assess the potential financial and economic impact of any proposed measure, as it might affect advertisers and media owners, against the potential benefit identified.

## 16. Other legal constraints to the consultation scope

16.1. CAP must also have regard to boundaries and limitations imposed by other legislation that affects food and soft drink advertising. A complex framework of specific and general legislation governs certain aspects of the content of advertising, along with related areas such as labelling and the provision of product information. The principal focus is on the presentation of product characteristics and provisions guarding against consumers being misled.

16.2. The most relevant pieces of legislation are:

- [Regulation \(EC\) No 1924/2006](#) *on nutrition and health claims made on foods* (the NHCR) seeks to protect consumers from misleading or false nutrition and health claims. The NHCR harmonises legislation across the European Union by placing controls on the use of nutrition and health claims in the advertising, labelling and presentation of all foods, including drinks and food supplements.
- [Food Information Regulations 2014](#) implement into UK law [Regulation \(EU\) No 1169/2011](#) *on the provision of food information to consumers*. The regulations primarily concern labelling and associated information, but they are relevant to the content of advertising, for instance, in relation to certain composition claims.

## Existing regulation of food and soft drink advertising to children

### 17. Introduction

17.1. This chapter provides an outline of the present CAP Code rules governing non-broadcast food and soft drink advertising to children, along with information on their development and the regulatory framework for their enforcement.

### 18. Advertising of food and soft drink products to children

18.1. The Code already includes strict rules on the creative content of food and soft drink advertising, which applies across all non-broadcast media, including online. There are some limited exceptions such as on promotions on packaging or at point of sale. Food and soft drink advertising targeted at children under 16 must not:

- Condone or encourage poor nutritional habits or an unhealthy lifestyle in children, for instance, by actively encouraging them to eat or drink at or near bedtime or to replace main meals with confectionery or snack foods;
- Disparage good dietary practice;
- Promote consumption of a food purely to obtain a promotional offer; or
- Encourage excessive consumption.

18.2. Additionally, food and soft drink advertising targeted at children under 12 must not include:

- Celebrities and licensed characters popular with children;
- Promotional offers.

The full text of the relevant rules is included in [Annex 2](#).

18.3. These sector-specific rules work alongside CAP's general rules on advertising to children, which include prohibitions on directly exhorting children to buy a product and creative approaches that might encourage "pester power".

### 19. Selected reviews of CAP rules on advertising of food and soft drink

19.1. The rules on advertising food and soft drink products to children have been reviewed in whole or in part on several occasions:

- CAP Code Review: in 2009, the CAP Code was subject to a [full Code Review process](#).
- Technical revisions: European health claims framework. In 2012, the [EU Register of authorised nutrition and health claims](#) came into effect, following a lengthy transitional period, as part of the framework established by [Regulation \(EC\) No 1924/2006 on nutrition and health claims made on foods](#). CAP [made several technical revisions](#) to Section 15 of the CAP Code, including an

amendment to rule 15.17 to bring it into line with the legal requirement upon which the rule is based.

- CAP online food and soft drink advertising review: In 2014, CAP commissioned an independent [literature review](#) to scope out the developing evidence base in relation to food and soft drink advertising in online media responding to concerns around the implications of new media technologies.

In 2015, CAP [published its response](#), concluding that there was no case to consider regulatory change based on the evidence of advertising's effect on children's food preferences or diet. However, it did identify evidence calling into question children's abilities to recognise more integrated online marketing, which has led CAP to initiate work to consider whether new guidance is necessary. Findings of this work, covering marketing for all sectors, are expected to be published later in 2016.

## 20. Enforcement

20.1. Since 2011, the ASA has received 127 complaints about 117 non-broadcast advertisements relating to food and soft drink advertising and children. The vast majority did not raise issues under the Code. During this period, there were 60 cases investigated on a formal or informal basis. Of these cases:

- 29 involved rule 15.11 (condoning or encouraging poor nutritional habits or an unhealthy lifestyle in children); and
- 21 involved rule 15.17 (misleading children's health and nutrition claims).

20.2. Recent examples of formal ASA rulings include:

- [Example A](#) – under rules 15.11 and 15.12;
- [Example B](#) – under rules 15.11 and 15.12;
- [Example C](#) – under rules 15.11 and 15.13; and
- [Example D](#) – under rule 15.17.

In all cases, the advertiser provided an assurance of compliance with the ASA ruling.

## 21. Proactive monitoring of compliance with the rules

21.1. From time to time, the ASA proactively monitors compliance with the Codes. Following the introduction of rules banning the use of promotions and celebrities and licensed characters popular with children in food and soft drink advertising targeted at children aged 11 or younger, the ASA conducted compliance sweeps in [2008](#) and [2009](#). Both sweeps found very high rates of compliance in the advertising surveyed. Follow-up enforcement action was undertaken to ensure the small amount of advertising found to be in breach of the rules was either amended or withdrawn.

- 21.2. More recently, in 2015, the CAP Compliance team carried out a survey of online food and soft drink advertising to children. The survey used data on food and soft drink brands and websites popular with children (aged 6-14) to identify a list of 50 brands. The survey assessed the content of the brands' websites and their marketing in third party space online, such as social media, for compliance against the present CAP rules on food and soft drink advertising to children. In total, the team assessed 680 website pages and 103 discrete marketing communications in social media.
- 21.3. Overall, the survey found extremely high rates of compliance with no obvious breaches of the Code. The survey is published as part of this consultation and is included in [Annex 8](#).

## Policy challenge: childhood diet and obesity

### 22. Introduction

- 22.1. Factors said to influence children's diets are under intense scrutiny. In its recent review, [Sugar Reduction: The evidence for action](#) (2015), Public Health England's (PHE) placed particular emphasis on measures to address these factors, improve children's diet and reduce rates of obesity.
- 22.2. Childhood obesity carries a significant potential for harm in terms of children's wellbeing and health. The links between childhood and obesity in adult life point to a long-term problem in terms of the scale of harm and economic costs associated with a significant proportion of the population being obese. Policy interventions are now being considered across a wide range of different areas in the hope that coordinated action will help to reverse trends and costs that are thought to be unsustainable in the long term.

### 23. Trends in children's weight and diet

- 23.1. The [National Child Measurement Programme](#) and the [Health Survey for England](#) provide detailed information on children's body mass index (BMI) with data going back several years, which allows for trend analysis. Presently, around a third of all children are overweight or obese. The rates have not declined significantly over the past 5 years.
- 23.2. From 2012 figures:
- 13.1% of 4-5 year olds are overweight and 9.5% are obese
  - 14.4% of 10-11 year olds are overweight and 19.1% are obese
  - 16.4% of 11-15 year olds are overweight and 18.7% are obese
- 23.3. Since 2007, there have been small reductions in rates of excess weight and obesity rates for 4-5 year olds, but for 10-11 year olds these rates have increased by between 1.5% and 2%. These statistics are broadly reflected by equivalent data from the devolved nations:
- [Scottish Health Survey Results](#) (2014) found that 16% of children were at risk of obesity and a further 13% at risk of being overweight;
  - [Child Measurement Programme for Wales 2013/2014](#) found that 14.6% of 4-5 year olds were overweight and 11.8% were obese; and
  - [The Health Survey Northern Ireland](#) (2014) found that 21% of children aged 2-15 year were overweight and 7% obese.
- 23.4. The PHE review responded to the findings of the Scientific Advisory Council on Nutrition (SACN) report on [Carbohydrates and Health](#) (2015). SACN made a recommendation that the total daily energy intake from sugars for all ages should be halved to 5%. The recommendation was based on evidence that increased energy intake from sugars increased overall energy intake and could lead to

adverse health effects, such as weight gain, conditions like Type-2 diabetes and dental caries (PHE, 2015: 11 and 15).

- 23.5. PHE's review cited data from the [National Diet and Nutrition Survey](#) showing children consume significantly more sugar than recommended; in younger children 14.7% of energy intake and teenagers 15.6%. The survey found that the main sources of sugar intake were soft drinks, confectionary, fruit juices, biscuits, cakes and cereals. Soft drinks were the largest single source of sugar intake for 11-18s with an average consumption of 336ml/day, accounting for nearly a third of total intake (PHE, 2015: 11-13).

## 24. Health impacts

- 24.1. The impact of obesity in childhood is widely understood to be significant in both the short and longer terms. PHE [considers](#) that "obese children are more likely to be ill, be absent from school due to illness, experience health-related limitations and require more medical care than normal weight children. Overweight and obese children are also more likely to become obese adults and have a higher risk of morbidity, disability and premature mortality in adulthood". In this respect, PHE cited evidence linking child and adolescent obesity to immediate conditions such as Type-2 diabetes, asthma, obstructive sleep apnoea, cardiovascular risk factors, psychosocial and mental health disorders and musculoskeletal problems.
- 24.2. Beyond the immediate impact on children, there is a strong consensus around the long term impact of childhood obesity as an important risk factor in a variety of serious conditions in later life. Furthermore, the National Obesity Observatory (NOO), in [The Economic Burden of Obesity](#) (2010: 1), found that the "consequences of obesity are not limited to the direct impact on health. Overweight and obesity also have adverse social consequences through discrimination, social exclusion and loss of or lower earnings, as well as adverse consequences on the wider economy through, for example, working days lost and increased benefit payments".

## 25. Wider costs to society and the economy

- 25.1. In terms of the estimated total costs of obesity in both children and adults, PHE [estimates](#) an annual cost of in excess of nearly £40bn, including:
- £5.1bn in direct costs to the NHS
  - £13.3m for obesity medication
  - £352m for social care costs
- 25.2. Another £27bn is estimated to be the wider economic cost, owing to indirect costs such as sick days and incapacity benefit. The upward trajectory of these costs is predicted to be significant; by 2034, PHE predicts that 70% of adults will be overweight or obese rising from the present figure of 60%.
- 25.3. The cost implications of obesity are further borne out by data from the devolved nations:

- The [total cost to NHS Scotland](#) of obesity in 2007/8 was in excess of £175 million, approximately 2% of the budget allocated to NHS Boards. These costs relate to obesity alone; using the assumption that the costs per person of being overweight are half the costs per person of being obese could add a further £137 million, giving a total NHS cost of £312 million.
- A [2010 report](#) estimated that obesity cost the NHS in Wales over £73 million; between 1.3% and 1.5% of total healthcare expenditure in Wales.
- A [2014 report](#) on the situation in Northern Ireland found that the cost of overweight and obesity was £369m, including £92m in direct health and social care costs.

25.4. There are inherent limitations in modelling complex costs to individuals, healthcare services and the wider economy, which all have varying degrees of direct and indirect relationship to the incidence of excess weight and obesity. No model can be completely accurate, especially over a period of time where dynamic factors such as the changes in the costs of treatment or the introduction of new drugs and therapies mean assumptions that hold for the present could become less valid over time.

25.5. Nevertheless, CAP notes how estimates of wider costs have changed significantly over the past 20 years. The National Obesity Observatory report also provides a summary of the developing view on economic and other costs (NOO, 2010: 2). In 1998, direct costs (such as treatment) were estimated at £479.3m and indirect costs at £2,149.5m. In 2001, the National Audit Office had estimated direct costs to be in the range of £990-£1,124m and indirect costs in the range of £2,350-£3,724m. As understanding of the dynamics of the issue develops, it is clear that the persistence of high rates of obesity is likely to equate to very significantly higher costs than envisaged over a decade ago.

## Policy responses and perspectives on advertising

### 26. UK Government policy

- 26.1. The latest significant government strategy was published in 2011 by the coalition government. [Healthy Lives, Healthy People](#), included a broad strategy for achieving a sustained reduction in rates of excess weight and obesity. It noted obesity rates had levelled off since the mid-2000s, but voiced concern that the absolute level of obesity was still very high. It noted the consequences of this trend in terms of individual ill-health, healthcare costs and health inequalities. Healthy Lives, Healthy People did not include dedicated calls for action on advertising. It established the [Responsibility Deal](#), a partnership with industry intended to address a broad variety of issues, such as reformulation of products to reduce salt content.
- 26.2. The obesity issue has returned to the top of the agenda in the present parliament with the government in the process of developing a comprehensive Obesity Strategy for England. At the time of writing, this is expected to also address advertising and is expected to be published in summer 2016.
- 26.3. The most significant policy statement by a UK government body in recent years is Public Health England's (PHE) [Sugar Reduction: The evidence for action](#) (2015). The report explored the evidence for broad policy interventions targeting three areas:
- Influencers – food marketing and promotion and price;
  - Food supply – reformulation of products to reduce sugar consumption; and
  - Knowledge, training and local action – training for those influencing others' nutritional habits or knowledge.
- 26.4. PHE acknowledged that no single action could be fully effective and that action had to be taken on a broad level tackling each of these areas. The recommendations included: a tax or levy to increase the price of high sugar products; a programme of reformulation to reduce sugar and portion sizes; *significant reduction in the opportunities to market and advertise high sugar products to children and adults [our emphasis]*; and, advice and training on the importance of sugar reduction to professionals and members of the public (PHE, 2015: 16).

### 27. Devolved Government policies

- 27.1. The devolved nations have all made commitments to address issues related to diet and obesity with a particular focus on children. All the policy statements include calls for action on advertising.
- 27.2. In 2010 the Scottish Government published a strategy, [Preventing Overweight and Obesity in Scotland – A Route Map Towards Healthy Weight](#), that sets out both national and local governments' respective long-term commitment to tackling excess weight and obesity. It included a commitment to explore opportunities to restrict the advertising of foods high in fat, salt or sugar (HFSS) in non-broadcast media.

- 27.3. In Northern Ireland, the strategy, [\*A Fitter Future for All: Framework for Preventing and Addressing Overweight and Obesity in Northern Ireland 2012-2022\*](#), committed the Northern Ireland Executive to action on advertising, including a reduction in exposure to HFSS product advertising.
28. **Other public health perspectives**
- 28.1. Several other stakeholders, chiefly non-governmental organisations (NGOs), have produced policy statements including calls for further restrictions on advertising to address issues related to children’s diet.
- 28.2. Cancer Research UK and the UK Health Forum’s recent report, [\*Tipping the scales: Why preventing obesity makes economic sense\*](#) (2016), called for a new national strategy to combat obesity. It cited a range of evidence and included modelling of the very significant projected costs of obesity to individuals, healthcare services and the economy. The report called for further restrictions on advertising to be included within the strategy.
- 28.3. In 2015, the British Heart Foundation (BHF) [launched a campaign](#) calling on the government to restrict marketing of food and soft drink products to children. Particular concern centred on TV and online advertising. The BHF cited evidence of advertising’s impact on children’s food preferences and amassed 30,000 signatures through a petition supporting the campaign.
- 28.4. From the perspective of medical professionals, the Academy of Royal Medical Colleges, AORMC, published a policy statement on obesity in 2013, [\*Measuring Up: The Medical Profession’s Prescription for the Nation’s Obesity Crisis\*](#) (2013), calling for action to further restrict TV and online advertising.
- 28.5. There are also two relatively recent, in-depth reports on food and soft drink advertising; one from the Children’s Food Campaign (CFC), and the other from the CFC in collaboration with the BHF.
- 28.6. The CFC published a report on the effectiveness of CAP’s rules in relation to online food and soft drink advertising, Clark and Powell (2013), [\*Through the Looking Glass: A review of the topsy turvy world of the regulations that are supposed to \(but don’t\) protect children from online marketing of junk food\*](#). The CFC strongly criticised CAP for failing to protect children from online food and soft drink marketing because the Code allowed:
- TV adverts promoting *junk food* that wouldn’t be allowed on children’s television;
  - child-friendly brand characters;
  - advergames that encourage children to eat *junk food*;
  - misleading health or nutrition claims; and
  - a lax approach to age restrictions (Clark and Powell, 2013: 2).
- 28.7. The CFC concluded that the advertising self-regulatory system was ineffective and called on the UK government “to introduce consistent and effective statutory

regulations across all broadcast and non-broadcast forms of marketing to protect children under 16 from the marketing of unhealthy food and drink products, as defined by the current FSA nutrient profiling model” (Clark and Powell, 2013: 38).

- 28.8. In 2011, the BHF and CFC published a joint report, [\*The 21st century gingerbread house: How companies are marketing junk food to children online\*](#), exploring the use of the internet for marketing food and soft drink products to children. They assessed a variety of websites of common brands associated with HFSS products. They found links to brand presence on social networking sites, promotional techniques using cartoons animations and brand characters, and solicitations through marketing for personal data. BHF and CFC concluded that the government should implement new rules to stop products that could not be advertised on TV being marketed to children online.

## 29. International policy perspectives

- 29.1. The [EU Platform on Diet, Physical Activity and Health](#) was established in 2005. The initiative was designed to bring together key stakeholders to develop approaches to tackling diet-related issues. In 2014, the [EU Action Plan on Childhood Obesity 2014-2020](#) was adopted. It included a specific commitment on advertising and marketing:

“In order to tackle overweight and obesity in children and young people, it is necessary to address the issue of the marketing of foods high in fat, sugars and salt targeting those age groups. While adults may recognise when they are being targeted by advertising, children and young people cannot necessarily distinguish between advertisements and cartoons. This makes them particularly vulnerable to messages that may lead to the development of unhealthy dietary preferences”

- 29.2. In 2006, the WHO Regional Committee for Europe at its fifty-sixth session adopted a comprehensive, action-oriented strategy for the prevention and control of non-communicable diseases (NCDs). An action plan, [Action Plan for implementation of the European Strategy for the Prevention and Control of Noncommunicable Diseases 2012 – 2016](#), was published in 2012 and included the goal of promoting healthier diets through food pricing, labelling and marketing controls. This was followed in 2013 with the [Vienna Declaration on Nutrition and Noncommunicable Diseases in the Context of Health 2020](#), by the health ministers to WHO Europe member countries. It included a specific commitment in relation to marketing:

“Create healthy food and drink environments and encourage physical activity for all population groups by [...] taking decisive action to reduce food marketing pressure to children with regard to foods high in energy, saturated fats, trans fatty acids, free sugars or salt, implementing common approaches to promote product reformulation, consumer-friendly labelling and nutrient profiling tools which facilitate a healthy choice” (WHO Europe, 2014: 2).

- 29.3. These commitments now sit within WHO Europe’s framework for public health in the 21<sup>st</sup> century, [Health 2020: a European policy framework supporting action across government and society for health and well-being](#).

### 30. Industry responses

- 30.1. Over the past decade, there have been several voluntary initiatives from the advertising and food industries addressing concerns over children's diet and the potential impact of marketing.
- 30.2. Major food and soft drink manufacturers have committed at an [EU-level to a voluntary agreement](#) not to advertise food and soft drink products to children under 12, except for products which fulfil specific nutrition criteria based on dietary guidelines. Signatories include Burger King, Coca-Cola, Mars, Ferrero, Unilever, PepsiCo, Kellogg's, McDonalds, Nestlé and Danone. The EU Pledge covers media including TV, print and internet advertising and includes a [nutrient profiling model](#) to facilitate differentiation between healthier and comparatively less healthy foods and soft drink products.
- 30.3. The EU Pledge was launched in 2007 in response to the [EU Platform on Diet, Physical Activity and Health](#). It has been extended subsequently to introduce a nutrient profiling scheme to facilitate greater levels of voluntary restriction on targeting of advertising for comparatively less healthy food and soft drink products to children. The initiative also includes a commitment to monitor compliance on an on-going basis. The [most recent monitoring survey](#) found very high rates of compliance and indicated that there had been a significant reduction in exposure to member companies' advertising for all products.
- 30.4. Beyond collective voluntary sectoral agreements, many food manufacturers have their own social responsibility policies that cover advertising to children, for example, [The Coca-Cola Company's Responsible Marketing Policy](#).

## Pre-consultation perspectives on the case for regulatory change

### 31. Introduction

31.1. In preparation for this consultation, CAP undertook an extensive pre-consultation exercise in the last quarter of 2015. It involved over 50 stakeholders representing key constituencies, including:

- Government bodies;
- The public health community;
- Charities and other non-governmental organisations (NGOs);
- The advertising industry;
- Media owners; and
- Food industry members.

CAP also sought input from relevant respondents in the devolved nations.

31.2. This chapter provides a summary of the views of different constituencies on the case for regulatory change. [Annex 3](#) includes more information on the pre-consultation responses to questions on a potential new approach to regulating non-broadcast food and soft drink advertising to children. It also includes full details of the pre-consultation process and a list of the stakeholders involved. [Annex 4](#) is the briefing document provided to pre-consultation respondents.

### 32. Narrative of responses

32.1. CAP asked: *Are the current rules on the non-broadcast marketing of food and soft drink to children fit for purpose? Briefly, what are the key factors influencing your answer?*

32.2. There was a very strong consensus across all constituencies that the present rules should be reviewed. UK and devolved governments, public health bodies, NGOs and the wider public health community considered that the rules were not fit-for-purpose. The food industry representatives tended to agree with this view, but other industry constituencies, in particular media owners, urged that the effectiveness of the present rules and case for regulatory change be explored through consultation and, importantly, assessment of the relevant evidence.

32.3. Members of the public health community and NGOs with an interest in children, health and/or diet-related issues voiced strong concerns about what they regarded as deficiencies in the present rules. They considered that the rules:

- Did not differentiate between products high in fat, salt or sugar (HFSS) and non-HFSS products;
- Ignored the need to limit children's exposure to advertising for less healthy products and did not address wider concerns over the high volume of advertising for such products;
- Were vaguely worded, for instance, in defining such concepts as encouraging poor nutritional habits or celebrities popular with children;

- Failed to restrict the use of equity brand characters, which, on the basis of evidence, they considered to have an effect similar to licensed characters and celebrities, the uses of which are prohibited by the present rules;
- Failed to cover media or marketing techniques such as sponsorship and packaging, along with licensing arrangements that resulted in HFSS products being associated with sporting or other healthy activities;
- Did not address inappropriate depictions of portion sizes;
- Were too permissive and inconsistent in targeting content restrictions mainly at under 12s; and
- Permitted misleading nutrition and health claims.

- 32.4. Governmental respondents shared some of these concerns, in particular around the need to limit exposure.
- 32.5. Several public health and NGO respondents also considered that, on a wider level, self-regulation was not effective in addressing issues relating to children’s diet. They urged a statutory alternative. Some cited the failure of the previous government’s Responsibility Deal to address the issue and others expressed concerns over the system itself. For instance, they perceived that CAP had an inherent conflict of interest as it comprised industry representatives.
- 32.6. Some industry respondents, mainly from the food industry, agreed that the rules were no longer fit for purpose, but differed in their reasoning. They considered that industry should respond to societal and political concerns and show responsibility and leadership in contributing to efforts to address childhood diet issues. Food industry respondents also cited consistency with the approach taken in the UK Code of Broadcast Advertising (the BCAP Code), which bans HFSS product advertising in or around TV programmes of particular appeal to children under 15, and bans promotions, celebrities and licensed characters popular with children in HFSS advertising directed at children under 12, as a reason for change. The latter view was supported by several public health and NGO respondents and governmental bodies.
- 32.7. Several industry respondents, mainly media owners and advertising industry parties disagreed and believed the present rules were proportionate. However, many acknowledged the need to review the present rules through public consultation and an assessment of the evidence.
- 32.8. Beyond comments on the rules themselves, respondents from all stakeholder constituencies pointed to the evidence base, data on diet and obesity and trends in media and advertising to support their respective arguments.
- 32.9. Governmental bodies (including those from the devolved nations), public health and NGO respondents emphasised the UK’s persistent obesity problem, both in term of rates of excess weight and obesity among children and dietary profiles, in particular, the over-consumption of sugars. They cited, in particular, the recent Public Health England (PHE) sugar review, the Scientific Advisory Council on Nutrition (SACN) report on carbohydrates and National Diet and Nutrition Survey results. Respondents from the devolved nations highlighted this issue also, in

relation to their respective national dietary statistics. Industry respondents acknowledged these concerns.

- 32.10. Some respondents pointed to the harm to children's physical and mental well-being caused by poor diet and rates of excess weight and obesity. One cited example was the impact of diet on children's educational attainment, along with a broader acknowledgement of the effect of diet on longer-term health outcomes. Additionally, other respondents, notably those from the devolved nations, pointed to the contribution of poor diet to general health inequalities and the evidence of the disproportionate prevalence of levels of excess weight and obesity in lower socio-economic groups.
- 32.11. There was again a strong consensus between governmental, public health and NGO respondents that advertising had an impact on children's diets; several cited the recent PHE review and the Health Select Committee report, [Childhood obesity- brave and bold action](#) (2015) as the basis for this view. Respondents from these stakeholder groups also agreed that marketing was a contributory factor to a wider, "obesogenic environment", which negatively influenced children's dietary choices and frustrated promotion of healthier options. One respondent cited the example of parents' concerns over how advertising made it difficult for them to promote healthy eating to their children.
- 32.12. Some industry respondents disagreed on the evidence of advertising's effect and considered that the problem could only be addressed through a wider, multifaceted approach with interventions to tackle key influencing factors such as low physical activity rates and promoting reformulation of products. Several governmental, public health and NGO respondents also placed emphasis on the need to tackle a variety of factors influencing obesity.
- 32.13. Another key theme emerging from respondents' views on the case for regulatory change was the importance of media change, particularly the growth of online advertising, and its impact on children's media habits. There was agreement across all stakeholder constituencies that this was an important reason to review the rules.
- 32.14. Public health and NGO respondents also agreed strongly that levels of advertising and spend, in particular in online media, were of concern in terms of children's exposure. Allied to this, several respondents cited examples of techniques they considered to be problematic such as advergames and social media-based advertising, and expressed concern about the powerful impact of online advertising that employed techniques such as repetition of advertising messages and brand engagement.

## Evidence base

### 33. Introduction

33.1. CAP has drawn together evidence from a variety of sources. In particular, it has considered key UK-oriented reviews in relation to the evidence of advertising's effect on children's food preferences and diet. The evidence examined addresses the following key points:

- The types and prevalence of food and soft drink advertising in non-broadcast media, and the level of children's exposure to it.
- The changing nature of advertising and children's media habits since 2007.
- Evidence relating to the effect of food and soft drink advertising on children's food preferences and diet.

33.2. CAP has sought to reflect the evidence presented in this chapter in good faith and in neutral terms. In doing so, the reader should not assume that CAP agrees or disagrees with the research findings reproduced in this chapter. In [section 40](#), CAP provides a critical assessment of the methodologies underpinning and findings arising from key pieces of evidence presented here.

### 34. Prevalence, types and children's exposure to food and soft drink advertising

34.1. It is clear that food and soft drink advertising in general continues to play a significant part in the UK media landscape. It comprises a significant proportion of UK advertising spend and advertising volumes.

34.2. [WARC](#) data, provided by the Advertising Association (AA), is an accepted industry measure of advertising spend and volumes across different sectors and media. Total advertising spend in the UK was £20.1bn in 2015 ([WARC/AA Expenditure Report](#)). Of this, non-broadcast "food" advertising accounted for £261m and "drink" advertising accounted for £148m. In addition, the advertising category "entertainment/leisure", including advertising for restaurants and other food vending business, resulted in a total spend of £483m in 2015.

(£)	Totals	Cinema	Direct Mail	Door Drops	Internet	Outdoor	Press
<b>Grand Total</b>	<b>483,139,591</b>	<b>49,209,052</b>	<b>11,975,459</b>	<b>24,511,091</b>	<b>1,769,432</b>	<b>181,204,200</b>	<b>214,470,357</b>
Food	261,397,258	19,548,729	7,512,847	13,725,029	1,033,283	67,663,067	151,914,303
Drink	148,272,415	24,824,683	3,842,859	133,679	222,923	72,644,007	46,604,264
Entertainment & Leisure	73,469,918	4,835,640	619,753	10,652,383	513,226	40,897,126	15,951,790

- 34.3. The table above shows the distribution advertising spend across different non-broadcast media. Press and outdoor pre-dominate but it is important to note that the data for online advertising significantly under-represents the totals owing to the limitations inherent in measuring advertising activity across online environments.
- 34.4. Estimating the proportion of food and soft drink advertising that relates to products high in fat, salt or sugar (HFSS) products is difficult owing to factors such as the problems associated with distinguishing between product and brand advertising and the fact that non-broadcast media are not presently required to differentiate through nutrient profiling.
- 34.5. The AA provided CAP with an analysis of categories of advertising likely to include HFSS products, such as “sweets”, “crisps/snacks”, “chocolate” and “biscuit”. Of the total non-broadcast advertising spend of £483m some £158m was for categories likely to relate to HFSS products. Separately, Public Health England’s (PHE) review, [Sugar Reduction: The evidence for action](#) (2015) included an analysis by Nielsen, using a similar category-based approach, which resulted in a figure for both non-broadcast and broadcast HFSS advertising spend of over £250m. Such estimates are crude, as the modelling assumes that all advertising in the categories is for HFSS products, but they do suggest that HFSS advertising accounts for a significant proportion of food advertising in non-broadcast media.
- 34.6. The WHO Europe (2013) review, [Marketing of foods high in fat, salt and sugar to children: update 2012–2013](#), included a detailed breakdown of food and soft drink marketing channels and typologies observed in the studies assessed as part of the review (WHO Europe, 2013: 3). It strongly suggests that food and soft drink advertisers use a very broad range of communications across different channels (note: not all the channels identified are covered by the CAP Code).

Media/platform	Detail
<b>Placement of online advertising</b>	<ul style="list-style-type: none"> <li>• On search engines</li> <li>• On social networking sites</li> <li>• On news sites, music sites and blogs</li> <li>• Around or in TV-on-demand</li> <li>• Around or in films and media clips viewed online</li> <li>• Around or in online and downloadable games, music and other media</li> </ul>
<b>Product placement and branding</b>	<ul style="list-style-type: none"> <li>• Product placement in scheduled TV and radio programmes, films, computer games, downloadable “apps” (downloadable software applications)</li> <li>• Branded books such as counting books for pre-schoolers</li> <li>• Branded toys such as the fast food store as a playhouse</li> <li>• Branded computer games</li> <li>• Interactive company-owned web sites, for example with puzzles and games</li> <li>• Branding on sports teams and advertising at sports and cultural events</li> </ul>

<b>Viral marketing</b>	<ul style="list-style-type: none"> <li>• Word-of-mouth and personal recommendation by consumers, sometimes in return for payment or reward, and increasingly encouraged in social networking sites</li> </ul>
<b>Sponsorship</b>	<ul style="list-style-type: none"> <li>• Sponsorship of TV and radio programmes, music videos</li> <li>• Celebrity product endorsement</li> <li>• Sponsorship of community and school events and contests</li> <li>• Corporate gifts of educational materials and equipment</li> <li>• Corporate support of health campaigns, sports clubs, school meals</li> </ul>
<b>Direct marketing</b>	<ul style="list-style-type: none"> <li>• Promotional e-mails</li> <li>• Promotional sales by telephone, text messaging to mobile phones</li> <li>• Promotion and sampling schemes in schools</li> </ul>
<b>“Advergaming”</b>	<ul style="list-style-type: none"> <li>• Branding and advertising embedded in video games and interactive fantasy worlds, available online or for downloading (the users may provide their contact details to marketers in return for multiplayer interactive gaming and opportunities for rewards.)</li> </ul>
<b>Point of sale and product promotion</b>	<ul style="list-style-type: none"> <li>• Packaging vouchers with links to discounts on videos, films, music</li> <li>• Packaging codes with links to online games, social networking sites or downloadable apps</li> <li>• Vending machine codes with links to online immediate discounts</li> </ul>
<b>Integrated marketing</b>	<ul style="list-style-type: none"> <li>• Linking film, toy and food products and new media, such as a breakfast cereal with on-pack promotion of a brand-promoting game played on a web site, with matching Facebook page and Twitter messaging (the game can be played interactively with other people worldwide and is downloadable as an app to play on a smartphone.)</li> </ul>
<b>Interactive and user-generated marketing</b>	<ul style="list-style-type: none"> <li>• Includes two-way marketing and market-shaping activities (for example, TV advertisements invite viewers to vote for different flavours of a brand which then get produced and marketed; or the company launches a competition to create a video commercial which individuals put on YouTube for viral distribution.)</li> </ul>

34.7. In terms of children’s exposure, the general data on the prevalence of HFSS advertising and content analysis-based research provide a strong basis to suggest that exposure occurs at a level of some significance. However, exploring children’s exposure in detail is difficult owing to issues associated with non-broadcast audience measurement and tracking the exposure of defined groups across different media. One of the key problems is the absence of a defined category of products (i.e. HFSS) for audience measurement providers to track. It is virtually impossible to quantify the relative levels of exposure for different categories of children in different media with any appropriate level of accuracy.

- 34.8. Nevertheless, CAP's Regulatory and economic impact assessment (see [Annex 7](#)) includes more detailed attempts to model likely exposure along with more information on the limitations to the data.
35. **Developments in advertising and children's media habits**
- 35.1. One of the most significant changes in advertising over the past decade has been the huge growth in the extent and complexity of online advertising platforms and marketing techniques. Data from AAWARC shows:
- Total internet advertising spend rose from £4bn in 2010 to £8.6bn in 2015.
  - Advertising spend has grown by over 10% year-on-year compound
  - Forecasts suggest that advertising spend will exceed £10bn by 2017
- 35.2. Mobile advertising spend has seen an even greater rate of growth over the same period. Total advertising spend in 2011 was £203m; in 2015 it has been measured at £2.6bn and is estimated to rise to £4.4bn by 2017.
- 35.3. Online advertising allows advertisers vastly greater scope to advertise products both in terms of volumes and through techniques made possible by new online platforms and devices, such as tablets and more powerful smart phones. Alongside the WHO Europe analysis of the growing diversity in marketing channels used by food and soft drink advertisers, information from the UK Internet Advertising Bureau (IAB), which represents online marketers and publishers, provides further insight. It [classifies online marketing](#) into 14 categories and formats, including areas such as affiliate marketing, behavioural targeting, mobile marketing, social media and search marketing.
- 35.4. It is also important to take into account children's changing media habits and the opportunities this presents to advertisers in terms of reaching and engaging with child audiences.
- 35.5. Ofcom's research on children's media habits, [Children and Parents: Media use and Attitudes Report](#) (2015), shows significant changes in children's interaction and level of engagement with different media. Over a decade ago, TV was the overwhelmingly dominant advertising medium, especially for children. This was a point relevant to but not determinative of Ofcom's decision to introduce restrictions on advertising for HFSS products around TV programmes of particular appeal to children.
- 35.6. The development of online platforms and the proliferation of connected devices, including mobile technology, have driven greater access and more diversity in content. Advertising has inevitably developed as part of these trends.
- 35.7. In summary:
- The number of hours per week 8-11s and 12-15s spend online has more than doubled since 2005 showing a consistently upward trend (4.4–11.1 hours and 8–18.9 hours respectively).

- 12-15s now spend nearly three and a half hours a week more online than they do watching a TV set (18.9 vs 15.5 hours).
- Almost a third of both 8-11s and 12-15s said they prefer to watch YouTube clips over TV programmes.
- More children have internet access at home than in 2005 and, compared to 2005, more are going online in their bedroom.
- Social networking engagement and usage are high:
  - 23% of 8-11s and 76% of 12-15s have a social network profile
  - The top four social network sites for children aged 12-15 are: Facebook (87%), Instagram (53%), SnapChat (43%) and YouTube (33%)
- 48% of all children play online games including; 14% of 2-4s, 20% of 5-7s, 52% of 8-11s and 60% of 12-15s.

35.8. It is clear that children, as an audience, are significantly more engaged with online environments and potentially exposed to new marketing content that comes with them. Online environments, not just social networks like Facebook and Instagram, tend to provide spaces for interaction between users and brands, as well commercially focused content, such as advertising. Also, greater access to online environments is occurring beyond direct parental supervision and at younger ages.

## 36. Effect of food and soft drink advertising on children

36.1. At the core of the policy issue is the body of research that examines how food and soft drink advertising affects children's behaviour. Over the past 15 years there have been several literature reviews in the UK on the evidence related to food and soft drink advertising and its impact on children, including on their food preferences and diet.

### Evidence base up to 2007

36.2. The key reviews carried out before 2007 related to varying extents to the UK government's 2004 public health white paper, [\*Choosing Health: Making healthy choices easier\*](#), and work that stemmed from it.

### 36.3. Hastings et al (2003)

36.3.1. The first significant review of the evidence base relating to the impact of food and soft drink advertising on children was Hastings, Forsyth and Godfrey (2003), [\*Review of Research on the Effects of Food Promotion to Children: Final Report\*](#). It was commissioned by the Food Standards Agency (FSA). It found that TV was the dominant advertising medium and that pre-sugared breakfast cereals, soft-drinks, confectionary and savoury snacks were the prominent food and soft drink categories, alongside the then recent emergence of fast food outlets. It also found that the advertised diet contrasted markedly with that recommended of children and that there was little support for the promotion of healthier options (Hastings et al, 2003: 2).

36.3.2. In relation to the effect on children, the review acknowledged the need to establish whether children noticing and enjoying food promotion, something for which there was found to be plenty of evidence, actually influenced their behaviour. The review found “evidence that food promotion influences children’s food preferences and their purchase behaviour. A study of primary school children, for instance, found that exposure to advertising influenced which foods they claimed to like; and another showed that labelling and signage on a vending machine had an effect on what was bought by secondary school pupils. A number of studies have also shown that food advertising can influence what children eat. One, for example showed that advertising influenced a primary class’s choice of daily snack at playtime” (Hastings et al, 2003: 2).

36.3.3. Hastings et al (2003) acknowledged the difficulties in linking the evidence of an effect on children to their longer term diet and levels of obesity. It noted studies that found correlations between TV viewing and diet, obesity and cholesterol levels did not provide causal proof owing to the influence of other associated factors; the sedentary nature of TV viewing and the likelihood of snacking during TV watching hours. However, Hastings et al (2003) noted other studies had sought to isolate the effect using viewing diaries and had found links between exposure and consumption and concluded: “Nonetheless, many studies have found clear effects and they have used sophisticated methodologies that make it possible to determine that i) these effects are not just due to chance; ii) they are independent of other factors that may influence diet, such as parents’ eating habits or attitudes; and iii) they occur at a brand and category level” (Hastings et al, 2003: 2).

#### 36.4. Ofcom (2004)

36.4.1. Ofcom [carried out an extensive research project](#) to review existing academic literature, the state of children’s diet and lifestyle, and trends in advertising. It also carried out quantitative and qualitative research to identify influences on children’s food preferences, purchase behaviour and consumption and the role of TV advertising in this context.

36.4.2. The results of this process formed the basis of Ofcom’s subsequent consultations on TV food advertising. As such, one of the key aims was to assess the role of TV advertising in comparison to other factors influencing children’s diet. Ofcom concluded that:

- Children’s food preference, consumption and behaviour are multi-determined.
- The rise in obesity levels amongst children is similarly multi-determined, against a backdrop of key lifestyle changes over the past few decades.
- People see parents as primarily responsible for improving children’s diets. Schools and food manufacturers are also seen to play an important role. The role of government, the media, supermarkets and broadcasters is not perceived to be as important as these three.
- There is a trend for children to increasingly influence their own diet with the acquiescence of their parents.
- TV advertising forms a smaller part of a larger social issue.
- Solutions to the problem of obesity need to be multi-faceted ([Ofcom](#), 2004: section 1.9)

- 36.5. Livingstone (2006)
- 36.5.1. Ofcom commissioned a literature review, Livingstone and Helsper (2004) [Advertising 'unhealthy' foods to children: Understanding Promotion in the Context Of Children's Daily Lives. A review of the literature for the Market research Department of the Office of Communications](#), and an updated review, Livingstone (2006), [Television advertising of food & drink products to children](#), to inform its policy making as it considered new restrictions for TV advertising. Ofcom took into account other key reviews carried out at the time; Hastings et al (2003) and the Institute of Medicine review (McGuinnis et al (eds). 2005), [Food Marketing to Children and Youth: Threat or Opportunity?](#).
- 36.5.2. Livingstone (2006: 2) found that there was a consensus in the literature that advertising had an influence on children. The experimental evidence considered suggested that TV advertising had a modest direct effect on the food preferences of children aged 2-11. The experimental and survey evidence suggested that the effects were likely to be small, but some suggested that exposure to food and soft drink advertising accounted for a 2% variation in food choice. It also found evidence of a modest but consistent association between overall TV exposure and weight/obesity. However, whether the influence of advertising messages viewed or the sedentary nature of TV viewing were causal factors was not clear. Livingstone (2006: 14) noted, although the effect might have been small, many researchers were concerned that it could equate to significant numbers of children and the cumulative effect of advertising exposure could also be more significant.
- 36.5.3. Livingstone (2006: 15-16) concluded that multiple factors combine to account for obesity; from the individual and family level to systemic factors such as food production, distribution and pricing and influences, such as media and social and cultural norms. These factors act indirectly, as well as directly, making it overly simplistic to regard each as playing a separate role. Based on this, Livingstone found agreement among experts that the most effective intervention strategy should be multi-faceted.
- 36.5.4. Importantly, Livingstone also cautioned against relying on the extent to which individual factors can be determined to influence preferences, knowledge and behaviour. Livingstone regarded it as a polarising influence on debate considering that emphasis should ideally shift toward a “probabilistic assessment of range of risks to children’s health and should take us into a broader and potentially more productive discussion of the range of factors involved in children’s food choice” (Livingstone, 2006: 14).

### **Recent evidence reviews**

- 36.6. Since 2007, there have been further dedicated reviews of the evidence of advertising’s influence on children’s food preferences and diet.

### 36.7. Public Health England (2015)

- 36.7.1. The most recent review of the evidence, Ells, Roberts, McGowan and Machaira (2015), [\*A mixed method review of behaviour changes resulting from marketing strategies targeted at high sugar food and non-alcoholic drink\*](#), was commissioned by PHE and included as an annex to [\*Sugar Reduction: The evidence for action\*](#) (2015), which, as noted in [section 26](#) above, recommended a broad range of interventions to tackle factors that were said to influence excessive sugar consumption, including advertising.
- 36.7.2. The review's objectives were "to undertake a pragmatic review of the existing literature, to draw together evidence from recent (2010 onwards) primary research and grey literature on marketing strategies targeting high sugar food and non-alcoholic drink, and the resultant impact on attitudes, purchases, consumption and health to collect qualitative data from stakeholders/informants, to gather key intelligence on the impact of current marketing strategies, emerging and iconic marketing" (Ells et al, 2015: 17).
- 36.7.3. It considered over 500 pieces of research, 45 of which met the inclusion criteria. The review described the studies identified as follows:
- The 45 primary research publications included in this review provide evidence on the impact of marketing in children (29 publications), adults (14 publications), and adults and children (2 publications). The studies were conducted across 10 different countries (US: 16; Netherlands: 8; England: 5; Australia: 4; Belgium: 4; Mexico: 2; Portugal: 2, Across Europe: 1; Austria: 1; South Korea: 1; Canada: 1) and present a mix of 31 experimental/controlled and 14 descriptive observational studies. The majority of studies were short term and small scale, with 27 out of 45 with an n<200.
- 36.7.4. Study quality was generally low to moderate, with many of the experimental studies lacking clear details on blinding, allocation concealment, randomisation and withdrawals, to gain higher scores in the quality assessment model used" (Ells et al, 2015: 20).
- 36.7.5. There were also 20 interviews with key stakeholders: academics, non-governmental organisations (NGOs), industry and international experts. The findings were cross-referenced with the literature review to identify areas of convergence.
- 36.7.6. In summary, Ells et al (2015: 10) concluded that:
- promotion can impact on high sugar food preference, purchase and consumption although the current evidence base is strongly focused on children
  - TV advertising remains a popular food marketing channel and evidence suggests it has the potential to influence preference for, or intake of high sugar products, however independent research suggests that current UK broadcast regulations are not strong enough to reduce children's exposure to unhealthy food advertising

- digital marketing strategies are rapidly growing and are a potentially influential area, given the highly immersive and interactive nature of these approaches. However, this remains an under-researched field, with current research evidence focusing on the advergames, which was found to significantly influence intake of, or preference for high sugar foods in school age children
- understanding the behavioural and health impacts of new digital marketing strategies is essential, given they differ in approach to most traditional marketing strategies, therefore introducing a number of new concerns which may require additional regulatory consideration
- sponsorship is recognised as an emerging marketing strategy, yet despite many high profile sponsorship deals in the UK, there remains a lack of evidence as to diet and health related impacts of this approach
- price discounting can promote the sales of less healthy food, however more research is required to understand the broader implications of discounting on overall dietary intake and impact across different demographic groups
- character branding can be an effective strategy to market high sugar foods to young children, and while current regulations prevent the use of the approach to young school-age children, they may still be susceptible to products branded for wider appeal
- altering portion size can influence sugar intake, however it is important to consider the impact of possible counter marketing or compensatory behaviours to any size regulation
- supermarket placement may influence high sugar purchases, however, evidence is limited (one study identified in this review) and lacks further detail on consequential health and behavioural impacts.

### 36.8. Family Kids & Youth review for CAP (2014)

36.8.1. Recognising the uncertainties and policy challenges presented by the rapid development of online media, in 2014, CAP commissioned an independent literature review of the evidence base. The review, Clarke and Svanaes (2014: 5), [Literature Review of Research on Online Food and Beverage Marketing to Children](#), was carried out by the consultancy, Family Kids & Youth, which was asked “to provide an up-to-date, robust, and comprehensive review of the latest literature on children, young people and online marketing communications, especially in relation to food and drink advertising. The brief also included a requirement to review ‘grey literature’, including books and articles that have been written on the subjects of advertising and marketing food and drink to children, some of which might help form public opinion.”

36.8.2. Clarke and Svanaes (2014: 6) identified a significant body of relevant evidence: 106 papers were assessed based on search categories in the area of children, food and soft drink advertising, marketing in general and online environments.

36.8.3. The overall finding was that (Clarke and Svanaes, 2014: 7):

Experimental studies show that online marketing techniques can influence children’s brand awareness and their short-term food preferences. There are, however, significant limitations to the literature available, and evidence of growing criticism of the methodology through which these findings are

produced. There is limited in-depth, ethnographic or longitudinal research looking at the actual impact of online food marketing on children's diets, or how children and parents engage with the advertising they see in everyday life. There is a need for more robust evidence of a causal effect of online food advertising on children's eating habits, and for more sophisticated methods of measuring children's online advertising exposure.

36.8.4. Clarke and Svanaes (2014) also identified several themes emerging from the evidence base:

- Content analyses indicated that HFSS products were being advertised through new online channels, such as branded websites, banner ads and mobile apps. There was particular concern over the types and volume of ads appearing on social networking sites, along with their likely appeal to children (Clarke and Svanaes, 2014: 43-44).
- Advertising could have an unconscious effect on brand and product attitudes; more research, however, using longer-term methods was necessary to understand how it influences behaviour and food consumption (Clarke and Svanaes, 2014: 42).
- A body of evidence suggested that advergames had an impact on children's brand attitudes and purchase requests. Also, younger children had particular difficulties in understanding the commercial and persuasive intent behind such advertising. Some studies linked these effects specifically with food and soft drink advertising (Clarke and Svanaes, 2014: 46-51).
- Other integrated forms of marketing, where editorial and commercial content are merged to various extents, were also found to cause difficulties, especially, for younger children in critically understanding the commercial intent behind the communication (Clarke and Svanaes, 2014: 53-56).
- Children may process the content of targeted advertising differently to adults as their understanding of targeted advertising formats was likely to be quite low (Clarke and Svanaes, 2014: 44-45).

36.8.5. CAP [published a response](#) to the findings of the scoping review.

### **Other recent studies**

36.9. CAP has sought to identify recent studies that are unlikely to have been considered in the evidence reviews above to provide a more complete and up-to-date overview of the latest evidence.

36.10. [Boyland et al \(2016\)](#)

36.10.1. The most recent significant academic review of the evidence base in relation to the effect of advertising on food consumption was published in January 2016; Boyland, Nolan, Kelly, Tudur-Smith, Jones, Halford and Robinson (2016), [Advertising as a cue to consume: a systematic review and meta-analysis of the effects of acute exposure to unhealthy food and non-alcoholic beverage advertising on intake in children and adults](#). It involved a systematic review and meta-analysis to attempt to quantify the impact of food and soft drinks advertising on children.

36.10.2. Boyland et al (2016: 3) found 18 studies (including 20 comparisons) that tested adult and child subjects for the effects of exposure to advertising for an unhealthy food or non-alcoholic beverage against a control group. The studies mainly focused on TV advertising with some studies looking at advergames. Overall, the meta-analysis found a small-to-moderate impact on food consumption, primarily in children.

36.10.3. Boyland et al (2016: 13) pointed out that the small impact of limited acute exposure could only be understood in the real world context when taking into account that individuals were likely to be exposed repeatedly resulting in a cumulative effect on their preferences. Nevertheless, the study called for longer-term research to explore the impact of the types of exposures explored in the evidence on diet and weight gain. In conclusion, Boyland et al (2016: 13-14) considered that the findings supported the case for interventions to restrict children's exposure to unhealthy food advertising.

### 36.11. Cairns (2015)

36.11.1. Cairns (2015), [\*The Impact of Food and Drink Marketing on Scotland's Children and Young People: A report on the results of questions about exposure and purchase responses included in IPSOS-Mori's 2014 Young People in Scotland Survey\*](#), explored the marketing exposure and purchase responses of 2,285 school students aged 11-18 in Scotland. In summary, the study found:

- 63.5% reported seeing at least one piece of food marketing over the preceding seven days;
- 47% reported buying at least 1 product in response;
- 74% of the classifiable marketing materials were for products high in free sugars;
- 24% of the classifiable marketing materials were for sugar sweetened soft drinks;
- 21% of the classifiable marketing materials were for chocolate or sugar based confectionary; and
- Price promotions were the most frequently reported and prompted most purchase decisions (Cairns, 2015: 2-3 and 11).

### 36.12. McKinsey Global Institute (2014)

36.12.1. Dobbs, Sawers, Thompson, Manyika, Woetzel, Child, McKenna, and Spatharou (2014), [\*Overcoming obesity: An initial economic analysis\*](#), reviewed the cost effectiveness and evidence for the regulatory impact of 44 potential policy interventions designed to tackle obesity across whole populations. The objective was to explore the economic dimension of measures to tackle obesity with a view to informing policy at a global level. However, the analysis was based on circumstances in the UK as a case study. It concluded that:

- No single solution creates sufficient impact to reverse obesity: only a comprehensive, systemic program of multiple interventions was likely to be effective.

- Almost all of the interventions analysed were highly cost-effective from the viewpoint of society.
- Education and encouraging personal responsibility are necessary but not sufficient; restructuring the context that shapes physical activity and nutritional behaviour was a vital part of any obesity program.

**36.12.2.** Capturing the full potential impact was likely to require commitment from government, employers, educators, retailers, restaurants, and food and beverage manufacturers, and a combination of top-down corporate and government interventions and bottom-up community-based ones. No single solution creates sufficient impact to reverse obesity: only a comprehensive, systemic program of multiple interventions is likely to be effective (Dobbs et al, 2014: 3-5)

**36.12.3.** Using the UK as an example, in relation to advertising, Dobbs et al (2015: 38) calculated that media restrictions could result in an impact of 401,000 disability adjusted life years (DALY), each at an estimated average cost of \$50. The evidence for the effectiveness of such interventions was rated as “limited evidence for behaviour change”. This contrasted with other interventions, for instance, weight-management programmes with 967,000 DALY at an estimated average cost of \$1,300. Advertising restrictions were categorised as a very low cost intervention.

## Case for regulatory change and CAP policy recommendations

### 37. Introduction

37.1. The first half of this chapter explains why CAP considers there is a case for regulatory change within the scope of consultation set out in [section 13](#). The second half sets out the proposals for change that CAP considers are proportionate and necessary to achieve its objective outlined in [section 11](#).

### 38. Establishing a case for change

38.1. CAP's case for change is not driven by new understanding of the level of food and soft drink advertising's effect on children's behaviour. There is a link, but for the most part, it is short-term and relatively small when compared to factors like parental influence. The evidence arising since 2007, when CAP last strengthened the rules, has not fundamentally changed this picture.

38.2. In establishing a case for regulatory change, CAP has considered the evidence of advertising's effect in its wider context. Importantly, given the policy imperative to address obesity – both in children and in general – CAP considers that it is appropriate to balance the evidence of advertising's effect with the scale of the harm and wider detriment associated. Ultimately, in balancing the two, CAP has determined that there are further regulatory interventions through which advertising regulation can contribute.

38.3. As part of this wider context, CAP has taken into account

- **The scale of the obesity problem overall:** the public health harms and socio-economic costs associated with current and forecast levels of obesity both directly in children and through childhood obesity's role as a risk factor in adult ill-health ([sections 22-25](#));
- **Developments in online advertising:** the significant changes to the media landscape and the new opportunities that advertisers now have to engage children online ([section 34-35](#));
- **Children's changing media habits:** the changing balance of children's media consumption and their increasing use of online platforms ([section 35](#));
- **The existing rules controlling food and soft drink advertising:** the coverage and levels of compliance ([sections 17-21](#)); and
- **Stakeholder views:** the views of different stakeholders who took part in CAP's pre-consultation and the additional advertising regulatory measures they and other organisations consider necessary ([section 32](#)).

### 39. Policy aim

39.1. In satisfying the requirements for assessing cases for regulatory change noted in [section 14](#), CAP considers that it is a legitimate policy aim to place appropriate restrictions on advertising to protect the health and well-being of children, including by not undermining progress towards national dietary improvement.

- 39.2. The UK and devolved governments have made strong commitments to pursue programmes of further intervention on the issues of childhood diet and obesity. These are based on a strong consensus among public health experts on the gravity of the problem and that the most effective strategy is a broad set of interventions targeting a range of factors that influence children’s diet. This is supported by:
- Recent diet and obesity policy reviews carried out by Public Health England (PHE) and McKinsey Global Institute;
  - Established evidence of the impact of poor childhood diet on health both directly in children and, more significantly, in later life;
  - Public health measurement data showing excessive consumption of sugar by children and the persistence of high rates of childhood excess weight and obesity; and
  - The projections of the significant future detriment to individuals and economic costs of persisting rates of excess weight and obesity in general.
- 39.3. One of the influencing factors identified consistently in the evidence and policy literature is food promotion, of which advertising is regarded as an important element.
- 39.4. There is agreement between international bodies, such as the WHO, the EU and the UK and devolved governments, that food and soft drink advertising should be restricted with the aim of protecting public health; specifically, that of children. This consensus is shared by public health professionals and non-governmental organisations (NGOs). Pre-consultation responses and food manufacturers’ voluntary commitments to restrict advertising, such as the EU Pledge, demonstrate industry’s acknowledgement of the need for action.
- 39.5. In principle and in practice, through its existing rules on food and soft drinks advertising to children (see [section 18](#)), CAP acknowledges that the non-broadcast Code must provide appropriate levels of protection to children where there is evidence of harm or the real potential for harm.
40. [Advertising’s effect: evidence of the link between advertising and harm](#)
- 40.1. Evidence of how and the extent to which advertising affects those exposed to it is the core indicator of whether a particular harm is occurring. In the instance of food and soft drink advertising, whether it influences children’s food preferences and diet (see [section 36](#)).
- 40.2. Livingstone and Helsper (2004) and Livingstone (2006: 2-3) established that children’s exposure to TV advertising was likely to have a modest direct effect on food preferences, accounting for some 2% of the variation in food preferences of younger children (aged 2-11). These reviews were a key factor in Ofcom’s rationale for introducing placement restrictions for TV advertising. They also took account of the extensive contemporaneous evidence reviews carried out by Hasting et al (2003) and the Institute of Medicine (2005). There was some evidence suggesting links between advertising and diet, but very little longer-term research to identify any direct links to health, in particular, obesity.

- 40.3. Applying these findings to non-broadcast advertising was, at the time, difficult as nearly all the significant research considered related to TV advertising. It nevertheless suggested that there is some relationship between non-broadcast food and soft drinks advertising and children's diet; this was a key premise of CAP's decision in 2007 to introduce creative content restrictions on the use of promotions and celebrities and licensed characters popular with children in food and soft drinks advertising targeted at children aged 11 or younger. However, without evidence to show that non-broadcast advertising had a similar level of effect to TV, CAP considered that it was not justified in introducing media placement restrictions on food and soft drink advertising in non-broadcast media.
- 40.4. Since 2007, more evidence has emerged that continues to support the case for links between advertising and children's food preferences. The PHE literature review, Ells et al (2015), found several studies demonstrating advertising's influence. This follows Clarke and Svaenes (2014) identification of a body of experimental evidence on the effects of online marketing on attitudes, preferences, consumption patterns and behaviour; several of these studies centred on food and soft drink advertising. However, the level of effect of non-broadcast food and soft drinks advertising on children's food preferences and their diets suggested by the evidence has not changed significantly in that time.
- 40.5. In general, the evidence base continues to focus disproportionately on TV advertising with very little research covering advertising in traditional media such as magazines and posters. The available research continues to show that the audio-visual nature of TV and its place in the home has a relatively greater impact on audiences than magazines and posters, perhaps reflected in the relatively lower costs of those media, on average, to advertisers.
- 40.6. The Ells et al (2015: 26) identified only two studies, from Australia, relating to print and outdoor advertising. One large-scale survey found a relationship between exposure and self-reported consumption of associated sweet snacks. These findings are broadly mirrored in a more recent study of children and young people in Scotland, Cairns (2015), which showed recall of a broad range of advertising that had some influence on purchase behaviour. However, such studies, while indicative of the presence of an effect, do not sufficiently control for other influencing factors and are reliant on subjects accurately recalling their exposure; quantifying the effect is very difficult.
- 40.7. There is now a growing body of evidence relating to advertising in online media platforms. Clarke and Svaenes (2014) found evidence of children's exposure to new and emerging marketing techniques. There are also clear parallels with TV: some audio-visual online advertising is often virtually identical to that broadcast on TV.
- 40.8. In terms of measuring the likely impact of online food and soft drinks advertising, the majority of research has centred on advergames. This is borne out by the balance of the studies identified in Boyland et al (2016), Ells et al (2015) and Clarke and Svaenes (2014). Clarke and Svaenes (2014: 46) suggested that the nature of advergames renders them easier to research leading to their over-representation in the evidence base.

- 40.9. The emphasis on advergames, one of the most interactive and immersive online advertising techniques, makes it difficult to generalise about the impact of food and soft drinks advertising in all online media. Ells et al (2015) highlighted the need for more work on new and emerging online marketing techniques, particularly those that are highly interactive and immersive. CAP agrees, but nevertheless considers that in the absence of further research in this area, it is not unreasonable to assume that these new forms of online marketing have the potential for greater impact, including on children. However, again, the extent of this influence has not been demonstrated robustly.
- 40.10. CAP notes that Clarke and Svaenes (2014: 44-45) found a body of evidence relating to online advertising in general, which suggested that younger children especially were susceptible to more immersive advertising techniques as they found it difficult to recognise that they were being advertised to.<sup>1</sup> Although not centrally related to the issue of food and soft drink advertising, it provides further support for the case that the growth of online media presents a significant increase in advertisers' ability to influence children's preferences about particular food and soft drinks products.
- 40.11. Studies considered as part of the literature on advertising's effect vary in robustness due to a range of methodological issues:
- Content analyses provide a means for assessing the types, prevalence and context of different marketing techniques. They can be useful in exploring likely exposure to advertising. However, they are very limited in their capacity to assess the actual level of impact on different groups as such methods do not capture information on who actually sees or interacts with a communication under study.
  - Recall-based studies gather data from subjects and can show that exposure is occurring. They can also establish links between advertising and behaviour, but they rely on the accuracy of the individual's recollection, which, especially over longer periods, diminishes the robustness of findings. Where such studies attempt to show links between recalled exposure and behaviour, for instance, whether the exposure directly influenced consumption of the advertised product, there are difficulties in isolating the effect from other factors so that it can be meaningfully quantified.
  - Laboratory-based research isolates for particular influences, such as whether exposure to an advertisement can lead to a subject selecting a particular product subsequently. However, the method does not take account of 'real-

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<sup>1</sup> In its response to the literature scoping review, CAP committed to exploring the issue of children's critical understanding in greater detail, recognising that the issue affects all sectors, not just food and soft drinks advertising. The recognition of advertising is a core principle of the CAP Code and is part of the wider legal framework embodied by the CPRs. This work is ongoing and involves a more focused assessment of the evidence identified in Clarke and Svaenes (2014) and other relevant evidence. CAP will assess whether new guidance is required on the interpretation of the recognition rules in relation to certain types of online marketing directed at children. CAP will report publicly on its findings later in 2016.

life' factors that determine food and soft drink preferences, for instance, parental or family influences.

- Isolating the effect: the literature tends to assess advertising of products that are appealing to children both in terms of the nature of the product and the approach in advertising. Some studies have found that techniques, such as advergames, did not result in increased preference for healthier products in the same way as it did for HFSS products Clarke and Svaenes (2014: 49).

40.12. PHE's literature review, Ells et al (2015: 20), characterised the evidence it assessed as mainly short-term and small scale and considered that the study quality of the overall body of evidence was low to moderate.

40.13. There are also important gaps in the evidence base:

- Relatively few studies explore the UK regulatory environment. Although studies from other countries exploring advertising's effects are useful, advertising in other jurisdictions is often not subject to the same restrictions as in the UK. This can lead to food and soft drinks advertising approaches that would not be permitted in the UK being used as the subject matter for testing the level of advertising's impact.
- As acknowledged in several of the reviews and studies examined, there is a lack of work to explore longer-term relationships. How does advertising's immediate effect on preferences influence diet in the medium to long term and, ultimately, whether weight gain occurs? There is some evidence on the question of diet, for instance the associations between TV advertising exposure and rates of excess weight. However, the question of causality remains. TV watching is a sedentary activity that reduces energy expenditure; it is also associated with calorie intake through snacking. Without dedicated longitudinal and ethnographic studies, it is difficult to place the effect on food preferences into its appropriate context when compared to other more influential factors.

40.14. Food and soft drinks advertising has been the subject of significant research attention, being central to an important public health policy area, and has been subject to repeated, in-depth evidence and policy reviews over the past 15 years. However, what it reveals about the level of non-broadcast advertising's impact has not moved on significantly over that time. The evidence around online advertising supports the view that such platforms could have greater influence on children, but such evidence is still emerging and that which is presently available suffers from several limitations.

40.15. CAP nevertheless acknowledges the potential difficulties involved in carrying out more developed long term research on advertising's impact on diet and levels of excess weight. It also notes the general emphasis and consensus of many academic experts in the field in urging further interventions on advertising as part of wider measures to tackle childhood obesity.

40.16. In conclusion, CAP considers there is evidence to establish that there is an impact on children's food preferences, but the level of that impact is likely to be very small

in absolute terms and certainly in comparison to other factors like parenting and education. In CAP's view the academic evidence of advertising's effect on children's behaviour does not *alone* establish a case for tougher advertising restrictions.

#### 41. Basis for regulatory change: the effect of advertising in its wider context

- 41.1. CAP considers that, given the nature and extent of the obesity problem in the UK, a growing agreement within industry that voluntary and – in the present case – mandatory restrictions might play even a small part in addressing the problem, and changes in children's media and their consumption habits since non-broadcast rules were put in place ten years ago, it is justifiable to look beyond the evidence of the effect non-broadcast food and drink advertising on children.
- 41.2. Rising long term cost projections show that the economic impact of obesity on health and social care and society in general were less well understood a decade ago when the present rules were introduced. The role of childhood obesity as a key risk factor in adult obesity and ill-health in later life creates a link between both public health issues. It is clear from data on childhood and adult excess weight and obesity and dietary behaviour that existing interventions have not – to date – been successful in reversing the negative trends.
- 41.3. At the same time, the evidence from Ofcom and others clearly points to the importance of new media environments where children spend time and have the potential to engage with commercial content. The pace of change looks set to further undermine the pre-dominance of TV as a medium for advertising to children. There is a need to respond to new balance of advertising media.
- 41.4. ASA enforcement statistics (see [section 20-21](#)) and, specifically, the online compliance survey published as [Annex 8](#) to this consultation suggest that there is no significant issue of compliance with the present rules. Set against the wider context, CAP considers that this raises questions as to whether there are further regulatory options for restrictions on advertising to contribute to general efforts to tackle issues related to childhood diet.
- 41.5. There is a consensus across all stakeholders – government, industry, the public health community and academics – for further action to tackle obesity to include measures relating to advertising. CAP acknowledges that there are divisions of opinion on the scope and extent of any change. However, although not determinative, it adds emphasis to the case for change.
- 41.6. Ultimately, CAP considers that even a very small positive impact from new restrictions could equate to a meaningful mitigation of harm to children and, in turn, the wider detriment associated with childhood obesity as a risk factor in adult ill-health. Immediately and at the very least, a change in children's media environments brought about by further advertising restrictions could reasonably be expected to contribute by not hindering wider efforts to increase positive messaging to children over their dietary choices and by limiting advertisers' ability to influence children's preferences for and consumption of HFSS products.

41.7. CAP therefore concludes that in assessing the evidence of advertising's role within the wider context of the underlying public health problem, there is a case for regulatory change.

## 42. Proportionality

- 42.1. In making consultation proposals to respond to the case for regulatory change, CAP has considered what might best address the challenge of effecting real change to children's media environment, and to that end has focused on media placement restrictions. Such an approach will reduce children's exposure to advertising for HFSS products in media environments of particular interest to children. However, at the same time, CAP has found no grounds to support a case for broader restrictions, such as product category bans or media placement restrictions in adult-oriented media.
- 42.2. The nature of the risks and potential harms involved do not provide a basis for a precautionary approach. It is clear that consumption of an HFSS product is not, of itself, harmful. This can be contrasted with tobacco where the toxicity and highly addictive nature of the product mean any level of consumption, and therefore advertising, present a real potential for harm.
- 42.3. Most importantly, however, evidence of a significant direct effect is absent; advertising only tangentially affects the childhood diet and obesity issue. CAP therefore considers that there are limits to what advertising restrictions can ever reasonably achieve (and be reasonably expected to achieve) in contributing to wider efforts to tackle poor diet and obesity.
- 42.4. Whilst the harms associated with obesity play an important role in the rationale for further intervention, restricting the advertising of products that are not likely to be of interest to children, or advertising that is not directed at them through its content or the selection of media, is likely to yield rapidly diminishing returns in terms of regulatory impact.
- 42.5. CAP considers that there will be less and less impact in terms of reducing exposure or opportunities for advertising to reach children along with a rapidly increasing impact on advertisers' freedom of commercial expression and the economic and compliance costs to advertisers and media owners. One of the key consequences of a disproportionate balance is the likely impact on funding of editorial content directed at children. CAP's Regulatory and economic impact assessment is included in [Annex 7](#).

## 43. CAP Policy Recommendations

43.1. Having established a case for regulatory change, CAP now proposes to:

	<ul style="list-style-type: none"><li>• Update the CAP Code to include rules dedicated to the advertising of HFSS products.</li></ul>
	<ul style="list-style-type: none"><li>• Apply the new and amended rules to brand advertising that has the effect of promoting an HFSS product, mirroring present guidance used for TV advertising.</li></ul>
	<ul style="list-style-type: none"><li>• Use the Department of Health nutrient profiling model – used for TV advertising – to identify HFSS products.</li></ul>
	<ul style="list-style-type: none"><li>• Amend existing rules on the creative content of food and soft drink advertising – prohibiting licensed characters, celebrities popular with children and promotions directed at children aged 11 and younger – to apply only to HFSS product advertising allowing greater opportunities for healthier foods to be advertised to children.</li></ul>
	<ul style="list-style-type: none"><li>• Introduce a new rule prohibiting the placement of HFSS product advertising in media targeted at or likely to appeal particularly to children.</li></ul>
	<ul style="list-style-type: none"><li>• Explore through consultation whether the new rule should prohibit HFSS advertising in media targeted at or of particular appeal to children under 12 or under 16.</li></ul>
	<ul style="list-style-type: none"><li>• Apply the new rule to advertising in media where more than 25% of the audience are understood to be under 12 or, subject to the outcome of the consultation, under 16.</li></ul>
	<ul style="list-style-type: none"><li>• Cover all non-broadcast media within the remit of the CAP Code, including online advertising.</li></ul>

43.2. The recommended approach would remove HFSS product advertising from media environments – both traditional and new – directed at children or where children make up or are likely to make up more than 25% of the audience. Immediately, this will result in a significant reduction in the potential for and likely actual levels of children’s exposure to HFSS product advertising. CAP’s Regulatory and economic impact assessment provides further detail on the impact of the recommendations and is included in [Annex 7](#).

43.3. Respondents should also note [Annex 3](#) provides a summary of the pre-consultation responses to the various recommendations discussed in the following sections.

#### 44. Restrictions on HFSS product advertising

- CAP proposes to update the CAP Code to include rules dedicated to the advertising of HFSS products.
- CAP proposes to apply the new and amended rules to brand advertising that has the effect of promoting an HFSS product, mirroring present guidance used for TV advertising

44.1. The consensus view among stakeholders, including respondents to CAP’s pre-consultation (see [Annex 3](#)), identifies the advertising of HFSS products to children as the focal point of concern.

44.2. HFSS products can contribute to weight gain and adverse health outcomes, especially when consumed excessively. To this end, CAP considers it is proportionate to target new restrictions on HFSS product advertising, including brand advertising that, for all intents and purposes, promotes an HFSS product, as defined in existing [BCAP guidance on identifying brand advertising that promotes HFSS products](#).

#### 45. Selecting a nutrient profiling model

- CAP proposes to use the [Department of Health nutrient profiling model](#) to differentiate advertising for HFSS products from that for non-HFSS products.

45.1. [Annex 6](#) includes a fuller discussion of nutrient profiling and provides detail on the other potential options CAP identified: the EU Pledge Model and the WHO Europe Model.

45.2. CAP recognises that there are difficulties inherent in any attempt to classify food and drink products as “healthier” and “less healthy”. There is no ideal approach, since individual foods are consumed as part of a wider diet and negative health impacts derive from an inappropriate balance of consumption over time. They are also influenced by external factors such as levels of physical activity.

45.3. CAP considers, however, that the DH nutrient profile best satisfies the following principles:

- Proportionality – Is the model suitable for the purposes of advertising regulation, balancing commercial freedoms with the need to protect health? Is the cost of implementation proportionate?
- Usability – Has the model been shown to be reasonably straightforward and easy to use?
- Credibility – Is the model scientifically robust? Is it likely to be acceptable to the majority of different stakeholder constituencies?

45.4. In assessments of its performance relative to that of other models it compares favourably, and the evidence of its use for TV suggests that it has contributed to a significant reduction in the levels of HFSS advertising and children’s exposure to that advertising.

- 45.5. The WHO Europe model is comparatively stricter, in large part because it includes outright prohibitions on marketing for certain categories of product, such as edible ices and cakes. CAP considers that category prohibitions are likely to be disproportionate and potentially unfair on certain food and drink businesses. Importantly, they remove any incentive for food and drink businesses to adapt their behaviour, for instance, through reformulation of product composition.
- 45.6. In practical terms, the DH model is well established in the UK regulatory context. CAP's Regulatory and economic impact assessment (see [Annex 7](#)) finds that those most likely to be affected by new restrictions are larger food and drink businesses that already have experience of the model in relation to TV advertising. Although food and drink businesses are required to carry out or commission compositional and nutritional assessment by legislation, adopting a new nutrient profiling scheme will invariably add to compliance costs and create a more complex and potentially confusing regime. The WHO Europe and EU Pledge models both have multiple categories and different requirements that would result in increased immediate compliance costs and additional complexity at the enforcement stage.
- 45.7. In terms of credibility, CAP notes the majority of pre-consultation respondents supported the adoption of the DH model. It also considers that the development process, under the auspices of the FSA and involving acknowledged nutrition and public health experts, was robust and transparent.
- 45.8. CAP notes that PHE will review the DH model in order to update it in light of the recommendations of the SACN report on sugar. Should CAP ultimately adopt the DH model, it will consider the impact of any changes to the model arising from the PHE review and report publicly on their potential regulatory implications; where the implications are significant CAP would very likely consult on the potential adoption of the new model for the purpose of differentiating HFSS and non-HFSS products.
46. **Existing prohibitions on the use of promotions and licensed characters and celebrities**
- CAP proposes to amend existing rules on the creative content of food and soft drink advertising – prohibiting licensed characters, celebrities popular with children and promotions directed at children aged 11 and younger – to apply only to HFSS product advertising allowing greater opportunities for healthier foods to be advertised to children.
- 46.1. This would allow non-broadcast advertising to use those techniques to promote non-HFSS products to under 12s, bringing the CAP Code into line with the approach of the BCAP Code for TV advertising.
- 46.2. Lessening the restrictions on the content of non-HFSS product advertising encourages advertisers to adapt their behaviour and advertise healthier foods to children. It is notable that several pre-consultation respondents were concerned that advertising of relatively healthier foods was very limited. This is supported by various studies that suggest that the balance of food advertised is not representative of a healthy diet.

- 46.3. Having regard to its Regulatory and economic impact assessment (see [Annex 7](#)), CAP considers that this will also create more potential routes of adaptation to limit detrimental economic impacts of placement restrictions.
- 46.4. In making this recommendation, however, CAP acknowledges the concerns of some respondents to the pre-consultation; in particular that the relaxation would most likely result in an increase in the promotion of borderline non-HFSS products rather than products that are considered to be relatively more important to children's diets. CAP welcomes responses on the potential risks of this recommendation.
47. **Introducing media placement restrictions**
- CAP proposed to introduce a new rule prohibiting the placement of HFSS product advertising in media targeted at or likely to appeal particularly to children.
  - CAP will explore through consultation whether the new rule should prohibit HFSS advertising in media targeted at or of particular appeal to children under 12 or under 16.
- 47.1. The question of whether to introduce media placement restrictions for HFSS advertising is central to this consultation. Media placement restrictions can complement rules that address the creative content of advertising. Put simply, reducing exposure to a particular type of advertising will inevitably reduce the overall impact on a given audience. Although the available data precludes an accurate quantification of the regulatory impact, CAP's Regulatory and economic impact assessment (see [Annex 7](#)) suggests that placement restrictions are likely to provide a meaningful reduction in children's exposure to HFSS product advertising and the possibilities for targeting such advertising at children.
- 47.2. CAP considers that the evidence and information it has assessed do not establish clearly to which age group the new rule should apply. CAP considers that, at a minimum, the restriction should apply to media targeted at or of particular appeal to children under 12. However, CAP acknowledges that there is a case for that to be extended to cover children under 16.
- 47.3. Children at different stages of cognitive and social development have very different potential vulnerabilities; they cannot be regarded as one homogenous group for regulatory purposes. There is therefore a need to explore what level of restriction would have an appropriate balance of impact to effectively meet CAP's policy aim.
- 47.4. Under-12s are acknowledged in the present regulatory framework to be particularly vulnerable. This stems from the fact that younger children's understanding of the commercial world and advertising is still evolving as part of their wider cognitive development. This is most apparent in the evidence of their capacity to critically understand advertising. Studies show that, before the age of 8 children are still developing an understanding of the commercial intent behind advertising. For

some more integrated online media, critical understanding may only be fully developed by the age of 12.

- 47.5. Younger children are also in the process of forming food preferences and developing their dietary choices. Reducing children's exposure to HFSS advertising could have two complementary impacts: mitigation of advertising's immediate influence on their food preferences and, much more speculatively, a longer-term effect on their still-developing dietary behaviour.
- 47.6. Importantly, the evidence base establishing advertising's likely effect on children's food preference focuses disproportionately on younger children. In relation to TV, Livingstone (2006) noted that the experimental evidence then available pointed most strongly to the effect being predominantly for children aged 2-11. The Institute of Medicine review (McGuinnis et al (eds.), 2005), considered in Livingstone (2006: 5), found that there was insufficient evidence about advertising's influence on purchase requests, beliefs and short term consumption in 12-18 year olds to draw regulatory conclusions.
- 47.7. This picture has not changed significantly; only around a quarter of the evidence identified by the PHE review relates to children over the age of 12. For instance, the evidence in relation to advergames, which made up the majority of the evidence directly relevant to non-broadcast media, covered an age range of 5-12 years (PHE, 2015: 26). This is similar to the profile of the selected literature included in the WHO Europe review (2013: 26-27).
- 47.8. At the same time, CAP acknowledges the view of policy makers, the public health community and some industry that restrictions are desirable for all children. An under 16 restriction would also align with the BCAP Code rules restricting the placement of TV advertising.
- 47.9. Although the evidence is not as strong as that for younger children, there is still evidence of a link between advertising and older children's food preferences. Older children have more independence and freedom of choice in terms of their engagement with the commercial world and in determining their diet. Their access to media is also wider, particularly in relation to online environments which children are likely to access through personal devices such as mobile telephones and tablets. CAP's impact assessment shows that a higher age restriction is almost certain to result in a more significant reduction in exposure to HFSS product advertising for all children.
- 47.10. Finally, CAP notes that a higher age restriction would also secure all the benefits associated with an under 12s category restriction. The key question is whether there would be disproportionate costs to advertisers and media providers when set against the benefit of also reducing exposure for those aged 12-15.
- 47.11. CAP invites respondents to provide their perspectives and evidence in support of the respective options outlined above.

## 48. Defining the audience

- CAP proposes to apply the rule limiting the placement of HFSS product advertisements to non-broadcast media where more than 25% of the audience are understood to be under 12 or, subject to the outcome of the consultation, under 16.

48.1. It is often straightforward to identify media targeted at children. Where media has a mixed age audience, CAP uses a 'particular appeal' test to identify media that should not carry advertising for certain products i.e. media where more than 25% of the audience are understood to be of a given age or younger. The 25% measure has long been used, and successfully so, to prevent non-broadcast advertisements for alcohol and gambling, for example, from being placed in media of particular appeal to people aged under 18.

48.2. It is clear that children do not simply consume media that is directed only at them, but often form part of audiences more diverse in age. However, aiming restrictions at media targeted specifically at children protects the right of adult viewers in general media to see ads for products of interest to them. The proposed approach serves to proportionately focus new restrictions on where they are likely to have to the most impact.

## 49. Application to different media

- CAP proposes that new restrictions apply to all non-broadcast media within the remit of the CAP Code, including online advertising.

49.1. A key principle of the Code is media neutrality and, in carrying out its pre-consultation and assessing the evidence and information summarised in this document, CAP has not been made aware of a case to exempt specific media from scope.

49.2. The pre-consultation exercise revealed a consensus between all stakeholder constituencies that it was desirable for restrictions to apply across the board, in order to have the maximum regulatory impact in reducing children's exposure while ensuring commercial fairness at the same time. Nevertheless, CAP notes that some respondents did raise the prospect that exemptions might be considered and that some of those opposed to granting exemptions acknowledged that cases could be made through the consultation; CAP would need to consider whether such cases were robust and well-evidenced.

49.3. CAP acknowledges that those children's media with greater commercial interest in or dependency on food and drink advertising to children will be likely to experience a greater economic impact.

49.4. Notwithstanding its recommendation, CAP commits to considering responses that make a strong, well-evidenced case for media exemptions. CAP is also open to responses making the case for transitional arrangements.

## Consultation questions, respondent guidance and next steps

### 50. Introduction

- 50.1. This chapter sets out CAP's consultation questions and notes of guidance to assist respondents. It also outlines the next steps following the response deadline of **17:00 on Friday 22 July 2016**. The proposed text of changes to the CAP Code to implement the policy recommendations in [sections 43-49](#) is included in [Annex1](#).

### 51. Consultation questions

QUESTION 1	<b>Restrictions on HFSS product advertising</b>
	<p>(a) Should the CAP Code be update to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?</p> <p>(b) Should CAP use the existing <a href="#">Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products</a> to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?</p> <p>Please explain your reasons. Please consider CAP's recommendations in <a href="#">Section 44</a> when answering this question. The text of the BCAP guidance note is available via the link above or in <a href="#">Annex 5</a>.</p>
QUESTION 2	<b>Selecting a nutrient profiling model</b>
	<p>Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?</p> <p>Please explain your reasons and, if applicable, the details of your preferred nutrient profiling model. Please consider CAP's recommendation in <a href="#">section 45</a> and the information on potential nutrient profiling models included in <a href="#">Annex 6</a> when answering this question.</p>
QUESTION 3	<b>Existing prohibitions on the use of promotions and licensed characters and celebrities</b>
	<p>There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?</p> <p>The current rules on creative content are the prohibitions on the use of promotions (rule 15.14) and of celebrities and licensed characters popular with children (rule 15.15). Please explain your reasons. Please consider CAP's recommendation in <a href="#">section 46</a> when answering this question.</p>

<p>QUESTION 4</p>	<p><b>Introducing placement restrictions</b></p>
	<p>(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?</p> <p>(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:</p> <ul style="list-style-type: none"> <li>i) aged 11 or younger?</li> <li>ii) aged 15 or younger?</li> </ul> <p>Please explain your reasons. Please consider CAP’s recommendations in <a href="#">section 47</a> when answering this question.</p>
<p>QUESTION 5</p>	<p><b>Defining the audience</b></p>
	<p>It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a “particular appeal” test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media.</p> <p>Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?</p> <p>Please explain your reasons. Please consider CAP’s recommendation in <a href="#">section 48</a> when answering this question.</p>
<p>QUESTION 6</p>	<p><b>Application to different media</b></p>
	<p>Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?</p> <p>Please explain your reasons. Please consider CAP’s recommendation in <a href="#">section 49</a> when answering this question.</p> <p>Also, if relevant, please include information and data on why a particular media should be considered exempt from the scope of a new rule. CAP expects that respondents making a case for media exemptions will be able to demonstrate robustly the disproportionate impact on the media in question.</p>

## 52. Respondent guidance

- 52.1. Each question above cites the corresponding policy recommendation and particularly relevant information in the rest of the document and annexes. However, the consultation questions must be read in conjunction with all the other sections of this document and its annexes. In particular, [sections 13-16](#) which outline the consultation scope and the key regulatory and legal constraints to which CAP is subject.
- 52.2. Respondents should note the attached annexes, which provide further information and background. Importantly, they include further information from the pre-consultation and CAP's Regulatory and economic impact assessment.

[Annex 1](#) – Proposed text of changes to the CAP Code

[Annex 2](#) – CAP Code rules on food and soft drink advertising to children

[Annex 3](#) – Pre-consultation responses on approaches to regulatory change

[Annex 4](#) – Pre-consultation respondent briefing paper

[Annex 5](#) – BCAP guidance on brand advertising that promotes HFSS products

[Annex 6](#) – Overview of potential nutritional profiling models

[Annex 7](#) – Regulatory and economic impact assessment

[Annex 8](#) – Online Food Advertising Survey 2015: ASA Compliance Survey

[Annex 9](#) – Responding to this consultation

- 52.3. CAP encourages respondents to provide or otherwise cite relevant academic evidence, data or other information to support their arguments. CAP is particularly interested in data and information on the likely impact of the proposals for regulatory change. Respondents should ensure that any such information is accompanied by an appropriate commentary citing parts relevant to the argument being made.

## 53. Next Steps

- 53.1. In addition to being publicised, details of the consultation have been specifically circulated to a cross-section of interested parties including academics, regulatory bodies, government departments, non-governmental organisations (NGOs), public health professionals and industry.
- 53.2. CAP is committed to considering all responses carefully and with an open mind and welcomes responses from all those who have an interest. Information on how to respond to this consultation can be found in [Annex 9](#).
- 53.3. CAP will evaluate all significant points arising from consultation and explain the reasons behind the decisions made. The consultation evaluation will be published on the CAP website when the outcome of the consultation is announced.
- 53.4. If it decides that regulatory change is justified, CAP will seek to implement the new rules as soon as is practicable.

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