

INTRODUCING A TOTAL ONLINE ADVERTISING RESTRICTION FOR PRODUCTS HIGH IN FAT, SUGAR AND SALT (HFSS)

About this submission

The George Institute for Global Health is pleased to contribute to the UK Government consultation 'Introducing a total online advertising restriction for products high in fat, sugar and salt (HFSS)'.

We welcome the opportunity to further engage with the Department of Health and Social Care.

About The George Institute for Global Health

The George Institute is a leading independent global medical research institute established and headquartered in Sydney. It has major centres in China, India and the UK, and an international network of experts and collaborators. Our mission is to improve the health of millions of people worldwide by using innovative approaches to prevent and treat the world's biggest killers: non-communicable diseases (NCDs) and injury.

Our work aims to generate effective, evidence-based and affordable solutions to the world's biggest health challenges. We research the chronic and critical conditions that cause the greatest loss of life and quality of life, and the most substantial economic burden, particularly in resource-poor settings.

Our food policy team works in Australia and overseas to reduce death and disease caused by diets high in salt, harmful fats, added sugars and excess energy. The team conducts multi-disciplinary research with a focus on generating outputs that will help government and industry deliver a healthier food environment for all.

In collaboration with

Imperial College
London



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

Yes

Please explain your answer and provide relevant evidence

Unhealthy diets are associated with overweight and obesity, and children are particularly vulnerable to the non-communicable diseases associated with these conditions. As per the Resolution of the Sixty-third World Health Assembly, which was adopted on 21 May 2010, “children should maintain a healthy weight and consume foods that are low in saturated fat, trans-fatty acids, free sugars, or salt in order to reduce future risk of non-communicable diseases” [1]. A significant amount of marketing is directed towards children to encourage the consumption of High Fat, Salt and Sugar (HFSS) foods through online platforms and evidence shows a clear link between junk food advertising and child food preferences. Of particular note is the finding that children spending more than three hours per day online are almost four times more likely to buy junk food and will eat around three times less fruit and vegetables [2, 3]. To address the alarming rates of overweight and obesity in children in the UK, and meet the Government’s ambition to halve childhood obesity by 2030, it is crucial to reform the food environment to better promote and facilitate healthy eating.

As a result, The George Institute for Global Health supports the proposal by the Department of Health and Social Care and the Department for Digital, Culture, Media and Sport to introduce a total online HFSS advertising restriction. The George Institute would like to highlight the following:

- Children are spending more time online on a range of digital devices and platforms (including websites, social media, games and apps) and see billions of adverts each year. The Government’s own data shows children in the UK were exposed to 15.1 billion marketing impressions of unhealthy food and drink advertising in 2019 alone.
- Online platforms and digital marketing techniques are prolific and continue to evolve, making it difficult for public health policy to stay ahead of the curve in regulating unhealthy marketing. Current regulations for online advertising of HFSS foods do not sufficiently protect children. In June-September 2020, the Advertising Standards Authority conducted a surveillance of 50 websites likely to be visited by children and found 102 junk food advertisements, including 24 on children’s websites. A total ban circumvents this issue and creates a stable environment for manufacturers and retailers to market their products.
- Evidence in the alcohol category indicates that age-gating of online advertising material does not work and is therefore an ineffective method of preventing youth exposure to unhealthy products [4]. A total ban on online alcohol marketing has been successful in other jurisdictions, and therefore would be successful in reducing the consumption of HFSS products [5].
- A total ban would have subsequent benefits to population health as the effects of online marketing of HFSS foods are not limited to children. Online junk food advertising also encourages adults to consume unhealthy food and impacts the overall health of the family [6].
- In addition to the ban in its current form, it is critical that it is extended to include coverage of product placement and sponsorship on online platforms. Without this provision, the total ban could be undermined, with marketers migrating their advertising budgets to these forms of online promotion.
- It is also crucial that the scope of HFSS foods be regularly reviewed in line with the latest research findings. For example, ‘ultra-processed’ foods, which extend the definition of unhealthy foods beyond those solely based on nutrients, are also



associated with overweight and obesity and should be reviewed in line with this proposal [7, 8]. Caution should be paid to the reformulation of HFSS goods into 'diet' or so-called 'healthy' offerings that may carry associated damaging nutritional implications [9].

- The George Institute supports the move to make regulation mandatory in light of case studies that expose failings of public-private partnerships to produce health gains when targets are watered-down or lack independent monitoring and enforcement [10].

Further to the immediate health gains of such a ban, we concur with other public health groups that a total restriction online is necessary to:

- a. Futureproof the policy against changes in the nature of media platforms and patterns of children's media habits;
- b. Account for a lack of transparency and independent data; and
- c. Address potential issues with the way HFSS adverts are targeted to children online.

References:

- [1] WHA 63.14 Marketing of food and non-alcoholic beverages for children (2010) https://apps.who.int/gb/ebwha/pdf_files/WHA63/A63_R14-en.pdf
- [2] Sadeghirad, B., Duhaney, T., Motaghipisheh, S., Campbell, N. R. C., and Johnston, B. C. (2016) Influence of unhealthy food and beverage marketing on children's dietary intake and preference: a systematic review and meta-analysis of randomized trials. *Obesity Reviews*, 17: 945– 959. doi: [10.1111/obr.12445](https://doi.org/10.1111/obr.12445).
- [3] Emma Boyland, Rosa Whalen, Paul Christiansen, Lauren McGale, Jay Duckworth, Jason Halford, Malcolm Clark, Gillian Rosenberg, Jyotsna Vohra (2018) See it, want it, buy it, eat it: How food advertising is associated with unhealthy eating behaviours in 7 – 11 year old children. Cancer Research UK.
- [4] L Harris, J., Webb, V., J Sacco, S., & L Pomeranz, J. (2020). Marketing to Children in Supermarkets: An Opportunity for Public Policy to Improve Children's Diets. *International Journal of Environmental Research and Public Health* vol. 17,4 1284. doi:10.3390/ijerph17041284.
- [5] Katainen A, Kauppila E, Svensson J, Lindeman M, Hellman M. Regulating Alcohol Marketing on Social Media: Outcomes and Limitations of Marketing Restrictions of Finland's 2015 Alcohol Act. *J Stud Alcohol Drugs*. 2020 Jan;81(1):39-46. PMID: 32048600.
- [6] Pettigrew S, Tarabashkina L, Roberts M, Quester P, Chapman K, Miller C. The effects of television and Internet food advertising on parents and children. *Public health nutrition*. 2013 Dec;16(12):2205-12.
- [7] Chen, X., Zhang, Z., Yang, H. *et al*. Consumption of ultra-processed foods and health outcomes: a systematic review of epidemiological studies. *Nutr J* 19, 86 (2020). <https://doi.org/10.1186/s12937-020-00604-1>
- [8] Rauber, F., Chang, K., Vamos, E.P. *et al*. Ultra-processed food consumption and risk of obesity: a prospective cohort study of UK Biobank. *Eur J Nutr* (2020). <https://doi.org/10.1007/s00394-020-02367-1>
- [9] Scrinis, G., & Monteiro, C. (2018). Ultra-processed foods and the limits of product reformulation. *Public Health Nutrition*, 21(1), 247-252. doi:10.1017/S1368980017001392
- [10] Laverty AA, Kypridemos C, Seferidi P, *et al* Quantifying the impact of the Public Health Responsibility Deal on salt intake, cardiovascular disease and gastric cancer burdens: interrupted time series and microsimulation study *J Epidemiol Community Health* 2019;73:881-887.



SCOPE

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

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

Do you agree with this definition?

No

Please explain your answer and provide relevant evidence

Digital marketing restrictions should cover platforms that might attract a mixed audience as well as the digital platforms that might be used primarily by children. We know that advertising not intended for children may end up being viewed by children, and therefore the scope of the definition should go beyond restricting marketing communications intended or likely to come to the attention of UK children [1]. So too, further consideration is required around what constitutes 'factual claims about products and services' to ensure definitional coverage of HFSS advertising across text and imagery.

Reference:

[1] UNICEF (2018), *Children and Digital Marketing: Rights, risks and opportunities*, [https://www.unicef.org/csr/files/Children_and_Digital_Marketing_-_Rights_Risks_and_Opportunities\(1\).pdf](https://www.unicef.org/csr/files/Children_and_Digital_Marketing_-_Rights_Risks_and_Opportunities(1).pdf)

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

Yes

Please explain your answer and provide relevant evidence

The George Institute for Global Health foresees difficulties with the proposed approach on types of advertising in scope. The George Institute would like to highlight the following:

- Definitional issues and the retained ability to display images of the HFSS products.
- Whilst most online platforms and mediums have age restrictions, these can easily be overcome by children themselves.
- It is essential to consider how to restrict the marketing activities of non-UK corporations and industry representatives.
- In implementing this ban, consideration should be paid to how marketing towards parents and families, and the influence of 'pester power', might best be mitigated to work towards a whole-of-family health.

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



Please refer to responses to questions 2 and 3.

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

Yes

Please explain your answer and provide relevant evidence

The George Institute for Global Health agrees with this definition. However, we believe it should be expanded to include brand ambassadors, influencers and retailers (that is to say, all types of person or organisation who might be involved in the marketing of a HFSS product). Influencers and retailers can - and do - advertise junk food products through product placement and search hierarchy online, so this form of marketing should be included under the scope of 'advertiser'.

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

Yes

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

No

Please explain your answer and provide relevant evidence

The George Institute for Global Health would like to highlight the following:

- Exemptions on 'factual claims' as defined above should only be permissible on owned websites and dedicated shopping platforms, where the purpose is to provide information about a product or service at the point of purchase.
- Should the Government decide to continue with a factual claim exemption across social media, then it will need to establish a very clear and comprehensive definition of what constitutes an acceptable factual claim, and what types of factual claims constitute a marketing or advertising message. Such a definition should, for instance, include brand ambassadors and secondary advertising and marketing strategies employed by manufacturers and retailers within its remit.

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

No

Please explain your answer and provide relevant evidence

Children could still access advertisers' social media pages and therefore be exposed to the marketing.



As outlined above, it is crucial that the ban be blanket and mandatory, so affording the most comprehensive protection to children by avoiding possible circumvention of age restrictions by online advertisers and children alike. As highlighted by the Obesity Health Alliance, “children consume content that is also popular for adults and children falsify their age online or use parents’ or shared household accounts.” (Obesity Health Alliance, 2020 *An End to Junk Food Marketing Online: Policy Position*. 2020. Accessible at <http://obesityhealthalliance.org.uk/wp-content/uploads/2020/11/Ending-junk-food-marketing-online-position-paper.pdf>).

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

Yes

Please explain your answer and provide relevant evidence

The George Institute for Global Health believes a total restriction of online HFSS advertising could have the benefit of conferring a competitive advantage on healthier food options and fruit and vegetable suppliers. This competitive advantage over unhealthy suppliers should facilitate a normalisation of consumption of healthier products for children and their carers.

However, it may also carry a negative transference of focus by major companies within the food industry to promote other products, such as artificially sweetened beverages or other ultra-processed foods. A strict, effective approach to limit such transference, as we’ve learnt from the UK Food Standards Agency Salt Reduction Strategy, could include ‘threat’ of further regulation. For instance, if this ban resulted in an increase in the advertising of other ultra-processed foods within a specified time period, the ban would be expanded to include those too.

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

No

Please explain your answer and provide relevant evidence

As noted above, a degree of distortion towards healthy foods is a positive direction, and an appropriate one given the current excessive distortion towards unhealthy foods. The George Institute for Global Health believes this competitive distortion to be of net benefit to society so mitigating steps are not required.

Across the board, proactive monitoring needs to be undertaken by independent research bodies to ensure compliance is not based solely on reactive complaints. Non-compliance should be responded to with the imposition of stricter limitations, for instance the banning of online advertising of HFSS products and ultra-processed goods to audiences of any age. The threat of more severe sanctions has been shown to be effective in avoiding breaches, particularly when applied in a timely and responsive manner. Fines and penalties should be imposed on companies in repeated breach of rules. These should be proportionate to the size and turnover of the company to act as a deterrent. Public and transparent reporting of all incidences of breaches should be published by the regulator.



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

Yes

Please explain your answer and provide relevant evidence

Search engines are extremely sophisticated in the way they categorise the pages they index and can target content to an individual based on available data. The problem is how does a search algorithm determine that the content is “junk food” based on the information that is on the page or the post? There is no nutritional information provided in advertising or post that could be used to make such an assessment. Trying to categorise based on the searching for certain keywords would be ineffective and could be easily worked around.

The experience of a digital feedback loop, where social media users signal affinity for a particular topic or content type, can mean audiences are exposed to more of the same content through both organic and paid means. This can result in a vicious cycle of triggered recommendations emanating from an advertisement for HFSS foods.

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

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ENFORCEMENT AND LIABILITY

13. What sanctions or powers will help enforce any breaches of the restriction or of the appropriate measures requirements by those in scope of this provision? Please explain your answer and provide relevant evidence

Non-compliance should be responded to with the imposition of stricter limitations, for instance the banning of online advertising of HFSS products and ultra-processed goods to audiences of any age. The threat of more severe sanctions has been shown to be effective in avoiding breaches, particularly when applied in a timely and responsive manner.

The George Institute recommends proactive monitoring by independent research bodies, so compliance is not based on reactive complaints. Fines and penalties should be imposed on companies in repeated breach of rules. Fines should be proportionate to the size and turnover of the company to act as a deterrent. Public and transparent reporting of all incidences of breaches should be published by the regulator.

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

a) New public body *OR* b) An existing public body

Please explain your answer and provide relevant evidence.

Redeploying an existing central government body (as per ‘b’) would ensure effective mobilisation to enact on this proposal. Its operation should, as ever, be subject to separate government approval and transparent oversight. The establishment of a new public body (as per ‘a’) with representatives from multiple departments and agencies would also be a sound option if able to be functional within reasonable timeframes. The establishment of such a



body for this specific purpose would ensure that the different entities within government with a stake in policy development on food marketing to children are involved in and able to contribute to the process.

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

Please explain your answer and provide relevant evidence

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

No

Please explain your answer and provide relevant evidence

The Advertising Standards Authority is not an independent body and thus may act under the influence of the industry with an inherent conflict of interest if given responsibility for the day-to-day regulation of a total online HFSS advertising restriction. The George Institute recommends this measurement be undertaken by an independent regulatory legislative body within central government.

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

Yes

Please explain your answer and provide relevant evidence

A training and guidance package should be developed and implemented to support start-ups and small and medium-sized enterprises (SMEs) to understand and work with any new regulations, especially in terms of understanding the scope and interpreting rules in relation to websites, social media channels, and use of influencer marketing.

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

a) Prohibited

A prohibition ensures the most comprehensive protection of children and affords the greatest clarity.

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

N/A

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

No

Please explain your answer and provide relevant evidence

Currently, self-regulations are the most popular forms of marketing regulations. Self-



regulations are regulations put in place by a system whereby industry actively participates in, and is responsible for, its own regulation. Furthermore, regulations such as voluntary pledges are non-obligatory measures offered by individual companies and are likely to include actions that would have been undertaken anyway [1]. States should adopt statutory regulations to reduce the negative impact of advertising on children's diets [2]. This would ensure that states impose "legally binding convention for marketing practices that target children with products HFSS" [3]. A regulatory approach ensures that there is a level-playing field across companies, preventing any company from being disadvantaged compared to their competitors by implementing marketing restrictions.

References:

- [1] Knai C, Petticrew M, Durand MA, Scott C, James L, Mehrotra A, Eastmure E, Mays N. The Public Health Responsibility deal: has a public-private partnership brought about action on alcohol reduction? *Addiction*. 2015 Aug;110(8):1217-25. doi: 10.1111/add.12892. Epub 2015 Mar 26. PMID: 25808244.
- [2] Romero-Fernández MM, Royo-Bordonada MÁ, RodríguezArtalejo F. Compliance with self-regulation of television food and beverage advertising aimed at children in Spain. *Public Health Nutr*. 2010;13(07):1013-1021. doi:10.1017/S1368980009991984
- [3] Kraak VI, Story M. An accountability evaluation for the industry's responsible use of brand mascots and licensed media characters to market a healthy diet to American children. *Obes Rev*. 2015;16(6):433-453. doi:10.1111/obr.12279

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

Yes

Please explain your answer and provide relevant evidence

This will be sufficient only if civil fines are applied at a level that is consistent with the size and turnover of the company and its investment in marketing and advertising, in order to provide an adequate deterrent and penalty. Indeed, WHO's framework highlights that the penalties for violations should be "large enough to disincentivize violations and include publicity about the offense"[1].

Reference:

- [1] World Health Organization. A Framework for Implementing the Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children. Geneva, Switzerland: World Health Organization;2012.

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

No, it most likely would not have impacts specifically for start-ups and/or SMEs. Banning advertising does not stop or restrict businesses from selling products – it only helps to remove cues and prompts that influence people to eat junk food.

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

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

Yes

Please explain your answer and provide relevant evidence

The George Institute recommends an explicit reference to the responsibility of any marketing team responsible for UK markets to ensure global market partners understand the regulations applying in the UK and do not target UK audiences. The WHO recommends that Member States should cooperate in order to reduce the impact of cross-border marketing of HFSS foods to secure the positive impact of national regulation policies. Resolution 63.14 from the World Health Assembly stresses the need “to take active steps to establish intergovernmental collaboration to reduce the impact of cross-border marketing” (WHO, 2010).

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

Yes

Please explain your answer

Currently, European legal regulations do not go beyond the geographical barriers, but we urge Member States to cooperate to reduce the impact of cross-border marketing to secure the positive impact of national regulation policies.

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

No response

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

No response

PUBLIC SECTOR EQUALITY DUTY

28. Do you think that a total restriction on HFSS advertising online is likely to have an impact on people on the basis of their age, sex, race, religion, sexual orientation, pregnancy and maternity, disability, gender reassignment and marriage/civil partnership?

Yes

Please explain your answer

The risk of obesity differs by gender, age, ethnicity and socioeconomic status. Dietary intake is also affected by income and age. The proposed restrictions could therefore disproportionately benefit the most vulnerable segments of the population and those at higher risk, including children.



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

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

No response

SOCIO-ECONOMIC IMPACT

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

Yes

Please explain your answer and provide relevant evidence

As previously outlined in this consultation, The George Institute for Global Health believes that a total restriction on HFSS advertising online will have a positive impact on all people, particularly those from more deprived backgrounds.

Evidence indicates that individuals experiencing disadvantage are at greater risk of overweight and obesity, in part through targeted advertising and the associated impact on consumption. Those from lower socio-economic backgrounds are higher consumers of HFSS such as soft drinks and are lower consumers of fruit and vegetables [1]. Children from lower socio-economic backgrounds are twice as likely as those from higher socio-economic backgrounds to be at risk of overweight and obesity. As has been found in the tobacco area, it is likely that reduced exposure to promotion of unhealthy food and beverages would have a disproportionately greater beneficial effect on people experiencing disadvantage.

Reference:

[1] Public Health England: National Diet and Nutrition Survey time trend and income analyses for years 1 to 9 <https://www.gov.uk/government/statistics/ndns-time-trend-and-income-analyses-for-years-1-to-9>

Contact

Anastasia Bow-Bertrand
Communications Manager
The George Institute for Global Health
M 07918 553680 | E abowbertrand@georgeinstitute.org