

Comments on UK Department of Health and Social Care's consultation on restricting promotions of products high in fat, sugar and salt by location and by price

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About World Cancer Research Fund International

World Cancer Research Fund International (**WCRF International**) leads and unifies a network of cancer prevention charities with a global reach. We are the world's leading authority on cancer prevention research related to diet, weight and physical activity. We work collaboratively with organisations around the world to encourage governments to implement policies to prevent cancer and other non-communicable diseases (NCDs).

We advocate for the wider implementation of more effective policies that create environments that are conducive for people and communities to follow our Cancer Prevention Recommendations¹. Our NOURISHING policy framework brings together ten policy areas where governments need to take action to promote healthy diets and reduce overweight, obesity and diet-related NCDs. The framework is accompanied by an extensive, regularly updated database of implemented government policy actions from around the world. *"Restricting food promotion and other forms of commercial promotion"* and *"Set incentives and rules to create a healthy retail and food service environment"* are two of the ten policy areas outlined in the NOURISHING framework.

More information on WCRF International can be found at <http://www.wcrf.org/> and www.wcrf.org/NOURISHING.

World Cancer Research Fund is a member of the Obesity Health Alliance and this submission is in alignment with the consultation response submitted by the Obesity Health Alliance.

Contact

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Summary

We welcome the Government's consultation on restricting the promotion of unhealthy food and drink. This is a positive step towards the Government's ambition of halving childhood obesity by 2030.

WCRF International advocates for governments to take a comprehensive policy approach to promoting healthy diets and reducing overweight, obesity and diet-related NCDs. Restricting promotions on high fat, sugar and salt (**HFSS**) food products by location and by price in retail

¹ <http://www.wcrf.org/int/research-we-fund/our-cancer-prevention-recommendations>

and out of home environments is one part of a wider package of policies needed to address diet-related NCDs.

We agree with the Government's mandatory approach to the regulation of promotions of HFSS products by location and by price. Implementing mandatory restrictions as opposed to voluntary restrictions will help consumers to make healthier choices and reduce their consumption of HFSS pre-packaged food products.

We also commend the aim of the policy which is to reduce overconsumption of HFSS products that contribute to children being overweight and obese through:

- a) restricting volume-based types of price promotions of pre-packaged HFSS food and drink products that specifically encourage overconsumption, such as multi-buy offers (e.g. buy one get one free) and free refills of sugary soft drinks.
- b) restricting the placement of all HFSS food and drink products (whether pre-packaged or non-pre-packaged) at key selling locations such as store entrances, checkouts and aisle ends which can lead to pester power and impulse purchases of HFSS products.

We outline our recommendations on the proposal below with a focus on outlining how to most effectively achieve the Government's stated objective.

Scope

We support the use of the Government's Nutrient Profile Model to design the policy and decide which products are in scope of the policy. The Government's Nutrient Profile Model is an evidence-based tool that is well understood and easily used in practice to define products that can be advertised to children (amongst other policies). We recommend that all policy design uses an evidence-based nutrition standard tool, like a nutrient profile model, to define the products in scope of a nutrition policy to ensure the policy is as robust and comprehensive as possible.²

We also support the intention to apply the restrictions to all retail businesses which sell any food and drink products, including their franchises and online outlets. We agree that the restrictions should also apply to retailers that do not primarily sell food and drink, such as clothes retailers and newsagents, to reduce the pester power that parents face due to the prominent display of HFSS products, even when they are not purchasing food and drink.

Price promotions

² World Cancer Research Fund International (2018). Building momentum: lessons on implementing a robust sugar sweetened beverage tax. Available at www.wcrf.org/buildingmomentum; World Cancer Research Fund International (2019). Building momentum: lessons on implementing a robust front-of-pack food label. Available at wcrf.org/frontofpack

We support restricting multi-buy promotions on HFSS food and drink products. Evidence shows that multi-buy promotions encourage people to make unplanned purchases and normalise buying more in the long-term.³⁴

We support Option 1 outlined in the consultation report:

Option 1:

Require retailers to ensure that all their volume-based price promotions on food and drink are on healthier products.

This would mean that no volume based price promotions may be on HFSS products included in PHE's reformulation categories and in scope of the SDIL.

Therefore, volume based price promotions of food and drink could only be on:

- *Non HFSS products included in PHE's reformulation categories and in scope of the SDIL (for example natural plain yoghurts within the yoghurts category or sugar free soft drinks).*
- *All other food and drink outside of PHE's reformulation categories (whether HFSS or non HFSS products) as these are the product categories included in the Government's dietary guidelines for example fruit and vegetables, unprocessed meat and fish, vegetable oils, cheese, nuts etc.*

We support Option 1 because we consider it a more effective policy. Defining the products in scope using the Nutrient Profile Model and applying a full restriction on all volume-based price promotions of those products will enable the Government to reach the overall objective of the policy as Option 1 is more robust, comprehensive, enforceable and effective.

Option 2 will **not** provide a clear message to consumers and will be challenging to enforce as it will rely on retailers sharing their sales data. A partial restriction on volume-based price promotions of HFSS food will be less effective at reaching the overall objectives of the Government.

Eating outside the home

We support the scope of the policy to target packaged HFSS food promotions. We agree that the policy should focus on the retail environment and out of home sector. However, we would also encourage extending the scope into the public sector, especially settings such as schools and hospitals to adequately reduce the exposure of children to such promotions.

3 Hawkes C. Sales promotions and food consumption. Nutrition Reviews 2009. 67(6):333–342.

4 Public Health England. Sugar Reduction: The evidence for action. Annexe 4: An analysis of the role of price

We support the Government's suggestion that restricting free refills of sugar-sweetened drink in retail environments should be included in the scope of the policy. WCRF International's NOURISHING database holds an example of a similar policy from France. Since 27 January 2017, France has banned unlimited offers of sweetened beverages for free or at a fixed price in schools, public restaurants and any facility used to teach, accommodate or receive children under the age of 18, eg dormitories, sports facilities, youth prisons (Article L. 3232-9 of the Public Health Act). Sweetened beverages are defined as any (non-alcoholic) drink sweetened with sugar or artificial (caloric and non-caloric) sweeteners, including flavoured carbonated and still beverages, fruit syrups, sports drinks, energy drinks, fruit and vegetable nectars, fruit- and vegetable-based drinks, as well as water-, milk- or cereal-based beverages.⁵ We would recommend extending the scope of the Government's policy to the school setting to adequately capture children's exposure to such promotions of sugar-sweetened beverages.

Multiple jurisdictions in the United States have implemented policies that restrict retail outlets and out of home outlets from offering a sugar sweetened beverage as the default beverage in a child's meal.⁶ Details of these can be found in the NOURISHING database.⁷

Location promotions

We support restricting the promotion of HFSS food and drinks from prominent locations such as shop entrances, aisle ends and checkouts. Evidence shows placing items in prominent locations increases sales.⁸ Restricting location promotions of unhealthy food and drinks will help discourage impulse purchases and reduce pestering from children. Sales of products increase when they are placed in more visible and salient locations such as aisle ends. Parents report pester power when sweets are placed as checkouts. Obesity Health Alliance survey data shows that the majority of food and drink products placed in entrances,

⁵ World Cancer Research Fund International NOURISHING framework and policy database. www.wcrf.org/NOURISHING - Set incentives and rules to create a healthy retail and food service environment – Incentives and rules to restrict sugar-sweetened beverage consumption.

⁶ World Cancer Research Fund International NOURISHING framework and policy database. www.wcrf.org/NOURISHING - Set incentives and rules to create a healthy retail and food service environment – Incentives and rules to offer healthy food options as a default in food service outlets.

⁷ World Cancer Research Fund International NOURISHING framework and policy database. www.wcrf.org/NOURISHING - Set incentives and rules to create a healthy retail and food service environment – Incentives and rules to offer healthy food options as a default in food service outlets.

⁸ Wilson A, Buckley E, Buckley J and Bogomolva S. Nudging healthier food and beverage choices through salience and priming: Evidence from a systematic review. *Food Quality and Preference* 2016. 51:47–64; Cohen D and Lesser L. Obesity prevention at the point of purchase. *Obesity Reviews* 2016. 17:389–396; Thornton L, Cameron A, McNaughton S et al. The availability of snack food displays that may trigger impulse purchases in Melbourne supermarkets. *BMC Public Health* 2012. 12:194.

aisle ends and checkouts are food and drinks that contribute to children's excess sugar and calorie intake.⁹

We recommend that online shopping should be included in the scope of the policy as many consumers are purchasing their food online. To ensure the effectiveness of the policy, and that it meets the Government's stated objective then a comprehensive policy that covers both physical *and* online retail environments and out of home sector.

We consider that all retail outlets should be the subject of this regulation, regardless of size. Again, this is to ensure the effectiveness of the policy and to ensure the policy's outcomes reach the stated policy objective. It is important to have a level playing field across all types of business. It is also important to capture the food environments that the British population are exposed to, which includes smaller off-licence type retail stores. It is particularly important to capture the retail environment in more deprived areas, where smaller sized retail outlets may be more prominent.

Monitoring and evaluation

We strongly urge the Government to build in monitoring and evaluation mechanisms from the outset of the policy design in order to monitor the policy's unintended, positive, negative and neutral impacts. Performance measurement and evaluation of the policy once implemented will be instrumental to understanding whether the restrictions are meeting the Government's objectives so the Government can make any necessary amendments, if required. It will also provide an important evidence base for other governments to adopt similar policies.

Countering opposition to the proposed policy

To counter opposition to the proposed policy and interference from stakeholders whose interests' conflict with the introduction of the restrictions proposed, we outline some key considerations for the Government. This advice is distilled from WCRF International's Building Momentum series on implementing robust nutrition policies.¹⁰

We cover five main areas that require consideration to help the Government's policy withstand opposition: evidence base, policy objectives, discrimination, trade restrictiveness and stakeholder engagement.

⁹ Obesity Health Alliance (2018). Out of Place.

¹⁰ World Cancer Research Fund International (2018). Building momentum: lessons on implementing a robust sugar sweetened beverage tax. Available at www.wcrf.org/buildingmomentum; World Cancer Research Fund International (2019). Building momentum: lessons on implementing a robust front-of-pack food label. Available at wcrf.org/frontofpack

Evidence base

Robust policy design, including a strong evidence base, is essential to ensure the policy can withstand opposition from stakeholders whose interests' conflict with the policy restrictions.¹¹

The Government outlines the evidence base behind the policy in its briefing document. Drawing on this evidence base is imperative when defending the policy. Evidence of the size of the obesity problem in the UK, the impact the obesity problem will have on the health outcomes of the population as well as the economic burdens is important evidence to support the policy. Evidence of the effect of pester power, the effect of price promotions and location of the products in the retail and out of home environments is also important to collate and we commend the Government for providing this evidence base in the policy consultation document. The evidence base is clear and the policy need is unequivocal.

Policy objectives

Setting clear policy objectives is critically important in order to defend restrictions on promoting HFSS products against trade issues and legal arguments. It is necessary to frame the objectives in a way that explains how the measure will address the specific problem. The Government's objectives do this by stating that the aim is to reduce over consumption of HFSS products that contribute to children being overweight and obese through:

- a) restricting volume-based types of price promotions of pre-packaged HFSS food and drink products that specifically encourage overconsumption, such as multi-buy offers (e.g. buy one get one free) and free refills of sugary soft drinks.
- b) restricting the placement of all HFSS food and drink products (whether pre-packaged or non-pre-packaged) at key selling locations such as store entrances, checkouts and aisle ends which can lead to pester power and impulse purchases of HFSS products.

In addition, the fact that the Government has framed the restrictions as part of a comprehensive suite of complementary policies as part of the Childhood Obesity Plan – which aims to help reduce the incidence of childhood overweight and obesity - strengthens the measure from a trade and legal perspective. The restrictions on HFSS promotions are framed as a necessary part of this suite of policies.

Discrimination

It is important that the Government does not discriminate between products from the UK and those from other countries, therefore honouring its commitments under international trade and investment law, i.e. the GATT (General Agreement on Tariffs and Trade) and the WTO TBT Agreement (Article 2.1 TBT). All products, domestic and imported will be subject to the Government's regulations.

¹¹ World Cancer Research Fund International (2018). Building momentum: lessons on implementing a robust sugar sweetened beverage tax. Available at www.wcrf.org/buildingmomentum; World Cancer Research Fund International (2019). Building momentum: lessons on implementing a robust front-of-pack food label. Available at wcrf.org/frontofpack

Trade restrictiveness

It is essential that the Government carefully reviews its international legal obligations to ensure the proposed policy can withstand potential opposition.

The World Trade Organization (WTO) Agreement on Technical Barriers to Trade (the ‘TBT Agreement’)¹² has several key commitments that are relevant to restricting HSFF food promotions:

Preamble: no country should be prevented from taking measures necessary for the protection of human health

Article 2.1: Technical regulations shall treat ‘like products’ the same, both imported and domestically produced

Article 2.2: Technical regulations should not create unnecessary obstacles to trade (not be more trade restrictive than necessary to fulfil a legitimate objective), taking account of the risks non-fulfilment would create

Article 2.4: Members should use relevant international standards as the basis for technical regulations

Article 2.5: If a measure may have a significant effect on trade, members shall explain the justification for the measure at the request of another member.

However, if a measure is designed to achieve a legitimate objective and is based on international standards, it shall be rebuttably presumed not to create an unnecessary barrier to trade.

Article 2.9: If a measure is not in accordance with international standards (or no relevant standard exists), members shall notify other members, provide information and allow time for comment

Article 2.12: Members shall allow a reasonable time between publication and entry into force of the measure, to allow for implementation

To further withstand opposition, the Government must regulate in a manner that is “not more trade restrictive than necessary to achieve a legitimate government objective” (Article 2.2 TBT). The Government has a legitimate and clearly stated objective to reduce overconsumption of HFSS products that contribute to children being overweight and obese.

The Government has chosen to focus the restrictions on pre-packaged HFSS food in the retail and out of home sectors, which will be defined by the UK’s robust Nutrient Profile Model. The products that fall within the scope of the policy are therefore selected because of an evidence-based evaluation tool. The rationale for the scope of the policy is also backed by empirical evidence.

Promotions based on price and location are not unduly restricted, just a targeted food group, based on evidence of effect. Private industry is not restricted on promoting their products beyond the scope of the restrictions.

¹² 12 WTO. (1994) Agreement on Technical Barriers to Trade. World Trade Organization, Geneva.

Stakeholder engagement

The Government has undertaken a public consultative process. It is vital that governments put in place governance mechanisms to prevent and manage potential conflicts of interest in the design and implementation of the policy. We implore the Government to adopt Health Canada's approach to policy governance, in particular their rules on transparency and managing conflicts of interest. Health Canada's new approach regarding transparency of stakeholder communications for healthy eating initiatives, was announced by the Minister of Health in October 2016. Following this announcement, all meetings and correspondence with the intent of informing policy development are published online, including the name of the organisation and topics and purpose of discussion.