

CAP Consultation: food and soft drink advertising to children

Annex 3

Pre-consultation responses on approaches to regulatory change



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1. Introduction

As explained in sections 31 and 32 of the [main consultation document](#), which provided a narrative of stakeholder views on the case for regulatory change, CAP carried out an extensive process of pre-consultation to assist in developing this consultation. This annex provides a further narrative of stakeholder responses to questions concerning the approach CAP might take to introduce new restrictions.

Responses have been anonymised and grouped to provide respondents with an overview of the various stakeholder perspectives and arguments; in particular, the areas of consensus and disagreement. The narrative is intended to reflect broadly the perspectives of the various stakeholder constituencies rather than the specific views of individual organisations. The narrative should not be regarded as an exhaustive or entirely representative of the views of every potential stakeholder.

For reference, [Annex 4](#) includes the briefing document sent to participants in the pre-consultation process.

2. Stakeholder list

The pre-consultation 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 the food industry. CAP also sought input from relevant respondents in the devolved nations.

The following organisations and bodies took part in the pre-consultation exercise:

Advertising Association	Dept of Health, Social Services, and Public Safety	Proprietary Association of Great Britain
Association of Directors of Public Health	Diabetes UK	Public Health England
Bel UK	Faculty of Public Health	Periodical Publishers Association
British Dietetic Association	Ferrero	Royal College of Paediatrics and Child Health
British Heart Foundation	Food and Drink Federation	Royal Society for Public Health
British Heart Foundation (Scotland)	Food Standards Agency NI	Scientific Advisory Council on Nutrition
British Nutrition Foundation	Google	Scottish Government
British Retail Consortium	Internet Advertising Bureau	Snack, Nut and Crisp Manufacturers Association
British Soft Drinks Association	Institute of Practitioners in Advertising	Tesco
Cancer Research UK	Institute of Promotional Marketing	The Public Health Agency (NI)

Children's Food Campaign	Incorporated Society of British Advertisers	UK Health Forum
Children's Food Trust	Kellogg's	UK Interactive Entertainment Forum
Children's Media Foundation	Mars	Unilever
Coca-Cola	McDonalds	Welsh Government
Danone	National Obesity Forum	Which?
Department of Culture Media and Sport	National Institute of Health and Care Excellence	World Cancer Research Fund
Department of Health	News Media Association	

3. Introducing stronger rules for HFSS products

CAP asked: Should greater restrictions be put in place for the non-broadcast marketing of food and soft drink high in fat, salt or sugar (HFSS products) than for non-HFSS products? For the purposes of this question please explain 'why' and not 'how'.¹

There was a strong positive consensus across stakeholder constituencies on introducing differentiation to allow for stronger rules to control HFSS advertising. However, some industry respondents, while acknowledging that approach as an appropriate option for strengthening the existing rules, stressed the importance of proportionality and the need to have regard to the evidence base through the process of consultation.

Governmental bodies at UK-level and in the devolved nations, public health and NGO respondents agreed on several key reasons for introducing greater restrictions on HFSS products:

- The overarching need to rebalance children's diets addressing the over-consumption of HFSS products;
- The importance of early influences in how children's food preferences developed;
- The links between poor diet, particularly excessive sugar consumption, and ill-health, which, in turn, resulted in economic and health care costs and contributed to health inequalities;
- HFSS advertising was considered to be too prominent and healthier options much less so within the overall balance of advertising;
- One respondent considered that the overall balance of advertising sent the wrong message about HFSS products – that they should be a core part of children's diets and not an occasional treat;

1. The use of the term "HFSS" in this question was not premised on any specific definition of the concept. The issue of what nutrient profiling model should underpin differentiation was addressed in the subsequent question, the responses to which are summarised in the section immediately below.

- The absence of nutrient profiling in non-broadcast media was considered anomalous, especially when the same HFSS ads that were restricted on TV appeared around similar programming in video-on-demand services; and
- HFSS advertising contributed to the wider obesogenic environment.

Although a small number of industry respondents agreed to some extent with the points above, they tended to favour stronger restrictions on HFSS food and soft drink products to reflect the approach already taken in the BCAP Code. Some governmental bodies also shared this view.

Some industry and media owner respondents cited the need for industry, through self-regulation, to contribute to wider efforts to tackle childhood diet and obesity issues. Other industry and media owner respondents considered that differentiation between products should be introduced to align the CAP Code with the EU Pledge.

There was a consensus among industry respondents that any action taken to differentiate HFSS products must be proportionate and balance the evidence of advertising's impact on children's diet with the right to advertise in general. Furthermore, some emphasised the need for any new restrictions on advertising to be part of a wider series of measures to address the underlying factors influencing children's diets.

4. Nutrient profiling models

CAP asked: If new restrictions were to be introduced specifically for the non-broadcast marketing of HFSS products, what model of nutrient profiling should be used to differentiate HFSS products from non-HFSS products?

There was a reasonable degree of consensus across most stakeholder constituencies on the use of the Department of Health (DH) nutrient profiling model. However, some public health and NGO respondents favoured the WHO Europe nutrient profiling model, considering it to be more robust. A significant number of respondents across all constituencies did not give a view at all, for instance because they had not come to a position on the issue or did not consider they had the technical expertise to make an informed decision.

The main supporting arguments for the DH model, generally agreed across governmental, public health and NGO respondents and the various industry stakeholder groups, were:

- The benefit to consumers and industry of consistency with the BCAP Code's approach to TV advertising; principally, the certainty and ease of understanding around what products could be advertised to children; and
- The established nature of the model, in terms of the rigours of its development – several noted that it had specifically developed in response to circumstances in the UK – and how it was commonly in use across the food and advertising industries.

Several public health and NGO respondents cited additional grounds for the DH model's adoption on the basis of it stimulating reformulation of products.

At the same time, a significant number of respondents across all stakeholder constituencies noted the on-going review of the DH nutrient profiling model being carried out by PHE in response to the recommendations of the SACN report, [Carbohydrates and Health](#) (2015).

Public health and NGO respondents considered that the review was important to strengthen the nutrient profiling model. Some respondents raised concerns over marginally reformulated products that were still high in nutrients such as sugars. Industry respondents also welcomed the review, but some considered that there was a need to properly assess any impact its findings might have on any new rules once those findings became public. Another respondent considered that there was a case to await the outcome of PHE's review of the model before making a decision.

Those public health and NGO respondents who endorsed the WHO nutrient profiling model pointed out that it was internationally recognised and was developed through a process that took into account other available models, including the DH nutrient profiling model. The point was also made that the WHO Europe model was desirable because its categorisation of different food stuffs avoided loopholes and anomalies, for example, marginally reformulated products that were still high in nutrients such as sugars. Several other public health and NGO respondents, while not endorsing the WHO Europe model specifically or endorsing the DH model, considered that the consultation process should nevertheless give due consideration to the WHO Europe model.

Some respondents, including governmental bodies, considered that the EU Pledge nutrient profiling scheme was undesirable as it was not sufficiently independent from industry.

One respondent expressed general concern over the difficulties associated with developing a new nutrient profiling model and considered that the only viable option was to choose an existing model.

Some industry respondents made the point that nutrient profiling models could have unintended consequences. They gave the example of imposing restrictions on advertising of products that were of no interest to children, such as olive oil or stock, because they were classified by the DH nutrient profiling model as HFSS.

5. Limiting content restrictions to HFSS product advertising

CAP asked: With the exception of fresh fruits and fresh vegetables, non-broadcast marketing communications for food and soft drink products cannot include promotions or licensed characters, if the creative content of the marketing communication is aimed at children aged 11 or younger.

If new restrictions were to be introduced specifically for the non-broadcast marketing of HFSS products, should the existing restrictions on creative content apply to HFSS products only?

There was no general consensus on whether the present content rules should be applied only to products categorised as HFSS. Governmental, public health and NGO respondents tended not to favour the approach, while industry respondents, especially

food industry stakeholders, were in favour. There was, however, some agreement that the matter should be explored more fully through the consultation process as many respondents tended to acknowledge the possible benefits of allowing non-HFSS products more scope to advertise.

The main objection of governmental, public health and NGO respondents was that they considered that a relaxation of the rules could have unintended consequences. There was particular concern over the prospect of presently prohibited approaches to promote marginally reformulated products that still contained significant quantities of nutrients such as sugar. One respondent considered that there should be no relaxation in the rules as a point of principle.

Amongst these stakeholder groups, there was some acknowledgement of the possible benefits of allowing healthier foods to be promoted more freely. Concern centred, however, on uncertainty about the impact of a differentiated approach and respondents stressed the need to provide more detail in the consultation in order to explore the issue fully.

The key arguments made in favour of applying the content restrictions only to HFSS products were the benefits of consistency in aligning the CAP Code with the BCAP Code and encouraging advertising of healthier foods. Industry respondents tended to hold these views, but the point about encouraging advertising of healthier foods was also made by some governmental bodies.

One industry respondent supported the approach on the grounds that the evidence pointed only to HFSS products being a problem and they were concerned that failure to allow healthier foods more scope to advertise would dilute the impact of differentiating between HFSS and non-HFSS products.

6. Introducing exposure restrictions

CAP asked: (a) Should the rules aim to reduce children's exposure to non-broadcast marketing of HFSS products?

On the principal question of whether to introduce exposure restrictions, there was a broad consensus across all stakeholder constituencies that of all the options for regulatory change this was likely to be the most appropriate. As noted previously, governmental, public health, NGO respondents and some industry stakeholders either considered that there was already an evidence base to support regulatory change and/or that other factors made such change desirable on a precautionary basis. Other industry respondents were open to the introduction of exposure restrictions provided that the consultation process came to that conclusion on the basis of a proper and balanced assessment of the available evidence.

Governmental bodies, including those from the devolved nations, along with public health and NGO respondents, considered that exposure was the key problem and restrictions were required to reduce the number of HFSS ads seen by children.

One industry member considered that consistency with the BCAP Code was desirable. Another stressed the importance of ensuring that only media targeted at children were covered by any new restriction. Some NGO respondents raised concerns over

enforcement of any new rules. They considered that the ASA should adopt a more transparent approach on the criteria it used to assess whether an advertisement was targeted at children. One respondent also highlighted the issue of brand, as opposed to product, advertising and the need to address that as well.

One industry member objected to the introduction of exposure restrictions on the basis that such a measure assumed that advertising was inherently problematic.

CAP asked: (b) If so, should that be done by prohibiting the marketing of HFSS foods in non-broadcast media targeted at or of particularly appeal to children aged 15 or younger, 11 or younger or some other age category of children?

There was a reasonable consensus among public health, NGO and industry respondents, in particular those from the food industry, around the desirability of an under 16 age category as the basis for exposure restrictions. However, some industry respondents, principally media owners and advertising industry bodies who were able to give a view, supported the narrower age category of under 12. UK governmental bodies also supported the under 16 category, but some respondents from the devolved nations suggested an under 18 category.

Several public health bodies and some NGOs considered that an under 16 age category was the minimum acceptable standard and voiced some support for higher age categories. Some of these respondents argued, as a point of principle, that 16 and under was a more appropriate definition of a child.

Those supporting the use of the under 12 age category made several points:

- Younger children were the most vulnerable. Some industry respondents pointed to concerns around younger children's capacity to identify and critically understand advertising messages, in particular in online environments;
- Consistency with the EU Pledge was desirable; and
- In practical terms, it was easier for advertisers and media owners to identify media targeted at or likely to appeal to that group.

Those governmental, public health and NGO respondents supporting the use of the under 16 age category made several points:

- Older children were shown to have poorer diets and displayed higher rates of excess weight and obesity;
- Older children had more independence from their parents and greater income and capacity to make dietary choices themselves;
- Brain development did not finish until early adult hood and on-going social development rendered older children vulnerable in other ways, for instance, to peer pressure and other social influences; and
- Younger children had a tendency to consume media intended for older groups, necessitating targeting restrictions for older children in order to enhance protection for younger ones.

Several food industry respondents and some governmental and NGO respondents considered that alignment with the BCAP Code was desirable.

Some industry respondents objected to the use of the under 16 age category on the basis that they believed there was little evidence to support it and that there were practical considerations, such as new restrictions covering media not intended for children, owing to the difficulties in measuring and separating older children's media habits from those of young adults.

Some public health and NGO respondents supported extending protections beyond the age of 15:

- Several respondents argued for a 16 and under age category on the basis of it being a more appropriate definition of a child – noting international definitions – saying that children still had low health literacy skills and that it was the only way to meaningfully reduce exposures; and
- Some respondents argued for an under 18 age category on the basis that evidence showed harm being caused to this group, 18 is the age at which brain development is completed and policy in this area should align with child protection practice and the UN framework on the rights of a child. Respondents also considered that there should be parity of approach with other harmful products like alcohol.

CAP asked: (c) Is there an alternative means of reducing exposure?

There were relatively few responses suggesting alternative means for reducing exposure. However, several public health and NGO respondents, in citing concerns and criticisms of the role of self-regulation, suggested that a statutory system of regulation was desirable.

7. Media exemptions

CAP asked: Is there a case for exempting some media from provisions designed to reduce children's overall exposure to non-broadcast marketing of HFSS foods?

There was a strong consensus across all stakeholder constituencies that exemptions for certain media were not desirable. However, there was a general acknowledgement that it might be possible for a case for an exemption to be made in response to the consultation. Governmental bodies, public health and NGO respondents stressed that any case must be strongly supported by evidence of the disproportionate impact of any new rules.

There was broad agreement that the key problem of granting exemptions was the loss of consistency. Governmental, public health and NGO respondents were particularly concerned about how that might provide opportunities for advertisers to circumvent any new rules. Some respondents suggested that there would be difficulties involved in meaningfully defining exemptions so that they could be enforced effectively.

Some governmental bodies and a significant number of public health and NGO respondents considered that exemptions were uncalled for as media owners had significant capacity to replace revenues from HFSS advertising spend with that from other sectors.

One respondent considered that it was important to future-proof any new rules against developments, particularly in online advertising. Another considered that the broader issue was one of child protection, a consideration that significantly outweighed concerns over economic impacts.

One industry respondent considered that it was important for any new rules to cover only media targeted at children. Another considered that it was important to consider different media in proper context, for instance people tended only to visit the cinema infrequently, mitigating the impact of exposure to advertising.

8. Impact of regulatory change

CAP asked: Who is likely to be most impacted by the introduction of new restrictions on the marketing of HFSS foods in non-broadcast media targeted at or of particularly appeal to children? Please consider positive and negative impacts.

Governmental bodies, including those from the devolved nations, public health and NGO respondents, along with a small number of industry respondents, considered that a variety of positive impacts could be achieved by introducing new restrictions:

- Reduction in children's exposure to HFSS advertising would influence children's consumption choices and ultimately their diet. This would be beneficial in terms of health, quality of life (for instance, education attainment) and future health;
- Reformulation of products would be stimulated, there would be a greater prominence of advertising for healthier options, and the effectiveness of public messaging would consequently be improved;
- Parents would benefit by allowing them to make healthier choices for children and themselves and avoid problems such as pester power;
- Wider social benefits would be the positive impact on diet of lower socio-economic groups; and
- On an economic level, there would be reduction in health and social care costs and wider benefits in terms of reduced sickness and incapacity raising employment levels.

The same constituencies of stakeholders also highlighted potentially beneficial impacts to industry:

- New opportunities to promote healthy options;
- Regulatory consistency; and
- Reputational benefits in having contributed to wider efforts to address the diet and obesity issue.

Some industry respondents acknowledged the positive aim of any potential strengthening of the rules, but considered that the impact was very difficult to quantify in practice. Others, including UK government stakeholders, stressed the importance of testing the likely impact of regulatory change for children, the economy and industry through the consultation process.

Several industry respondents highlighted the potential financial impacts on all stages of the advertising market: media owners, the advertising industry and food advertisers. One respondent considered that changes would impact especially those companies with narrower product ranges and, in the longer term, would impact on research, innovation and levels of employment.

Other industry respondents highlighted the impact in terms of compliance costs:

- Without a [Clearcast pre-clearance system](#)² in non-broadcast a new way of assessing compliance with nutrient profiling would need to be devised;
- New audience segments and measurements would need to be developed; and
- Changes would impact particularly on globally produced ad campaigns.

Some NGOs and governmental bodies considered that any negative impacts on industry would be outweighed by the benefits to public health.

Some public health and NGO respondents considered that there were no negative impacts on industry. Others pointed to evidence that showed advertising restrictions were one of the lowest-cost interventions and placed an emphasis on the industry to demonstrate any disproportionate negative impacts through the consultation process.

9. Other pre-consultation comments

Respondents were given an opportunity to raise points additional to their responses to the set questions outlined in the sections above:

- Several public health and NGO respondents considered that food advertising to adults was also a problem. They were concerned about both adult roles as parents, influencing children's diets, and how advertising influenced adults' own diets.
- Some public health and NGO respondents considered that advertising to children was, of itself, a problem in principle and should be restricted.
- Several respondents, including those from the devolved nations, emphasised the importance of acting to address health inequalities as an overarching factor in the case for regulatory change.
- Several public health and NGOs considered that total exposure to HFSS advertising should be minimised and that new rules should not merely restrict targeting of children with such advertising.
- Some governmental and NGO respondents considered that the framework of the rules should be changed to allow greater restrictions to be placed on certain media, for instance social media, and products, for instance, sugary drinks, that evidence suggested had greater relative impact on children's diets.
- One industry respondent was concerned about the potentially disproportionate impact of any new restrictions on smaller food producers.

² Clearcast is an organisation owned by the major broadcasters, which provides pre-clearance services to ensure that advertising is compliant with the BCAP before being broadcast on TV.

There was a consensus among public health and NGO respondents, shared by some governmental and industry respondents, that the consultation should address several issues related to enforcement:

- The consultation should make clear how the rules will be interpreted in practice, in particular the criteria by which an advertisement would be considered to be targeted at children for difficult-to-measure media like outdoor advertising;
- The ASA should take a public health perspective in enforcing the rules; and
- Clarity should be provided on what is expected of advertisers and media owners in determining the age profile of their audiences, especially in complex media, such as those online that rely on several different parties to serve advertisements.

Some respondents raised concerns related to the consultation process:

- There must be a clear and transparent process to review any new rules employing defined metrics to measure impact and allowing groups like academics to feed in;
- Children themselves should have a voice in the process; and
- The outcome must be communicated effectively to ensure that industry have an appropriate opportunity to make arrangements for compliance with any new regime.

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