

Department for Culture, Media & Sport,
Department for Digital, Culture, Media & Sport,
Department of Health & Social Care

E: childhood.obesity@dhsc.gov.uk

31 March 2023

Re: Open consultation: Introducing further advertising restrictions on TV and online for products high in fat, salt or sugar: consultation on secondary legislation

Dear Sir/Madam,

Thank you for the opportunity to participate in this consultation, please find attached a response from the Institute of Public Health.

The Institute of Public Health informs public policy to support healthier populations in Northern Ireland and Ireland. Our key priorities are promoting health and wellbeing, improving health equity, and reducing health inequalities through evidence, policy, and partnership.

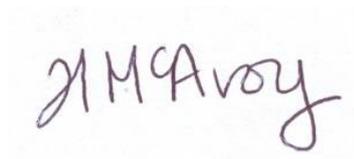
We welcome the policy objective to reduce childhood obesity on a population level, and support the aim to reduce children's exposure to high in fat, salt or sugar (HFSS) product advertising on TV and online. We note that this consultation is primarily concerned with ensuring the text within the regulations is fit for purpose, rather than revisiting policy decisions (with the exception of the proposal for a new audio-only exemption).

Our response highlights:

- issues relating to the implementation and monitoring of the measure in the unique media, political and regulatory environment in Northern Ireland
- contextual issues relating to Northern Ireland's obesity epidemic, patterns of food purchasing and consumption
- specific concerns on exemptions which hold the potential to dilute the impact of the regulations – specifically, alcohol substitute drinks, breast milk substitutes and baby food; SME businesses and services connected to regulated radio services and the audio-only exemption
- concerns regarding the potential for ongoing brand advertisement
- concerns regarding the long time period for implementation of the policy to 1 October 2025

Thank you for taking the time to consider our response. Please do not hesitate to contact us should you require more information or clarity on any of the points we have raised.

Kind regards,

A handwritten signature in purple ink that reads "H McAvoy". The signature is written in a cursive, slightly slanted style.

Dr Helen McAvoy
Director of Policy
Institute of Public Health

Key points

1. The Institute of Public Health (IPH) welcomes the introduction of advertising restrictions for HFSS products and see this as an important action for obesity prevention in Northern Ireland. We propose that implementation proceed in Northern Ireland on a timeline on par with the rest of the UK, and sooner than proposed in the consultation document

1.1 We welcome the introduction of these restrictions as an upstream measure to address obesity in Northern Ireland that align with the region's obesity strategy, 'A Fitter Future for All'

The Institute welcomes the proposed regulations and sees them as an important upstream measure to address the obesogenic food environment. Children living with obesity are more likely to become adults living with obesity, increasing their risk of developing conditions including type 2 diabetes, cancer, heart and liver disease¹.

The Health Minister in Northern Ireland previously wrote to the Secretary of State for Health at Westminster in support of a pre-9pm watershed ban on advertising HFSS foods. The current obesity strategy in Northern Ireland, A Fitter Future for All², is currently under review and work has commenced on scoping a successor strategy. IPH is represented on the Department of Health Obesity Prevention Policy Project Board and, to support policy development, IPH policy team conducted a review of systematic reviews which was developed into a 'policy options matrix' and policy mapping document.

This work examined evidence of effectiveness and the potential return from different regulatory options and explored the extent of devolved and non-devolved powers to address these options, as well as the feasibility and public acceptability of introducing different measures in Northern Ireland. As advertising restrictions are a fully non-devolved matter,

¹ Prospective Studies Collaboration, Whitlock G, Lewington S, Sherliker P, Clarke R, Emberson J, Halsey J, Qizilbash N, Collins R, Peto R. Body-mass index and cause-specific mortality in 900 000 adults: collaborative analyses of 57 prospective studies. *Lancet*. 2009 Mar 28;373(9669):1083-96.

² A Fitter Future for All (health <https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/obesity-fitter-future-framework-ni-2012-22.pdf> -ni.gov.uk)

Northern Ireland is dependent on decision making in Westminster to progress this measure.

Within our review of the evidence, four systematic reviews were found on the topic of advertising and marketing^{3, 4, 5, 6}. Three of the systematic reviews included studies on children only and one included both children and adults. A low risk of bias was reported in most studies. Overall, findings demonstrated that even short-term exposure to unhealthy food advertising on TV and advergaming can increase immediate calorie consumption in children, with a disproportionate effect on children with overweight or obesity compared with children with healthy weight. The use of celebrities in the marketing of HFSS foods to children also was linked to increased consumption of the marketed products. Further details on the included reviews will be provided throughout this consultation response.

A recent report by *safefood* investigated the public acceptability of obesity policy measures on the island of Ireland, and found that four out of five people agreed that the Government should restrict advertising for unhealthy food aimed at children on the internet⁷. A further four out of five and seven out of ten people agreed that the Government should ban advertising for unhealthy food that is aimed at children and adults respectively. Lastly, seven out of ten people agreed that the Government should restrict advertising for unhealthy food in public spaces (for examples bus stops, train stations, hospitals, roadside).

Overall, the international evidence available on the impact of unhealthy food products advertising on health highlights the importance of the proposed policy and regulations for obesity prevention at a population level.

³ Russell SJ, Croker H, Viner RM. The effect of screen advertising on children's dietary intake: A systematic review and meta-analysis. *Obesity reviews*. 2019 Apr;20(4):554-68.

⁴ Abril EP, Dempsey PR. Outcomes of healthy eating ad campaigns: A systematic review. *Progress in Cardiovascular Diseases*. 2019 Jan 1;62(1):39-43.

⁵ Osei-Assibey G, Dick S, Macdiarmid J, Semple S, Reilly JJ, Ellaway A, Cowie H, McNeill G. The influence of the food environment on overweight and obesity in young children: a systematic review. *BMJ open*. 2012 Jan 1;2(6):e001538.

⁶ Packer J, Russell SJ, Siovolgyi G, McLaren K, Stansfield C, Viner RM, Croker H. The impact on dietary outcomes of celebrities and influencers in marketing unhealthy foods to children: a systematic review and meta-analysis. *Nutrients*. 2022 Jan;14(3):434.

⁷ Public acceptability of policies to address obesity Findings from a mixed-methods study on the island of Ireland. *safefood*. June 2022

1.2 The obesity epidemic in Northern Ireland is showing no signs of abating so this action is warranted and proportionate

The obesity epidemic in Northern Ireland is showing no signs of abating despite Departmental strategies. The overarching targets set within the 'A Fitter Future For All' were:

Adults - To reduce the level of obesity by 4% and overweight and obesity by 3% by 2022

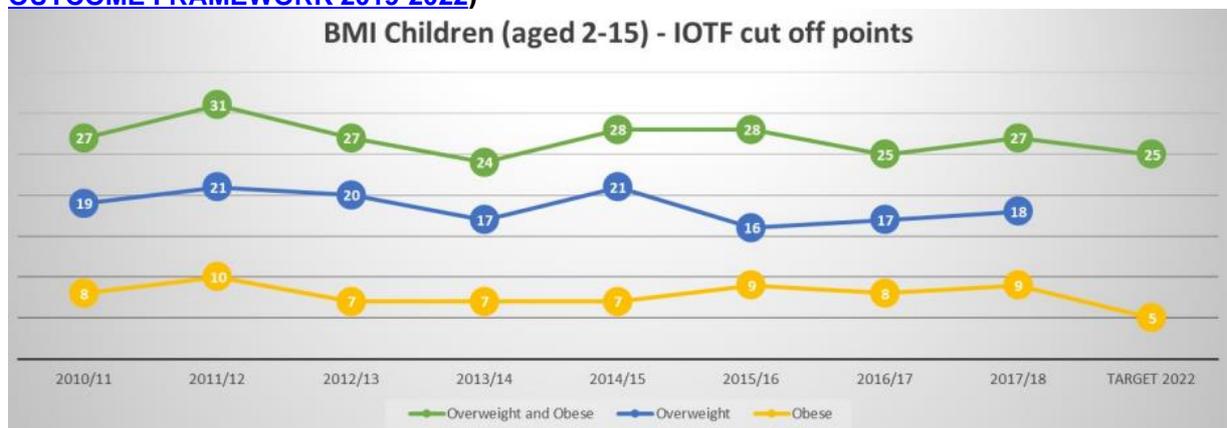
Children - A 3% reduction of obesity and 2% reduction of overweight and obesity by 2022

Yet, Figure 1 and Figure 2 illustrate that more than a quarter (27%) of the adult population (aged ≥16 years) and 9% of children (aged 2-15 years) in Northern Ireland were living with obesity in 2017/18:

Figure 1: BMI adults (aged 16+) in Northern Ireland between 2010/11-2017/18 (source: Health Survey Northern Ireland, taken from [A FITTER FUTURE FOR ALL \(AFFFA\): REVIEWED OUTCOME FRAMEWORK 2019-2022](#))



Figure 2: BMI children (aged 2-15) in Northern Ireland between 2010/11-2017/18 (source: Health Survey Northern Ireland, taken from [A FITTER FUTURE FOR ALL \(AFFFA\): REVIEWED OUTCOME FRAMEWORK 2019-2022](#))



In addition, there are other factors which increase population risk of obesity in Northern Ireland, namely higher levels of social deprivation compared to many other regions of the United Kingdom⁸ and evidence of a less nutritious diet among women of childbearing age⁹. In Northern Ireland, data is not available on the impact of advertising on children's food purchases, but consumption patterns are concerning, with high consumption of processed meats, cakes, chocolate, pizza and biscuits.¹⁰

The cost-of-living crisis in the region is contributing to food poverty and increasing the vulnerability and susceptibility of individuals to making unhealthy food choices with limited resources. These factors are outside of the control of the individual, and so upstream policy measures are required to protect population health and address health inequality.

1.3 Advertising affects food behaviours and is a valid target for intervention in obesity prevention

Children's food behaviours are influenced by the environment and socioeconomic conditions in which they live, and there are many factors that shape the modern food environment, including food labelling and packaging, advertising, marketing and sponsorship, pricing and promotions and density of unhealthy food outlets to name a few.

Advertising unhealthy food contributes to an obesogenic environment, with a large international study finding that children exposed to food advertising on TV and advergames respectively consumed an average of 60 and 53.2 calories more than children exposed to non-food advertising, with short-term exposure linked to immediate increase in calorie consumption¹¹.

1.4 Including the out-of-home sector will enhance the effectiveness of these regulations

⁸Abel GA, Barclay ME, Payne RA (2016) Adjusted indices of multiple deprivation to enable comparisons within and between constituent countries of the UK including an illustration using mortality rates. *BMJ Open*, 6 (11), [e012750]. <https://doi.org/10.1136/bmjopen-2016-012750>

⁹ https://www.food.gov.uk/sites/default/files/media/document/national-diet-and-nutrition-survey-northern-ireland-y5-9-executive-summary_0.pdf

¹⁰ Northern Ireland Take Home Food and Drink Purchases (2016, 2019, 2020) Food Standards Agency. December 2021

¹¹ Russel et al. The effect of screen advertising on children's dietary intake: A systematic review and meta-analysis. 2018

We particularly welcome the inclusion of the out-of-home sector, which is highly prominent in the UK shopping landscape. In the UK, spending on takeaway food has increased over the last decade, with the digital retail environment increasing access to the out-of-home sector, such as takeaway ordering. This is important as evidence shows that takeaway dishes are more likely to be unhealthy, with excessive portion size, energy, macronutrients and salt¹².

1.5 Timing is important but only one component of the comprehensive regulatory framework needed to reduce the harmful impact of marketing of HFSS products

These regulations are concerned with the timing of advertising and while reducing exposure through temporal restriction and 'curfews' is important, it does not sufficiently restrict the obesogenic influence of HFSS food marketing. A more comprehensive regulatory framework is needed to address content and endorsement of the advertisement, for example the use of cartoons and celebrity/influencer endorsement. A recent study examining the impact of celebrities in HFSS marketing on children's dietary outcomes found the use of celebrities to be associated with an increased consumption of the HFSS product by 56.4 calories¹³.

1.6 Implementation of the measure must take into account the unique political, regulatory and media context in Northern Ireland as well as cross-border issues

The lack of functioning government in Northern Ireland must not represent any impediment to the implementation of the measure across the UK as a whole or in Northern Ireland specifically. An implementation plan for Northern Ireland should be specified which considers the different political situation and ensures that the Northern Ireland Civil Service is resourced appropriately in terms of oversight, compliance, monitoring and reporting on the impact of the regulations in the region.

2. The Institute recommend that these regulations come into force as soon as possible, and are not delayed until October 2025

¹² Jaworowska, A., M. Blackham, T., Long, R., Taylor, C., Ashton, M., Stevenson, L. and Glynn Davies, I. (2014), "Nutritional composition of takeaway food in the UK", *Nutrition & Food Science*, Vol. 44 No. 5, pp. 414-430. <https://doi.org/10.1108/NFS-08-2013-0093>

¹³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8837952/pdf/nutrients-14-00434.pdf> Packer, J.; Russell, S.J.; Siovolgyi, G.; McLaren, K.; Stansfield, C.; Viner, R.M.; Croker, H. The Impact on Dietary Outcomes of Celebrities and Influencers in Marketing Unhealthy Foods to Children: A Systematic Review and Meta-Analysis. *Nutrients* 2022, 14, 434. <https://doi.org/10.3390/nu14030434>

2.1 No room for further delay in responding to the escalating obesity epidemic in Northern Ireland

There is pressing need for effective regulation to restrict junk food advertising as part of a comprehensive approach to reduce obesity. The regulations should be rolled as a matter of urgency as a key component of obesity prevention policy, to prevent further accumulation of morbidity and mortality linked to unhealthy food environments. The success of the UK Soft Drinks Industry Levy highlights the positive and rapid impact that regulatory measures can have on public health, but it was our experience that these measures are generally delayed and contested by interventions by parties with a commercial interest. We urge the Department to prioritise public health and ensure measures are in place to protect decision making from the inappropriate influence of commercial actors.

3. We are concerned regarding the exclusion of alcohol from the scope of the advertising restrictions and would recommend that alcohol substitute drinks are not exempt from categories of unhealthy food within the regulations

The Government's impact assessment states that other policies relating to alcohol labelling are being considered, however it also states that '*it is our expectation at this time that there is no interaction between the policies as alcohol falls out of the scope of further advertising restrictions*'. We consider that alcohol is highly relevant to obesity policy and should be included within the scope of advertising restrictions if the overall policy objective is to reduce population levels of obesity, for the following reasons:

- Alcohol is relatively high in calories. Amongst adults who drink, alcohol accounts for between 4-10% of total calorie intake. One gram of alcohol provides seven calories (7kcal), compared with 9kcal per gram for fat, and 4kcal per gram for carbohydrate and protein¹⁴;
- Alcoholic drinks also tend to include other ingredients which are high in calories including sugar, cream and fruit juice;

¹⁴ Alcohol and Calories. <https://alcoholchange.org.uk/alcohol-facts/fact-sheets/alcohol-and-calories>. Accessed March 2023

- Alcohol is an appetite stimulant, which can trigger overeating.

This is particularly important in the absence of mandatory nutritional labelling for alcohol products in the UK, as consumers are not provided with calorie information or the necessary support to make informed purchasing decisions.

We understand that alcohol substitute drinks are classed as exempt soft drinks, provided they meet the specified conditions in paragraph 2 of regulation 9 of the [Soft Drinks Industry Levy Regulations 2018](#). These conditions are:

The soft drink—

(i) is in packaging comparable to, and marketed in a way that is comparable to, the particular kind of alcoholic beverage to which it is similar; and

(ii) is not marketed in a way which is directed at, or is likely to appeal particularly to, people under eighteen years of age; and

(b) when the soft drink is advertised or sold, it is advertised or sold as a direct replacement for the particular kind of alcoholic beverage to which it is similar.

We are concerned that excluding alcohol substitute drinks from the regulations will allow for brand promotion, cross marketing and alibi marketing to continue. Research conducted for the Institute of Alcohol Studies in 2022 highlighted several policy considerations regarding the role of alibi marketing in alcohol-related harm¹⁵. It posed that alibi marketing for alcohol free products enables the promotion of alcohol brand marketing by stealth, and may expose non-consumers, including those below the legal drinking age, to alcohol brands and potential initiation of drinking. It also highlighted that alibi advertising can uphold social norms around drinking alcohol and encourage brand allegiance to products produced by the alcohol industry, with research identifying links between brand allegiance with heavier consumption (Casswell and Zhang 1998).

It should be noted that whilst the 'specified conditions' for exempt products within the SDIL Regulations state that the soft drink *'is not marketed in a way which is directed at, or is likely to appeal particularly*

¹⁵ Nicholls, E. The Marketing and Consumption of No and Low Alcohol Drinks in the UK. March 2022

to, people under eighteen years of age there is still a risk of children being exposed to advertising aimed at the general population. Regulation should protect children from being exposed to unhealthy food products and brands in all areas of their lives, not only through advertising and marketing that are specifically for children.

We recommend that alcohol substitute drinks products are included within the regulations and are subject to advertising restrictions alongside other HFSS products. The Government could consider including 'same-brand zero alcohol drinks' in the regulations, as has been done in countries such as Norway, where the advertisement of products carrying the same brand as beverages containing more than 2.5% ABV is prohibited¹⁶. Therefore, we recommend that the regulation of advertising alcohol-free products is included, and made statutory.

4. We are concerned that breast-milk substitutes such as infant formula and follow-on formula, as well as baby foods and processed cereal-based foods are currently exempt. We recommend that these are included within the scope of the regulations.

We understand that other exempt soft drinks include:

'4. (1) (b) 'products, to the extent that they are, or are capable of being, a soft drink, which are for use for-

(ii) infants or young children, and which meet the description in sub-paragraph (3)(b), (c) or (d)

(3) For the purposes of sub-paragraph (1)(b), the descriptions referred to are—

(b) foodstuffs intended for particular nutritional use by infants during the first months of life and satisfying by themselves the nutritional requirements of such infants until the introduction of appropriate complementary feeding, which complies with—

(i) Article 9 of Regulation (EU) 609/2013 on food intended for infants and young children, food for special medical purposes and total diet replacement for weight control, and

¹⁶Corfe et al. Alcohol-free and low-strength drinks. Understanding their role in reducing alcohol-related harms. Social Market Foundation. September 2020.

(ii) Articles 2(1) and (3), 3(1) and (3), 4 and 5 of Commission Delegated Regulation (EU) 2016/127 as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding, as it forms part of domestic law (“Regulation (EU) 2016/127”),

(c) foodstuffs intended for particular nutritional use by infants when appropriate complementary feeding is introduced and constituting the principal liquid element in a progressively diversified diet of such infants, which complies with—

(i) Article 9 of Regulation (EU) 609/2013 on food intended for infants and young children, food for special medical purposes and total diet replacement for weight control, and

(ii) Articles 2(2) and (3), 3(2) and (3), 4 and 5 of Regulation (EU) 2016/127,

(d) baby foods and processed cereal-based foods, as defined in the Processed Cereal-based Foods and Baby Foods for Infants and Young Children (England) Regulations 2003, which comply with the requirements of regulations 5 to 7 of those Regulations...’

4.1 We are concerned that the regulations do not allow for restricted advertising on breast-milk substitutes such as infant formula and follow-on formula.

Breastfeeding is described as a protective factor with regards to obesity development, with research exploring the relationship between breastfeeding and obesity in 22 European countries finding that, compared to children who were breastfed for at least 6 months, the odds of obesity were higher among children never breastfed or breastfed for a shorter period¹⁷. The Lancet series on breastfeeding, which explores the complex and highly effective strategies used by commercial formula manufacturers to target parents, health-care professionals, and policy-makers, finds that these marketing practices are often in breach of the WHO Code on marketing of breast milk substitutes and its resolutions, and compounded by lobbying of governments¹⁸. The World Health Organization also recognizes that inappropriate promotion of breast-milk substitutes negatively impacts on breastfeeding practices.

¹⁷ Rito et al. Association between Characteristics at Birth, Breastfeeding and Obesity in 22 Countries: The WHO European Childhood Obesity Surveillance Initiative – COSI 2015/2017. Accessed March 2023.

¹⁸ <https://www.thelancet.com/series/Breastfeeding-2023>

Research which looked at an online survey of 1307 mothers with a baby 0–12 months old in the UK (who were either breast, formula or mixed feeding their baby) explored:

- Exposure to infant milk adverts (including frequency and location)
- Recall of advert messaging (e.g. proposed impact on infant sleep, content of milks)
- Perceptions of infant milk adverts (e.g. factual, useful)
- Infant feeding decisions (use of infant milks, breastfeeding duration)

According to the study authors, almost all participants reported seeing a wide range of adverts for infant milks across different formats and locations. In particular, two thirds believed they had seen an advert for infant formula, suggesting significant cross promotion through marketing of follow on and toddler milk products. There was little difference in exposure between those using infant milks or not. However, those who did use infant milks were more likely to report seeing infant formula adverts.

The study concluded that exposure to infant milk adverts and promotions is common amongst mothers who are both using infant milks or exclusively breastfeeding. Often these adverts are mistaken for promotion of infant formula products, particularly by younger mothers, suggesting cross promotion and brand recognition. Themes in marketing literature such as impact upon behaviour or added ingredients drove purchasing decisions. In particular, follow on formula is perceived as a more advanced product, suitable for use over six months of age¹⁹.

Overall, women are exposed to a high level of formula marketing which begins early in pregnancy, is targeted, and influences women's attitudes towards formula feeding²⁰. WHO identify the safeguarding of child health and development from harmful commercial marketing, including from formula marketing, as an opportunity for action²⁰. The exclusion of babies from the protections under this legislation could therefore undermine its effectiveness as a tool to prevent the evolution of

¹⁹ Brown, A., Jones, S.W., & Evans, E. (2020) Marketing of infant milk in the UK: what do parents see and believe? A report for First Steps Nutrition Trust: London. Available at: https://static1.squarespace.com/static/59f75004f09ca48694070f3b/t/6053645514d0f3072adec94e/1616077909798/Marketing_of_infant_milk_in_the_UK-what_do_parents_see_and_believe_finala.pdf

²⁰ How the marketing of formula milk influences our decisions on infant feeding. Geneva: World Health Organization and the United Nations Children's Fund (UNICEF), 2022. Licence: CC BY-NC-SA 3.0 IGO

childhood obesity.

This is particularly important in Northern Ireland, where breastfeeding rates are the lowest in the United Kingdom with significant consequences for maternal and infant health and health inequity²¹. The Northern Ireland Maternity System data for 2021 indicated that 50.9% of infants were receiving breastmilk at discharge (37.5% totally breastfed and 13.4% partially breastfed) with 48.5% formula fed at discharge. In 2021, 13.8% (n=1,121) of infants who were totally breastfed at discharge had also received a formula supplement since birth. The UNICEF Baby Friendly Initiative standards relating to support with bottle-feeding highlight that mothers who are formula feeding or mixed feeding should be taught about safe preparation and storage of formula. NIMATS data for 2021 shows that the majority of mothers formula feeding at discharge are offered information/support to sterilise equipment with some minor variation by hospital of birth (98.3%, range 96.8%-100%), make up feeds (98.4%, range 97.3%-100%) and discuss first milks (97.8%, range 96.9%-100%)²².

'Breastfeeding - A Great Start A Strategy for Northern Ireland 2013-2023' is the breastfeeding strategy for Northern Ireland. The strategy requires the Public Health Agency and Health and Social Care Trusts to monitor compliance and report violations under the WHO International Code of Marketing of Breast Milk Substitutes. It is acknowledged within the strategy that, like the rest of the UK, Northern Ireland has enacted legislation encompassing some, but not all provisions of the Code. Health professionals have responsibilities to ensure that healthcare facilities are not used for product promotion; and monitor and report violations against the Code under the provisions of the International Code of Marketing of Breast Milk Substitutes.

Included in the action relating to Outcome 1 of the strategy (Supportive environments for breastfeeding exist throughout Northern Ireland) it is recognised that regular television and media advertising of branded follow-on milks and toddler milks helps to perpetuate bottle feeding as the norm in Northern Ireland. This advertising is controlled by UK wide law and codes regulating infant formula and follow-on milk marketing to the public. The strategy states that the Department of Health and other

²¹ <https://www.health-ni.gov.uk/articles/breastfeeding>. Accessed March 2023.

²² PHA (2023) Health Intelligence Briefing. Breastfeeding in Northern Ireland 2022 – available upon request

organisations or individuals should advocate for strong controls on advertising. A further strategic action is to advocate for the strengthening of the legislation regulating infant formula and follow-on formula milks to prevent the marketing of these products to the public. The Department of Health, Public Health Agency and Health and Social Care Board²³ were listed as being responsible for this action²⁴.

Overall, IPH recommends that these products are not exempt from the regulations, both to protect adults and children from formula marketing, but also as a means of working towards the overall policy objective given the relationship between breastfeeding and obesity prevention.

4.2 We are also concerned regarding the exemption of baby foods and processed cereal-based foods from the regulations, and recommend they are included to support the overall policy goal of obesity prevention.

A recent review of common brands of commercial baby food highlighted the predominance of high sugar content in products, as well as concerns regarding processing, low levels of some micronutrients and portion sizes which exceed the energy requirements for infants²⁵. The report highlights that food quality in the early years is related to later adiposity in children.

5. We are concerned regarding the exemption of food or drink SMEs and would encourage the Government to include these businesses and not compromise on the public health benefits of advertising restrictions

Whilst we welcome the policy intention to preclude multinational corporations from circumventing the regulations, the exemption of SME businesses from the regulations may serve to dilute the potential impact of this policy and create additional burden in compliance and

²³ Please note - as part of the wider transformation of Health and Social Care (HSC) services in Northern Ireland, the Health and Social Care Board (HSCB) closed on 31 March 2022 and responsibility for its functions transferred to the Department of Health.

²⁴ <https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/breastfeeding-strategy-2014.pdf>

²⁵ Crawley et al. Baby foods in the UK. A review of commercially produced jars and pouches of baby foods marketed in the UK. First Steps Nutrition Trust, 2017

enforcement activity. A government Impact Assessment for Mandating calorie labelling of food and drink in out-of-home settings highlighted that micro, small and medium businesses occupy the majority of out-of-home business, and over half (51%) of out of home turnover²⁶. There is a substantial source of advertising that will continue if not included within the regulations, and promote out-of-home services popular with children, such as online takeaway foods. We recommend that the regulations are extended to include SME businesses, to maximise the potential impact of the regulations on population health.

6. We are concerned regarding the exemption of services connected to regulated radio services, such as broadcast radio and audio advertisements. We do not support the exemption of audio only content.

We understand that the legislative context in the UK means that broadcast radio is not within scope of these regulations, and that audio advertisements on the online streams of regulated commercial and community radio stations are in scope but will be exempt provided there are no visual accompaniments to the sound.

Any exemption to the regulations provides the industry with more opportunity to market HFSS foods. For the regulations to be as comprehensive (and future proofed) as possible, any activity that promotes any product, service, organisation, or brand should be included, such as:

- all marketing on television, radio or at the cinema (including digital film, television, and radio)
- all forms of digital marketing, including on social media, video streaming or gaming platforms (e.g. influencer, brand owned, sponsored, and shared content), branded mobile applications, games and websites and programmatic or display advertising
- print advertising, including publications, billboards, and signs
- promotions and competitions, including giveaways and prizes
- sponsorship

The online marketing environment is fast-paced and innovative with the development of new formats and marketing techniques. It will be challenging for the Government to effectively future proof this policy and identify all types of marketing communications and platforms that will be

²⁶ Impact assessment: mandating calorie labelling in the out-of-home sector (publishing.service.gov.uk)

developed. Therefore, it is vital that the new regulations have a regular review mechanism built in whereby the scope can be adjusted to capture new marketing techniques that have evolved that may be exempt, and address any other loopholes that may have arisen from the exemptions. This review could be conducted annually, and should aim to strengthen the legislation from a public health perspective and reduce exposure to advertising unhealthy products.

7. We are concerned that focusing solely on identifiable HFSS products without including brand advertising could undermine the purpose of the policy. We would encourage the government to set out clear and evidence-informed parameters for the Regulator to identify brand adverts that have the effect of promoting HFSS products even when the product itself is not displayed.

Failure to include brand advertising has the potential to undermine the purpose of the regulations; to protect children from marketing of unhealthy foods. The current UK Code of Broadcast Advertising (BCAP Code) and Committee of Advertising Practice (CAP) codes recognise that brand advertising can be synonymous with product advertising, due to the historic, strong associations between a brand and product.

An Irish Heart Foundation report on junk food marketing highlights that children as young as 18 months can recognise brands, with preschool children demonstrating a preference for branded products²⁷. A research report that examined children's brand knowledge found that their knowledge increased significantly from 3 years of age, and was higher for unhealthy than for similarly advertised healthy foods²⁸.

We strongly encourage the government to take steps to explicitly require the Regulator responsible for producing implementation guidance to set out clear and evidence-informed parameters to identify brand adverts that have the effect of promoting HFSS products. We would like to see further guidance on what constitutes the 'brand', if the 'brand' is HFSS identifiable.

²⁷ Stop Targeting Kids! Three action areas for a childhood free from junk food marketing. Irish Heart Foundation. Accessed March 2023.

²⁸ Tatlow-Golden, M et al. Young children's food brand knowledge. Early development and associations with television viewing and parent's diet. *Appetite* Volume 80, 1 September 2014, Pages 197-203

8. Formal, regular review of the regulations and early and continuous evaluation of the health impacts will be needed, including across subsets of the population

Process and impact evaluation, particularly of the impact of this policy on population health and health inequalities, will be a necessity. Any evaluation should consider the differential impact this policy may have across subsets of the population, including deprivation, gender and ethnicity.

The introduction of these measures in the UK could create a natural experiment where different watersheds are in place on the island of Ireland and in UK and Irish media environments. This could bring the potential for comparative analysis of regulatory environments if there was willingness to cooperate and resource available to support such analysis by the UK and Ireland governments.

As plans are developed to implement the regulations, it is important that a schedule for each stage of the process is made publicly available and shared with key stakeholders, including public health. A formal mechanism to regularly review the scope of the restrictions, with an opportunity to close any loopholes that emerge that undermine the policy intention, should be included. Given the fast pace of marketing innovation this will be essential to ensure the regulations are future-proof and adequately reflect the modern marketing environment.