

# CAP Consultation: food and soft drink advertising to children

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

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Abridged Final Draft (Embargoed)

## Chairman's foreword

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

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

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

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

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

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

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

**James Best**

Chairman  
Committee of Advertising Practice  
May 2016

## Executive summary

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

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

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

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

CAP now proposes to:

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

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

CAP considers its proposals strike the right balance, having primary regard to the protection of children and due consideration for the rights of businesses to

advertise their products responsibly and the rights of consumers to receive responsible advertising for products that may be of interest to them.

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

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

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

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

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

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

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

## In brief: policy recommendations

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

## In brief: consultation questions

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

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

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## Case for regulatory change and CAP policy recommendations

### 37. Introduction

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

### 38. Establishing a case for change

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

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

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

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

### 39. Policy aim

39.1. In satisfying the requirements for assessing cases for regulatory change noted in [section 14](#), CAP considers that it is a legitimate policy aim to place appropriate

restrictions on advertising to protect the health and well-being of children, including by not undermining progress towards national dietary improvement.

39.2. The UK and devolved governments have made strong commitments to pursue programmes of further intervention on the issues of childhood diet and obesity. These are based on a strong consensus among public health experts on the gravity of the problem and that the most effective strategy is a broad set of interventions targeting a range of factors that influence children's diet. This is supported by:

- Recent diet and obesity policy reviews carried out by Public Health England (PHE) and McKinsey Global Institute;
- Established evidence of the impact of poor childhood diet on health both directly in children and, more significantly, in later life;
- Public health measurement data showing excessive consumption of sugar by children and the persistence of high rates of childhood excess weight and obesity; and
- The projections of the significant future detriment to individuals and economic costs of persisting rates of excess weight and obesity in general.

39.3. One of the influencing factors identified consistently in the evidence and policy literature is food promotion, of which advertising is regarded as an important element.

39.4. There is agreement between international bodies, such as the WHO, the EU and the UK and devolved governments, that food and soft drink advertising should be restricted with the aim of protecting public health; specifically, that of children. This consensus is shared by public health professionals and non-governmental organisations (NGOs). Pre-consultation responses and food manufacturers' voluntary commitments to restrict advertising, such as the EU Pledge, demonstrate industry's acknowledgement of the need for action.

39.5. In principle and in practice, through its existing rules on food and soft drinks advertising to children (see [section 18](#)), CAP acknowledges that the non-broadcast Code must provide appropriate levels of protection to children where there is evidence of harm or the real potential for harm.

#### 40. Advertising's effect: evidence of the link between advertising and harm

40.1. Evidence of how and the extent to which advertising affects those exposed to it is the core indicator of whether a particular harm is occurring. In the instance of food and soft drink advertising, whether it influences children's food preferences and diet (see [section 36](#)).

40.2. Livingstone and Helsper (2004) and Livingstone (2006: 2-3) established that children's exposure to TV advertising was likely to have a modest direct effect on food preferences, accounting for some 2% of the variation in food preferences of younger children (aged 2-11). These reviews were a key factor in Ofcom's rationale for introducing placement restrictions for TV advertising. They also took account of the extensive contemporaneous evidence reviews carried out by Hasting et al

(2003) and the Institute of Medicine (2005). There was some evidence suggesting links between advertising and diet, but very little longer-term research to identify any direct links to health, in particular, obesity.

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

balance of the studies identified in Boyland et al (2016), Ells et al (2015) and Clarke and Svaenes (2014). Clarke and Svaenes (2014: 46) suggested that the nature of advergames renders them easier to research leading to their over-representation in the evidence base.

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

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

- Laboratory-based research isolates for particular influences, such as whether exposure to an advertisement can lead to a subject selecting a particular product subsequently. However, the method does not take account of 'real-life' factors that determine food and soft drink preferences, for instance, parental or family influences.
- Isolating the effect: the literature tends to assess advertising of products that are appealing to children both in terms of the nature of the product and the approach in advertising. Some studies have found that techniques, such as advergames, did not result in increased preference for healthier products in the same way as it did for HFSS products Clarke and Svaenes (2014: 49).

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

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

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

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

40.15. CAP nevertheless acknowledges the potential difficulties involved in carrying out more developed long term research on advertising's impact on diet and levels of excess weight. It also notes the general emphasis and consensus of many

academic experts in the field in urging further interventions on advertising as part of wider measures to tackle childhood obesity.

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

environments brought about by further advertising restrictions could reasonably be expected to contribute by not hindering wider efforts to increase positive messaging to children over their dietary choices and by limiting advertisers' ability to influence children's preferences for and consumption of HFSS products.

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

## 42. Proportionality

42.1. In making consultation proposals to respond to the case for regulatory change, CAP has considered what might best addresses the challenge of effecting real change to children's media environment, and to that end has focused on media placement restrictions. Such an approach will reduce children's exposure to advertising for HFSS products in media environments of particular interest to children. However, at the same time, CAP has found no grounds to support a case for broader restrictions, such as product category bans or media placement restrictions in adult-oriented media.

42.2. The nature of the risks and potential harms involved do not provide a basis for a precautionary approach. It is clear that consumption of an HFSS product is not, of itself, harmful. This can be contrasted with tobacco where the toxicity and highly addictive nature of the product mean any level of consumption, and therefore advertising, present a real potential for harm.

42.3. Most importantly, however, evidence of a significant direct effect is absent; advertising only tangentially affects the childhood diet and obesity issue. CAP therefore considers that there are limits to what advertising restrictions can ever reasonably achieve (and be reasonably expected to achieve) in contributing to wider efforts to tackle poor diet and obesity.

42.4. Whilst the harms associated with obesity play an important role in the rationale for further intervention, restricting the advertising of products that are not likely to be of interest to children, or advertising that is not directed at them through its content or the selection of media, is likely to yield rapidly diminishing returns in terms of regulatory impact.

42.5. CAP considers that there will be less and less impact in terms of reducing exposure or opportunities for advertising to reach children along with a rapidly increasing impact on advertisers' freedom of commercial expression and the economic and compliance costs to advertisers and media owners. One of the key consequences of a disproportionate balance is the likely impact on funding of editorial content directed at children. CAP's Regulatory and economic impact assessment is included in Annex 7.

## 43. CAP Policy Recommendations

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

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

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

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

## 44. Restrictions on HFSS product advertising

- CAP proposes to update the CAP Code to include rules dedicated to the advertising of HFSS products.

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

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

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

#### 45. [Selecting a nutrient profiling model](#)

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

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

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

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

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

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

45.5. The WHO Europe model is comparatively stricter, in large part because it includes outright prohibitions on marketing for certain categories of product, such as edible ices and cakes. CAP considers that category prohibitions are likely to be disproportionate and potentially unfair on certain food and drink businesses.

Importantly, they remove any incentive for food and drink businesses to adapt their behaviour, for instance, through reformulation of product composition.

45.6. In practical terms, the DH model is well established in the UK regulatory context. CAP's Regulatory and economic impact assessment (see Annex 7) finds that those most likely to be affected by new restrictions are larger food and drink businesses that already have experience of the model in relation to TV advertising. Although food and drink businesses are required to carry out or commission compositional and nutritional assessment by legislation, adopting a new nutrient profiling scheme will invariably add to compliance costs and create a more complex and potentially confusing regime. The WHO Europe and EU Pledge models both have multiple categories and different requirements that would result in increased immediate compliance costs and additional complexity at the enforcement stage.

45.7. In terms of credibility, CAP notes the majority of pre-consultation respondents supported the adoption of the DH model. It also considers that the development process, under the auspices of the FSA and involving acknowledged nutrition and public health experts, was robust and transparent.

45.8. CAP notes that PHE will review the DH model in order to update it in light of the recommendations of the SACN report on sugar. Should CAP ultimately adopt the DH model, it will consider the impact of any changes to the model arising from the PHE review and report publicly on their potential regulatory implications; where the implications are significant CAP would very likely consult on the potential adoption of the new model for the purpose of differentiating HFSS and non-HFSS products.

#### 46. Existing prohibitions on the use of promotions and licensed characters and celebrities

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

46.1. This would allow non-broadcast advertising to use those techniques to promote non-HFSS products to under 12s, bringing the CAP Code into line with the approach of the BCAP Code for TV advertising.

46.2. Lessening the restrictions on the content of non-HFSS product advertising encourages advertisers to adapt their behaviour and advertise healthier foods to children. It is notable that several pre-consultation respondents were concerned that advertising of relatively healthier foods was very limited. This is supported by various studies that suggest that the balance of food advertised is not representative of a healthy diet.

46.3. Having regard to its Regulatory and economic impact assessment (see Annex 7), CAP considers that this will also create more potential routes of adaptation to limit detrimental economic impacts of placement restrictions.

46.4. In making this recommendation, however, CAP acknowledges the concerns of some respondents to the pre-consultation; in particular that the relaxation would most likely result in an increase in the promotion of borderline non-HFSS products rather than products that are considered to be relatively more important to children's diets. CAP welcomes responses on the potential risks of this recommendation.

#### 47. Introducing media placement restrictions

- CAP proposed to introduce a new rule prohibiting the placement of HFSS product advertising in media targeted at or likely to appeal particularly to children.
- CAP will explore through consultation whether the new rule should prohibit HFSS advertising in media targeted at or of particular appeal to children under 12 or under 16.

47.1. The question of whether to introduce media placement restrictions for HFSS advertising is central to this consultation. Media placement restrictions can complement rules that address the creative content of advertising. Put simply, reducing exposure to a particular type of advertising will inevitably reduce the overall impact on a given audience. Although the available data precludes an accurate quantification of the regulatory impact, CAP's Regulatory and economic impact assessment (see Annex 7) suggests that placement restrictions are likely to provide a meaningful reduction in children's exposure to HFSS product advertising and the possibilities for targeting such advertising at children.

47.2. CAP considers that the evidence and information it has assessed do not establish clearly to which age group the new rule should apply. CAP considers that, at a minimum, the restriction should apply to media targeted at or of particular appeal to children under 12. However, CAP acknowledges that there is a case for that to be extended to cover children under 16.

47.3. Children at different stages of cognitive and social development have very different potential vulnerabilities; they cannot be regarded as one homogenous group for regulatory purposes. There is therefore a need to explore what level of restriction would have an appropriate balance of impact to effectively meet CAP's policy aim.

47.4. Under-12s are acknowledged in the present regulatory framework to be particularly vulnerable. This stems from the fact that younger children's understanding of the commercial world and advertising is still evolving as part of their wider cognitive development. This is most apparent in the evidence of their capacity to critically understand advertising. Studies show that, before the age of 8 children are still developing an understanding of the commercial intent behind advertising. For some more integrated online media, critical understanding may only be fully developed by the age of 12.

47.5. Younger children are also in the process of forming food preferences and developing their dietary choices. Reducing children's exposure to HFSS advertising could have two complementary impacts: mitigation of advertising's

immediate influence on their food preferences and, much more speculatively, a longer-term effect on their still-developing dietary behaviour.

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

#### 48. Defining the audience

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

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

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

#### 49. Application to different media

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

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

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

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

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

## Contact us

Committee of Advertising Practice  
Mid City Place, 71 High Holborn  
London WC1V 6QT

Telephone: 020 7492 2200  
Textphone: 020 7242 8159  
Email: [enquiries@cap.org.uk](mailto:enquiries@cap.org.uk)

[www.cap.org.uk](http://www.cap.org.uk)

🐦 Follow us: @CAP\_UK

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