

The Food (Promotion and Placement) (England) (Amendment) Regulations 2022 – Informal DHSC Consultation

Action on Salt is an organisation supported by 22 expert members and working to reduce the salt intake of the UK population to prevent deaths, and suffering, from heart disease, stroke, kidney disease, osteoporosis and stomach cancer.

Action on Sugar is a group of experts concerned with sugar and obesity and their effects on health. It is working to reach a consensus with the food industry and Government over the harmful effects of a high calorie diet, and bring about a reduction in the amount of sugar and fat in processed foods to prevent obesity, type 2 diabetes and tooth decay.

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The planned restrictions on the placement and promotion of HFSS products in retail environments were first announced in 2018 and committed to in the world-leading 2020 obesity strategy, and were originally due to come into effect in April 2022.¹ They have already been delayed once to October 2022, and we are concerned to see this further delay and the precedent this sets.

This decision has serious health implications. Childhood obesity rates have increased dramatically in recent years, and are now significantly above pre-pandemic levels. Data indicates that obesity prevalence amongst children in England remains at 10.5% for reception-aged children, rising to 23.5% for children aged 10-11 (Year 6).² Children living with obesity are five times more likely to become adults with obesity,³ increasing their risk of developing conditions including type 2 diabetes, various cancers, heart and liver disease. There are also profound implications for the economy and the NHS, with estimates suggesting that overweight and obesity costs the UK 3% GDP annually.^{4,5} The NHS spent £6.1 billion on overweight and obesity-related ill-health in 2014 to 2015, with wider costs to society of £27 billion.⁶

Evidence-based and population level interventions, as opposed to individual-level interventions, are needed to address the impact of unhealthy diets on health and wellbeing. Addressing the promotion of HFSS products (albeit limited to a narrow range of sugary and calorific foods and drinks) would have an impact: evidence shows that buying products on volume promotions encourages excess

¹<https://www.gov.uk/government/publications/tackling-obesity-government-strategy/tackling-obesity-empowering-adults-and-children-to-live-healthier-lives#a-call-to-action>

² <https://committees.parliament.uk/publications/23284/documents/170077/default/>

³ Simmonds M, Llewellyn A, Owen CG, Woolacott N. Predicting adult obesity from childhood obesity: a systematic review and meta-analysis. *Obes Rev.* 2016 Feb;17(2):95-107.

⁴ McKinsey Global Institute. 2014. *Overcoming Obesity: an initial economic analysis*

⁵ The Chief Medical Officer for England. 2019. *Time to Solve Childhood Obesity: An Independent Report by the Chief Medical Officer, 2019* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/837907/cmo-special-report-childhood-obesity-october-2019.pdf

⁶ PHE. 2017. *Health matters: obesity and the food environment.* <https://publichealthmatters.blog.gov.uk/2017/03/31/health-matters-obesity-and-the-food-environment/>

calorie consumption, and therefore even small calorie reductions across the population would have an impact on weight.⁷⁸

Cost of Living

Delaying these regulations will not help to address the cost of living and we do not understand the use of this rationale. The evidence is clear that promotions are designed to encourage consumers to spend more money on products that they were not intending to buy, not to save people money. The Government's own impact assessment states *"Although price promotions appear to be mechanisms to save consumers money, data shows that they increase consumer spending by encouraging people to buy more than they intended in the first place."* The original Food (Promotion and Placement) (England) Regulations 2021 showed the clear role of these tactics (including "multibuy"/ volume-based promotions) in driving excess purchase and consumption of products that are high in saturated fat, salt and/or sugar (HFSS). They are estimated to increase total spending on HFSS foods and drink by around 22%. This is additional expenditure squeezing the budgets of low-income households, often at the expense of more nutritious food and drink.⁹

There is clear evidence that industry had made progress in preparing for the regulations to come into force by October 2022, including adjusting their price promotion strategies, as well as product reformulation and range innovation to come into compliance. Tesco and Sainsbury's have stated they will continue to meet the original deadline.¹⁰ Furthermore, promotions do not lead to long-term profits for retailers and are largely being phased out. These delays (and the potential for even further changes to this policy) not only provide further uncertainty to industry, they undermine the positive steps taken by progressive retailers to improve health and meet ethical responsibilities and add to the uneven playing field that more responsible retailers are forced to operate within.

Legislative Process

There has been no impact assessment undertaken to review the impact this change will have on children's health, and we do not believe that the proposed legislative procedure provides for a suitable level of parliamentary scrutiny. The proposed "negative" procedure allows for very little parliamentary debate and opportunities for parliamentarians to review and amend the proposals.

We are extremely concerned that the Statutory Instrument as written does not provide a backstop to ensure the regulations will come into effect on the revised date of October 2023. This leaves it open to even further delays, uncertainty and efforts to undo the policy entirely. We call on the Government to state a firm commitment to respect the scientific evidence, the will of Parliament and the health of the nation to enact this legislation in full, by no later than October 2023.

⁷<https://www.gov.uk/government/consultations/restricting-promotions-of-food-and-drink-that-is-high-in-fat-sugar-and-salt/outcome/restricting-promotions-of-products-high-in-fat-sugar-and-salt-by-location-and-by-price-government-response-to-public-consultation>

⁸https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800675/Calories_Evidence_Document.pdf

⁹ <https://www.research.ed.ac.uk/en/publications/rapid-evidence-review-the-impact-of-promotions-on-high-fat-sugar>

¹⁰<https://foodmatterslive.com/article/tesco-sainsburys-hfss-food-promotions-ban-despite-government-delay/#:~:text=British%20supermarkets%20Tesco%20and%20Sainsbury's,the%20cost%20of%20living%20crisis.>

Conclusion

We reiterate our opposition to this move, which amounts to an unnecessary delay to important measures to improve population health. We do not agree with the stated rationale for this policy change regarding the cost of living as all the evidence points to the contrary. Furthermore, we do not believe that the Government has produced any notable evidence to justify this change between the passage of the original legislation in December 2021 and the announcement of the proposed delay in May 2022. We call on the Government to publish all representations and evidence submissions that they received regarding this policy in this time period that informed their decision.

If the proposed delays to the multi-buy components of the regulations go ahead, for the reasons established above regarding the urgency of addressing childhood obesity, it further underscores the importance of the rest of the Food (Promotion and Placement) (England) Regulations 2021 coming into effect as planned in October 2022.