



### Key Points

- Advertised food and drinks are generally less healthy than those recommended as part of a healthy balanced diet
- While advertising and marketing techniques are effective at influencing food preference, choice and consumption in children, there is limited evidence of the same effect in adults with regard to high sugar products
- Ofcom nutrient profiling from 2007 restricting advertising of foods high in fat, sugar and/or salt during children's programmes is currently under review
- A blanket ban on TV advertising before the 9pm watershed has been suggested by a number of organisations
- New means of advertising and marketing have increased significantly in recent years coinciding with sharp increases in digital and online media use

### Key Actions

- A 9pm watershed for TV advertising of foods high in fat, sugar or salt (HFSS)
- Restrictions on advertising to children across all techniques; legal loopholes removed
- Nutrient profiles for advertising regularly renewed and updated

### Definition

Advertising and marketing techniques could be grouped into<sup>1,2:</sup>

**Broadcast:** TV and radio

**Non-Broadcast:** print, cinema, billboards, online (social media, internet pop-ups), advergames.

**Commercial Partnerships**

**In-store:** product packaging (incl. character usage for brand and license), placement of product (i.e. eye level, end of aisle, point of sale displays)

**Sponsorship:** sport events and clubs, cultural events, public activities

Advertising and marketing techniques have the potential to influence obesity rates by overriding established eating patterns; they can encourage buying more of a product, or switching between brands and products.

Traditional (broadcast, print etc.) and new (mainly online) techniques are effective in influencing food preference, choice and consumption in children. Although less research focuses on adults than on children, there is some evidence that screen advertising influences preference for choice, purchase and consumption of high sugar products in adults but the effects in specific population subgroups may differ<sup>3</sup>.

### **Consultation**

The Scottish Government is consulting on the wide range of actions that could be taken to tackle obesity in Scotland<sup>4</sup>. The consultation, which started in October 2017 closes on 31st January 2018. In the consultation is a commitment to press the UK Government to ban broadcast advertising of HFSS foods before the 9pm watershed; and, if no action is taken, to request that these powers be devolved to the Scottish Parliament.

The Scottish Government is looking for views on the following actions on non-broadcast advertising of HFSS products:

- Monitoring and reviewing the implementation and impact, in 2018, of the Committee of Advertising Practice (CAP) code on non-broadcast advertising of HFSS products. If assessed as insufficient, the Scottish Government will take any necessary steps to embed good practice
- Continuing to press the CAP to adopt the revised nutrient profile model (**NPM**) once available
- Exploring the scope to, and commissioning research to examine, the extension of the current CAP restrictions at, or near, streets or locations commonly used by a high proportion of children
- Exploring opportunities to restrict advertising on buses, trains and transport hubs

### **Investment**

In 2014 the UK food industry spent £780 million advertising and marketing food and drink; £256 million alone was spent on promoting 'unhealthy' **HFSS** food sold in retail<sup>5</sup>.

New figures from the Obesity Health Alliance show that in 2015 the top spending crisp, confectionery and sugary drinks brands in the UK spent over £143 million advertising their products.

In comparison, Change4Life, the English flagship healthy eating campaign spent only £5.2 million that year<sup>6</sup>.

#### **NPM: Nutrient Profiling Model**

Developed by the Food Standards Agency in 2004-5 as a tool to help Ofcom differentiate foods and improve the balance of television advertising to children

### **Broadcast Media**

While control over broadcast advertising is reserved to the UK Government, the Scottish Parliament has power over a range of advertising and marketing types (**see Box 1**).

In 2007 the UK Office of Communications (Ofcom) - an independent regulator and competition authority for the UK communications industries - placed restrictions on the advertising of HFSS foods specifically during children's TV programming<sup>7</sup> on TV and radio. The Ofcom nutrient profiling model (NPM) specified that food and drink could only be advertised if its profile met a set of criteria including positive (fruit, vegetables, protein, fibre) and negative (salt, sugar, fat) factors<sup>8</sup>.

In their report *Sugar Reduction: The Evidence for Action* (2015), Public Health England (PHE) criticised this model for not being stringent enough. They felt that the model prevented advertising of products with the highest amounts of fat, sugar and salt but permitted advertising of products relatively high in just one of these nutrients. In that context, PHE recommended

**HFSS FOODS ARE THOSE HIGH IN FAT, SUGAR AND SALT**

## Advertising: Reserved and Devolved Matters

The Scotland Act 1998 (as amended by the Scotland Acts of 2012 and 2016) confers broad, but not unlimited, legislative competences on the Scottish Parliament. The reserved matters are listed in Schedule 5 of the 1998 Act.

### Matters Reserved to the UK Parliament

- Broadcasting, advertising on TV and radio. Subject-matter of the Broadcasting Act 1990 and the Broadcasting Act 1996<sup>16</sup>
- Consumer protection and trade
  - (a) Sale and supply of goods to consumers
  - (b) Misleading and comparative advertising, except regulation specifically in relation to food, tobacco and tobacco products<sup>17</sup>
- Internet services and telecommunications<sup>18</sup>
- Advertising in cinemas<sup>19</sup>
- Intellectual property<sup>20</sup>, which can include the use of characters common in children programmes, trademarks, copyrights and patents

### Matters Devolved to the Scottish Parliament<sup>19</sup>

- Regulation of press, advertisements in magazines and newspapers
- Printed adverts such as posters, leaflets, banners, brochures
- Billboards
- Outdoor displays
- Point of sale displays
- Adverts or hoarding at sporting events, music and cultural events; book, comedy and film festivals
- Sponsorship of events
- There is also a view expressed in the document of the Secretariat to the Expert Group on the Levenson Inquiry in Scotland that there might be scope for regulation of website content because the reserved matter of internet services might relate to infrastructure of internet provision rather than the content of websites. Therefore, possibly, social media to some extent is within the competence of the Scottish Government
- Advertising in public spaces: streets, parks, public transport, bus shelters
- Schools and education. Vending machines in schools.

Box 1

reviewing and strengthening the Ofcom NPM significantly reducing opportunities to advertise HFSS foods across all media.

PHE is currently carrying out a review of the NPM on behalf of the Department of Health. Outcomes of the review and consultation will be published in June 2018<sup>9</sup>. In the regulatory statement, CAP acknowledged that an updated NPM may change the standards against which food and soft drink products are classified. However, CAP has given no commitment to adopt an updated NPM, noting that they would have to assess the regulatory and economic impact of any new model<sup>10</sup>.

The World Health Organization (WHO), in its implementation plan for the report of the Commission on Ending Childhood Obesity (ECHO), recommended that member states establish a national NPM to regulate marketing, taxation, labelling and provision in public

institutions, based on WHO's regional or global nutrient-profile models<sup>10</sup>. The current Ofcom NPM classifies 53% of foods as unhealthy, compared to 67% by WHO\_EURO model, 75% by WHO\_EMRO model, 81% by EU\_pledge model, and 86% by PAHO model<sup>11,12</sup>.

Restrictions on the advertising of HFSS products only cover children's TV and radio programmes and there has been an increase in exposure to HFSS food and drink advertising during times not covered by these criteria<sup>1</sup>. A recent evaluation of the regulation showed that, while the regulations were well adhered to, they failed to change the relative exposure of children to HFSS food<sup>13</sup>. One possible explanation is that children view many programmes not classified as children's TV and these are not covered by the Ofcom regulation.

In their evidence for the Health Select Committee in March 2017, the Royal College of Paediatrics and Child Health argued for the introduction of a ban on HFSS product advertising before the 9pm watershed. Such ban would reduce the number of HFSS adverts seen by children by 82% compared to just 37% under current regulations<sup>14</sup>.

During the March 2017 hearings, the House of Commons Health Select Committee was unconvinced by CAP's argument that a ban on HFSS products advertised before the 9pm watershed would be an unwarranted restriction on programming watched by adults and commercial free speech, suggesting that 'it would be no bad thing in tackling obesity if adults were exposed to less advertising of unhealthy food'<sup>14</sup>.

### **Non-Broadcast Media**

While TV remains an important marketing outlet, effective at influencing food preferences, many different types of marketing become increasingly influential; these include: advergames, advertising, use of characters and spokespeople, branding, product size, supermarket product placement and discounting. In 2013 more money was spent on online advertising than TV advertising: £6.3bn vs £4.6bn<sup>15</sup>.

A review produced for the Committee of Advertising Practice (CAP) showed that online advertising increased significantly in recent years<sup>15</sup> coinciding with sharp increases in online media use.

In June 2017 CAP introduced a new regulation for non-broadcast media targeted at under-16s<sup>10</sup>. The changes bring media such as print, cinema, online and social media into line with television and radio (BCAP rules). TV-like content online, such as on video-sharing platforms or 'advergames', must also adhere to the new rules. The new restrictions apply when it can be shown that at least 25% of the audience are children.

Health campaigners pointed out that the new rules only go part way towards tackling children's exposure to HFSS products. First, many younger children access popular social media sites despite the 'official' age restrictions and therefore the official demographics show that the majority of social media users are not children (i.e. children

are less than 25% audience). Second, the rules do not cover sponsorship of sports and family attractions, marketing communications in schools, and using child-friendly brand characters on food and drink packaging. Finally, because the use of licensed characters and celebrities to advertise to children under 11 is allowed for products that pass Ofcom NPM, this practice may spread for less healthy products before the updated model is established and in use.

### **Why Regulate to Limit Advertising and Marketing of Unhealthy Food and Drink?**

Advertising and marketing change purchasing preferences and consumption patterns, especially for children<sup>1,21,22</sup>. This is not new knowledge.

In 2003 the Food Standards Agency presented the evidence on this to the UK Government<sup>21</sup>.

In 2010, the World Health Organization reviewed evidence and published a set of recommendations<sup>23</sup>, including: 'given the effectiveness of marketing as a function of exposure and power, the overall policy objective should be to reduce both the exposure of children to, and power of, marketing of foods high in saturated fats, trans-fatty acids, free sugars and salt'.

In 2015, Public Health England gave very similar advice to the UK Government, showing evidence that marketing shifts choices towards less healthy products<sup>1</sup>.

**marketing shifts choices towards less healthy products**

Advertised food and drinks are generally less healthy than those recommended as part of a healthy balanced diet<sup>21,24</sup>. Good illustration of this is money spent on advertising in 2015: only 1.2% of all food and non-alcoholic drink advertising was spend for vegetables, while 22.2% was used for advertising cakes, biscuits, confectionery and ice cream<sup>21</sup>.

Voluntary measures addressing marketing and advertising to improve dietary health in Scotland as suggested in the Supporting Healthy Choices framework<sup>25</sup>, have proved to be insufficient<sup>26</sup>.

## Public Opinion

74% of the UK public back a ban on junk food advertising before the 9pm TV watershed<sup>27</sup>

YouGov survey published by CRUK in February 2016

69% of public thought advertising junk food online should be reduced<sup>27</sup>

YouGov survey published by CRUK in February 2016

58% of respondents backed banning adverts for sugary fizzy drinks, and 53% supported banning adverts for high fat foods, like crisps and chocolate<sup>28</sup>

British Social Attitudes survey 2015

## Policy Position

**The World Health Organization's** Commission on Ending Childhood Obesity advised to implement the set of recommendations on the marketing of foods and non-alcoholic beverages to children to reduce the exposure of children and adolescents to, and the power of, the marketing of unhealthy foods.

To implement it, the member states were recommended to:

- assess the impact of legislation, regulation and guidelines to tackle the marketing of unhealthy foods and non-alcoholic beverages to children, where required;
- adopt, and implement effective measures, such as legislation or regulation, to restrict the marketing of foods and non-alcoholic beverages to children and thereby reduce the exposure of children and adolescents to such marketing; and
- establish mechanisms to effectively enforce implementation of legislation or regulation on the marketing of foods and non-alcoholic beverages to children.

**The UK Government** did not address advertising and marketing to children in their 2016 action plan *Childhood obesity – a plan for action*.

**The Scottish Government** is consulting until 31st January 2018 on actions on non-broadcast advertising of HFSS products and continues to ask the UK Government to implement a 9pm watershed for advertising of HFSS products. The Programme for Government 2017-2018 commits the Scottish Government to progress measures to limit the marketing of HFSS products which disproportionately contributes to ill health and obesity.

**Food Standards Scotland (FSS)** in their January 2016 board paper recommended to Scottish ministers that they continue to argue strongly to UK Government ministers for restrictions on children's advertising and to include the introduction of advertising restrictions on non-broadcast media. Following publication of *Childhood obesity – a plan for action*, FSS expressed disappointment no discussion with Scotland took place before the UK Government decided not to address advertising and marketing to tackle childhood obesity.

**The Scottish Parliament Health and Sport Committee's** letter to the Minister of Public Health from 23rd January 2017 asked whether she planned to introduce any regulatory measures to help control the promotion and advertising of unhealthy foods. The Committee also encouraged the Minister to continue lobbying the UK Government to ban pre-watershed advertising of junk food.

**Public Health England** recommended in its 2015 report significantly reducing opportunities to market and advertise high sugar food and drink products to children and adults across all media including digital platforms and through sponsorship. They also asked for a clear definition for high sugar foods. The nutrient profiling model is under review by PHE; the results of the review and consultation will be published in June 2018.

**The Health Select Committee** on the Childhood Obesity Strategy supported PHE's position and further recommended restricting advertising of all HFSS food and drinks to after the 9pm watershed. They also supported a PHE call to review the Ofcom nutrient profiling model. At the beginning of 2017 they welcomed the changes introduced by CAP but urged a re-examination of the case for further restrictions on advertising of HFSS food and drink in the light of the most recent research not only on the effect of such advertising, but on the scale and consequences of childhood obesity.

**The Obesity Health Alliance** (which includes 40 leading health charities, medical royal colleges and campaign groups) commented on the UK Government's *Childhood obesity – a plan for action* one year after it was released. They warned that the current plan did not do enough to tackle the relentless exposure of children to junk food advertising on TV and online and would not be enough to reduce levels of childhood obesity.



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## ObesityActionScotland

Obesity Action Scotland was established mid-2015 to provide clinical leadership and independent advocacy on preventing and reducing overweight and obesity in Scotland.

### Our main aims:

- To raise awareness and understanding of what drives obesity and the health problems associated with obesity and overweight with health practitioners, policy makers and the public
- To evaluate current research and identify strategies to prevent obesity and overweight based on the best available evidence
- To work with key organisations in Scotland, the rest of the UK and worldwide, to promote healthy weight and wellbeing

Overseeing our work is the Steering Group whose membership spans various disciplines involved in preventing and tackling obesity and its consequences: clinicians, public health experts, epidemiologists, nutritionists and dieticians, GPs and weight management experts. There are four members of staff.

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