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# ***Food Products (Marketing to Children) Bill***

**Bill 19 of 2007-08**

The *Food Products (Marketing to Children) Bill* is a Private Member's Bill introduced in the House of Commons on 5 December 2007 by Nigel Griffiths MP. Under the provisions of the Bill, it would be an offence for a person or body to advertise or promote to children food (including drink products) which are classified as 'less healthy'. The Bill would introduce a 9pm watershed for television advertising of unhealthy food, as well as significant restrictions on non-broadcast marketing.

The Bill has received broad support from various health and consumer organisations including the British Heart Foundation, Cancer Research UK and Which?

The Bill is to have its Second Reading debate on 25 April 2008.

This Paper outlines the main provisions of the Bill. It considers Government policy on obesity in the young. It also provides an overview of the techniques used to market food products to children and current regulation (both broadcast and non-broadcast advertising).

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## Summary of main points

The *Food Products (Marketing to Children) Bill* is a Private Member's Bill introduced in the House of Commons by Nigel Griffiths MP. It has been given a Second Reading date of 25 April 2008. Under the provisions of the Bill it would be an offence for a person or body to advertise or promote to children food products which are classified as 'less healthy'. The Bill makes a distinction between broadcast and non-broadcast media:

- In the case of the broadcast media, an offence is committed if the less healthy food product is advertised or promoted by the broadcaster and if the advertisement or promotion is broadcast between the hours 5.30 am and 9 pm in the UK.
- In the case of non-broadcast media, an offence is committed if the less healthy food product is advertised or promoted by the person or body responsible for distributing or otherwise circulating the advertisement or promotion, provided that it is targeted at children.

For the purposes of the Bill, an 'unhealthy food' would include drink products and would be determined by a system or model to be published by the Food Standards Agency.

The Bill has wide support from various health and consumer organisations, including: the British Heart Foundation, Cancer Research UK and Which?

If enacted, the Bill would extend to the whole of the UK.



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## I Introduction

The *Food Products (Marketing to Children) Bill* is a Private Member's Bill introduced in the House of Commons by Nigel Griffiths MP on 5 December 2007. Commenting on the purpose of his Bill Nigel Griffiths said:

If children are not exposed to sophisticated ads for unhealthy foods, parents will find it easier to encourage healthy eating and the whole country will benefit.<sup>1</sup>

Under the provisions of the Bill it would be an offence for a person or body to advertise or promote to children food products which are classified as 'less healthy'. The Bill makes a distinction between broadcast and non-broadcast media:

- In the case of the broadcast media, an offence is committed if the less healthy food product is advertised or promoted by the broadcaster and if the advertisement or promotion is broadcast between the hours 5.30 am and 9 pm in the UK.<sup>2</sup>
- In the case of non-broadcast media, an offence is committed if the less healthy food product is advertised or promoted by the person or body responsible for distributing or otherwise circulating the advertisement or promotion, provided that it is targeted at children.<sup>3</sup>

The Bill has broad support from various health and consumer organisations.

Public concern about obesity in children led to Ofcom's ban in February 2007 on the advertising of foods that are high in fat, sugar and salt during television programmes aimed at children under 16. The Bill also follows the publication in January 2008 of "*Healthy Weight, Healthy Lives: A Cross-Government Strategy for England*." This sets out the UK Government's strategy on promoting healthy eating, with particular emphasis on children.

### A. Previous Private Members' Bills

There have been two recent Private Members' Bills that aimed to impose further restrictions on marketing to children.

The *Children's Food Bill* was first introduced as a Private Member's Bill by Debra Shipley in May 2004. Its aim was to:

Make provision regarding the marketing, promotion and sale of food and drink to and for children; to make provision for education and the dissemination of

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<sup>1</sup> "Second Bill seeks ban on junk food ads", *Guardian*, 4 December 2007

<sup>2</sup> Clause 2(2)(a) of the Bill

<sup>3</sup> Clause 2(2)(b) of the Bill

information about children's diet, nutrition and health; to place certain duties on the Food Standards Agency; and for connected purposes.

The Bill made no further progress but there followed a Children's Food Bill campaign supported by MPs who signed an Early Day motion (No 1256, 30 November 2004). On 22 June 2005 the Bill was re-presented to Parliament by Mary Creagh (2005/06 session). It had an uncompleted Second Reading debate on 28 October 2005, and made no further progress.<sup>4</sup> The Government agreed with some parts. They introduced new nutritional standards for school meals and stopped school vending machines from selling crisps, chocolates and sugary fizzy drinks.<sup>5</sup>

Baroness Thornton moved the *Television Advertising (Food) Bill (HL)* on 6 June 2007 (2006/07 session). Her speech on Second Reading explained what the Bill would do:

The Bill is in two parts. It will end television advertising for high in fat, salt and sugar—HFSS—food and drink before 9 pm, it will restrict the advertising of food “ranges” with HFSS items in them before 9 pm and finally it seeks to prevent the sponsorship of pre-watershed programmes by HFSS products.

The Bill seeks to do that by defining a watershed that covers most of the time when children might be watching television, but it is not limited to what are commonly known as “children's viewing times”. It seeks to find a form of words that would cover not only foods that are high in fat, salt and sugar, but that will deal with the manufacturers and producers of brands of those foods, hence the use of the phrase “range of foods” in Clause 1(4). Clause 2 seeks to use the classification and models that are already in existence to classify foods, particularly because those are the nutritional classifications that have been used by Ofcom in its deliberations about the restrictions on advertising to children.

Why is this Bill necessary now, when, as I am sure the Minister will tell us later in the debate, the Ofcom-recommended restrictions are only just being introduced? It is no exaggeration to say that there is a crisis in children's diets.

(...)

My contention, and I think that of many others today, is that the conclusion that Ofcom came to from its deliberations and the resulting proposals are inadequate given the scale and urgency of this problem. (...)

Ofcom's failure to place any restrictions on brand advertising allowed a significant loophole for food companies producing products that are high in fat, sugar and salt (HFSS). Its recommendations do not apply to brand advertising where no products are shown. (...)

This Bill tackles the issue of brand advertising by preventing advertising for any range of food that includes HFSS items, although advertising of any non-HFSS product within that range is still allowed. This will mean that much brand advertising is controlled, without harming advertising for healthier products.<sup>6</sup>

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<sup>4</sup> HC Deb 28 October 2005 cc585-98

<sup>5</sup> HC Deb 17 October 2007 c829

<sup>6</sup> HL Deb 8 June 2007 c1359

The Bill received its Second Reading after a debate, but made no further progress.

## B. Medical charities' support for the Bill

A joint brief from British Heart Foundation (BHF), Cancer Research UK, & Diabetes UK stressed the health dangers resulting from increasing obesity. It explained why they supported the Bill:

### Why is a 9pm watershed still needed?

New Ofcom restrictions cover only children's programmes, which are not the programmes most watched by children. Research from the consumer organisation Which? found the most popular programmes amongst 2-9 year olds are shown in the early evenings. A 9pm watershed on HFSS advertising would therefore have a far greater direct affect on the amount of HFSS foods TV advertising children would be exposed to.

### Why is it important that the Bill also covers non-broadcast marketing?

A 9pm watershed on TV junk food advertising will be a fantastic step forward. However, the advertising media and their audiences are becoming increasingly fragmented. Children are watching less TV and spending more time on other digital media like the internet, mobile phones and video games. This means that advertisers are increasingly using a range of media to get their message across to children, from internet and cinema advertising to the packaging of a product itself.

There has been a big increase in spending on internet advertising in particular and it has become one of the most important advertising mediums. New technologies and changing media consumption patterns mean that these trends are only likely to increase.

A recent survey of children by the National Children's Bureau found that cinemas, stands, magazines, displays in shops, posters and billboards were cited as the places they saw adverts for food most frequently. Over half of children had seen an advert on the internet and over a quarter had seen an advert via text message.

It is vital that a new regulatory structure for food advertising takes into account this new diversity of media consumed by children and acts to protect them from junk food advertising whatever media are used.<sup>7</sup>

## C. Statistics and policy in other countries

The Foresight Report presents Government statistics on obesity in adults and children in the UK and obesity in the future if current trends continue.<sup>8 9</sup>

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<sup>7</sup> British Heart Foundation, Cancer Research (UK) and Diabetes (UK), *Briefing on the Food Products (Marketing to Children) Bill*, pp2-3

<sup>8</sup> Government Office for Science, [Tackling Obesities: Future Choices](#), 2<sup>nd</sup> ed 2007

<sup>9</sup> Also see Library note SN/SG/3336, Statistics on obesity, which presents statistics on obesity in adults and children in the UK, obesity in the future if current trends continue, international comparisons, obesity related ill-health, and the economic cost of obesity

The Appendix to this Paper gives a brief summary of the regulation of advertising to children in other European countries.

## **II Government policy on obesity in the young**

### **A. Foresight Report and FSA nutritional standards**

#### **1. The Foresight Report**

In 2007 the Government Office for Science published a Foresight Report that took a strategic 40 year forward look at how society could respond sustainably to obesity.<sup>10</sup> It contained the following key messages:

- Most adults in the UK are already overweight. Modern living ensures every generation is heavier than the last – ‘Passive Obesity’.
- By 2050 60% of men and 50% of women could be clinically obese. Without action, obesity-related diseases are estimated to cost society £49.9 billion per year.
- The obesity epidemic cannot be prevented by individual action alone and demands a societal approach.
- Tackling obesity requires far greater change than anything tried so far, and at multiple levels: personal, family, community and national.
- Preventing obesity is a societal challenge, similar to climate change. It requires partnership between government, science, business and civil society.<sup>11</sup>

#### **2. Nutrient profiling**

The subject of the Bill is food (including drink) that is often described as unhealthy or “junk food”, but neither term is satisfactory. The preferred term is “food that is high in fat, sugar or salt”, or HFSS food. The Food Standards Agency (FSA) developed a nutrient profiling (NP) model for HFSS food, so that Ofcom could impose its controls on TV advertising in April 2007. The FSA website explained:

The nutrient profiling work of the FSA is innovative and the model has undergone rigorous scientific scrutiny and extensive consultation. It has strong backing from a wide range of nutritional experts including the independent Scientific Advisory Committee on Nutrition (SACN) and is supported by Public Health and Broadcasting Ministers.

The food industry has been unable to provide an alternative nutrient profiling model suitable for use to restrict HFSS for this use.

The FSA's NP model uses a simple scoring system which recognises the contribution made by beneficial nutrients that are particularly important in children's diets (protein, fibre, fruit and vegetables, and nuts) and penalises food

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<sup>10</sup> Government Office for Science, [Tackling Obesities: Future Choices](#), 2<sup>nd</sup> ed 2007

<sup>11</sup> Government Office for Science, [Tackling Obesities: Future Choices – Summary of Key Messages](#), 2007

with components that children should eat less of (energy, saturated fats, salt and sugars).

The FSA Board is committed to reviewing the impact of the NP model after a year of use to see how it works in practice. The review will consider changes in foods advertised to children and the views of all interested parties.<sup>12</sup>

However, this model has also attracted criticisms. Daniel Rogerson's Early Day Motion 591 of 2006/7 summed them up:

That this House welcomes the principle embodied in Ofcom's new regulations to ban advertising of junk food products while children's television programmes are on air; notes with concern, however, that Ofcom will use the Food Standards Agency Nutrient Profiling Model to determine which foods will be subject to the ban; notes that this model is scientifically flawed, based on a one-size-fits-all portion size and will proscribe nutritious foods like cheese from being advertised to children yet allow whole milk - cheese's key ingredient - to be advertised; welcomes the positive contribution both cheese and milk make to our national diet and economy; and calls on the Government to revise the Nutrient Profiling Model to ensure the regulations improve children's diets across the country

Another problem with this – and perhaps any other – system of nutrient profiling is the difficulty in encouraging manufacturers to improve their products. A manufacturer who starts with an HFSS product often wishes to promote a healthier version with similar taste characteristics. However, this healthier product may still count as HFSS, in which case it is covered by the advertising ban.

## B. UK Policy since the 2004 Public Health White Paper

A PQ in March 2008 gave an overview of Government policy on childhood obesity:

**Dawn Primarolo:** The Government's long-term ambition on obesity is to be the first major nation to reverse the rising tide of obesity and overweight in the population, by enabling everyone to achieve and maintain a healthy weight. Our initial focus is on children: by 2020, we aim to reduce the proportion of overweight and obese children to 2000 levels.

We have mapped out the first steps in delivering this ambition in a new £372 million cross Government strategy, "Healthy Weight, Healthy Lives: A Cross-Government Strategy for England" which was launched in January this year. A copy of the strategy is available in the Library. From April 2008, tackling child obesity will be a national priority for primary care trusts (PCTs), working with their local partners. This was set out in the NHS Operating Framework in December 2007. "Healthy Weight, Healthy Lives: guidance for local areas" was published on 19 March. It sets out actions PCTs and local authorities, in conjunction with their third and private sector partners, will want to consider to deliver their child obesity goals.<sup>13</sup>

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<sup>12</sup> FSA webpage: [key facts on nutrient profiling](#) [on 16 April 2008]

<sup>13</sup> HC Deb 31 March 2008 c585W

The Department of Health White Paper, *Choosing Health: making healthy choices easier*, November 2004 (Cm 6374) stressed the need for action on food promotion to children.<sup>14</sup> After consultation, Ofcom announced in February 2007 that HFSS foods should not be advertised in or around programmes of particular appeal to children under 16. The ban also covered sponsorship by makers of HFSS products and a prohibition on the use of licensed characters, celebrities, promotional offers and health claims in advertisements for HFSS products targeted at pre-school or primary school children.<sup>15</sup> This ban is discussed in more detail in section IV(A) of this Paper.

On 17 October 2007 the Secretary of State for Health, Alan Johnson, made a statement on obesity announcing a broad approach taking in a wide range of policy responses. Amongst other general points, he noted that: “An obese young man who remains obese, as most are likely to do, will die, on average, 13 years younger than his peer group.” Andrew Lansley, the Conservative Shadow Health Secretary, quoted the opinion that on current trends obesity would soon surpass smoking as the greatest cause of premature death. Alan Johnson made some specific references to children:

In recent years, we have focused more closely on child obesity. Sure Start children’s centres provide parents with high-quality health advice in the crucial pre-school years. We now intend to start earlier still with the proposed nutritional grants for pregnant mothers. Over the past three years, the share of children on the school fruit and vegetable scheme who are eating five a day has increased from just over a quarter to just under a half. We have introduced tough new nutritional standards; we are investing almost £100 million a year to improve school food; and we have added an entitlement to cooking lessons on the national curriculum. We have established the national child measurement programme, which will provide the largest database of its kind in the world on children’s weight. In 2004, only half of all pupils did two hours of high-quality PE and sport every week; today the figure is 86 per cent. We are now raising our sights so that every child has the chance of five hours sport every week, backed by a further £100 million of additional investment.

Working with the Food Standards Agency and the food industry, we have introduced front-of-pack labelling, and we have worked with Ofcom to prohibit television advertising of foods that are high in fat, salt and sugar during children’s programmes. This was a bold measure, but we are determined to go further if the evidence supports the need to do so. We will therefore be reviewing the impact of the restrictions on the nature and balance of food promotion to all children, across all media.

(...)

We will continue to focus particularly on children. More than 80 per cent. of obese 10 to 14-year-olds remain obese into adulthood. As part of the spending review, we have already set our ambition to reverse the growth in obesity so that, by 2020, we reduce the proportion of overweight and obese children to the levels in 2000. Ensuring that our health service is as focused on prevention as it is on treatment is already a priority, and obesity epitomises the need for that change.<sup>16</sup>

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<sup>14</sup> Department of Health, [Choosing Health: Making healthy choices easier](#), November 2004 (Cm 6374)

<sup>15</sup> Ofcom, [Television Advertising of Food and Drink Products to Children Executive Summary](#), 2007

<sup>16</sup> HC Deb 17 October 2007 cc825-7

He later noted what the Government had done, starting with commissioning the Foresight report:

Secondly, we introduced the tough new nutritional standards that have been in place since September as regards the rubbish that was in vending machines in our schools. (...) Some 86 per cent. of school children now do at least two hours of high-quality sport or physical education. The Department for Transport is investing £15 million in the national cycling network, and 450 schools are due to benefit from that. We put £1 billion more into sport in this country. All of those measures and more are important, but that brings us back to the Foresight group's comment about the futility of isolated initiatives. What we need is much greater integration, and the Government need to do more in that regard as well, but we need to forge a political consensus on the matter across the House.<sup>17</sup>

However, Norman Lamb, the Liberal Democrat Shadow Health Secretary, criticised the lack of action since a previous announcement on an obesity strategy in 2004:

Why has the take-up of school meals declined by almost 500,000 in the past two years? Schools now have to weigh their children, but why is there no follow-up action to give the schools the opportunity to do anything to tackle the problem that they uncover? Is it not right that the top priority must be to tackle child obesity, both through more exercise and through better diet?<sup>18</sup>

Government long-term targets for reduction of child obesity became more rigorous in 2007, at the cost of removing the medium-term target. They include a role for the Department for Culture, Media and Sport (DCMS), the Department responsible for broadcasting and the internet:

**Mr. Sutcliffe:** In July 2004, a Public Service Agreement (PSA) target was set for the first time to "halt the year-on-year increase in obesity among children under 11 by 2010, in the context of a broader strategy to tackle obesity in the population as a whole". (...)

Last year's comprehensive spending review set a new PSA to "improve the health and wellbeing of children and young people", which is co-owned by the Department of Health and the Department for Children, Schools and Families.

As part of this new PSA, there is the commitment to reduce the rate of increase in obesity among children under 11 as a first step towards a long-term national ambition by 2020 to reduce the proportion of overweight and obese children to 2000 levels in the context of tackling obesity across the population. (...)

The Department for Culture, Media and Sport remains a key partner in delivery of this commitment.<sup>19</sup>

In November 2007 the Nuffield Council on Bioethics published a report on ethical issues in public health. It contained a section on obesity in children, concluding:

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<sup>17</sup> HC Deb 17 October 2007 c829

<sup>18</sup> HC Deb 17 October 2007 c831

<sup>19</sup> HC Deb 18 March 2008 c1055W

5.23 Due to the special vulnerability of children it would be desirable not to advertise to children foods high in fat, salt and sugar by any medium, including on the Internet. The stewardship-guided state should aim to protect children from harm and provide an environment in which they can lead healthy lives. An example of the way in which the state might intervene includes regulation of the promotion of unhealthy foods and drinks to children, if industry fails to adequately regulate itself. A study in Australia published in 2006 suggested that this may be a particularly cost-effective way of reducing obesity in children.<sup>20</sup>

On 23 January 2008, the Department of Health published *Healthy Weights, Healthy Lives – A Cross Governmental Strategy for England*.<sup>21</sup> This contained a Healthy Food Code of Good Practice, which included the objective to:

3. Rebalance marketing, promotion, advertising and point of sale placement, so that we reduce the exposure of children to the promotion of foods that are high in fat, salt or sugar, and increase their exposure to the promotion of healthy options.

Government policy on food labelling is not covered in this Paper, but is available in a Library note.<sup>22</sup>

## C. EU measures and international concern over obesity

Child obesity is an international problem. However, information collected by the European Association for the Study of Obesity (EASO) Childhood Obesity Taskforce showed that the UK has one of the highest prevalence rates of overweight children in Europe.<sup>23</sup>

In 2000, a report by the International Obesity Task Force called for EU-wide restrictions on the marketing of HFSS products to young children:

The EU's implementation of a tobacco advertising ban should now be followed by similar EU based restrictions on the targeting of the young, including pre-school children, to consume inappropriate foods and drinks.<sup>24</sup>

The Bureau Européen des Unions de Consommateurs (BEUC) has said:

Faced with the proliferation of commercial communications, more than half of BEUC member organisations would tend to favour a ban on TV advertising to children in their own country. BEUC also calls for a horizontal piece of legislation to protect children in relation to all forms of marketing practices.<sup>25</sup>

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<sup>20</sup> Nuffield Council on Bioethics, *Public Health – Ethical Issues*, 2007

<sup>21</sup> Department of Health, *Healthy Weight: Healthy Lives – A Cross Government Strategy for England*, January 2008

<sup>22</sup> Food Labelling - Health and Nutrition (SN/SC/3286)

<sup>23</sup> National Obesity Forum webpage: *The Scale of the Problem* [on 16 April 2008]

<sup>24</sup> International Obesity Task Force, *Obesity in Europe report*, 2002

<sup>25</sup> Speech by Jim Murray, Director of BEUC (European Consumers Organisation) at the conference "Marketing to children on the Net, ITV and Mobile phone", 15 October 2002

The Consumer Committee of the European Commission, with representatives from consumer groups around Europe, has also expressed concern about the proliferation of marketing communications directed at children.

The Spanish self-regulating Code for food advertising aimed at children, PAOS, came into force in September 2005.<sup>26</sup> This voluntary Code includes several rules for the promotion of food and drink to children under the age of 12. Much of it is very similar to the UK Advertising Standards Authority Code. Amongst others:

14-. Telepromotions of food or drink products shall not be made during programmes directed at minors under 12 years of age.

(...)

XI. Education and nutritional information

23. As a general rule, food and drink advertisements should not promote or present unhealthy eating habits or lifestyles such as eating or drinking without moderation, in excess or compulsively, nor should they encourage, approve or present sedentary life styles as acceptable. To this end, the advertising of those products directed at children should not show the food or drink being promoted in large or disproportionate quantities. Likewise, when the advertisement depicts the food or drink being promoted in the context of a meal, it should be accompanied by a reasonable variety of foods in order for the advertisement to encourage consumption of the product as part of a varied and balanced diet.

24. In advertising directed at minors, no product may be shown as a substitute for any of the three main meals (breakfast, lunch and dinner).

25. Food and drink publicity should not demean the importance of healthy eating habits, including a varied and balanced diet or the practice of physical activity."<sup>27</sup>

In May 2007 the European Commission published a White Paper on '*A Strategy for Europe on Nutrition, Overweight and Obesity related health issues*'. This recommended a partnership approach to encourage voluntary actions to combat obesity, including voluntary action on advertising:

The Commission's preference, at this stage, is to keep the existing voluntary approach at EU level due to the fact that it can potentially act quickly and effectively to tackle rising overweight and obesity rates. The Commission will assess this approach and the various measures taken by industry, in 2010 and determine whether other approaches are also required.<sup>28</sup>

Some health campaigners were unhappy at the emphasis on self-regulation. Neville Rigby, director of policy and public affairs at the International Obesity Task Force, said:

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<sup>26</sup> The Spanish PAOS Code was signed on 9th June 2005 between the Ministry of Health and FIAB, the Food and Drink Industry Federation (Federación de Industrias de Alimentación y Bebidas) and came into force on 15th September 2005.

<sup>27</sup> Spanish Ministry of Health, *PAOS code: Code of self-regulation of the advertising of food products directed at minors, prevention of obesity and health*, 2005

<sup>28</sup> European Commission. [\*White Paper on A Strategy for Europe on Nutrition, Overweight and Obesity related health issues\*](#), 30 May 2007

There's a clear need for an overarching regulatory approach to advertising. The evidence is that businesses that lay claim to corporate social responsibility in relation to their TV marketing policies may be doing something quite different and far less acceptable in other areas of marketing including the internet.<sup>29</sup>

### III Overview: techniques used to market to children

In the UK, food marketing to children is multi-faceted in form. However, for the purposes of this Paper, the term 'marketing' is used to refer only to those techniques that are most apparent to the consumer, namely:<sup>30</sup>

- television advertising
- packaging and sales promotion
- internet marketing
- in-school marketing
- sponsorship
- product placement (e.g. vending in cinemas)

#### A. Advertising on television and film

Television advertising is the most popular means of product promotion worldwide. A report commissioned by the FSA estimates that an average child in the UK watches around 17 hours of television each week (including non-commercial television).<sup>31</sup>

The BHF has noted that whilst television advertising of HFSS food is being restricted by the Ofcom ban, advertising in cinemas appears to be increasing. According to the BHF, the amount spent on HFSS food advertising in the cinema increased by nearly 50% between 2006 and 2007. Describing its perceptions, the BHF said:

Now that television advertising of junk food is restricted, advertising in cinemas is on the increase. In the last year alone, the amount of junk food advertising in cinemas rose by nearly half.

Over the Christmas period, the BHF went to see several children's films around the UK and found junk food advertising before every one. Pizza Hut, Quality Street, Coco Pops and Coca-Cola were making an effort to reach children and young families, advertising before several different films including *Enchanted*, *The Bee Movie* and *the Golden Compass*.

Alongside ads, junk food product placement is increasingly prevalent, with movies like Disney's *Enchanted* prominently displaying Coca-Cola logos and *Alvin and the Chipmunks* featuring a grown-up's kitchen stuffed with nothing but branded junk food products aimed at children.<sup>32</sup>

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<sup>29</sup> "Health campaigners criticise the nutrition white paper", *EU Food Law*, 8 June 2007 p1

<sup>30</sup> This was the approach taken by the World Health Organization in its study *Marketing food to children: the Global Regulatory Environment*, 2004.

<sup>31</sup> Food Standards Agency, [Review of research on the effects of food promotion to children](#), September 2003

<sup>32</sup> British Heart Foundation webpage: "[Don't target my kids campaign](#)"; [on 16 April 2008]

## B. Packaging and sales promotion

Companies often use brightly coloured packaging and gimmicks to appeal to children. They may promote HFSS foods by:

- using 'child-friendly' promotional figures to attract children;
- running token-collecting schemes in exchange for goods;
- offering collectable toys for young children;
- running competitions to win music equipment for teenagers;
- linking their product with popular children's films;
- offering free movie tickets with successive purchases of their product;
- running birthday parties at fast-food outlets; and
- making low-cost offers - children with limited pocket money and freedom to buy their own snacks are often attracted to fast-food.

The idea is that children will associate the brands with the characters they recognize, and they will build a relationship with that brand. However, various health organizations allege that this is a marketing technique likely to encourage children to pester their parents for unhealthy meals.

## C. Internet marketing

New technologies allow advertisers direct, sometimes unmonitored, access to children and include:

- internet
- internet access via mobile phones
- interactive television
- text messaging
- email

It has recently been reported that by 2009 the value of internet advertising in the UK will overtake that of television advertising.<sup>33</sup> Online advertising grew 38% in 2007 to be worth £2.8bn, taking its market share to 15.3%, up from 11.4% in 2006.<sup>34</sup> The Internet Advertising Bureau (IAB) has explained this increase in web advertisements by the fact that faster broadband speeds are available and more people own laptops.<sup>35</sup>

According to the findings of a report by the International Association of Consumer Food Organizations (IACFO), many food companies are finding this direct marketing approach attractive:

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<sup>33</sup> ["Online ads 'to beat TV' by 2009"](#), *BBC News*, 7 April 2008,

<sup>34</sup> *Ibid*

<sup>35</sup> *Ibid*

Even in countries where advertising to children is restricted, such as Denmark, Sweden, Finland and Norway, there are no specific rules governing marketing via mobile phones.

Access to the internet is now widespread and ever more accessible, via schools, public libraries, internet cafes and at home. Many food companies are finding this an attractive (and cost-effective) way of reaching young people with their marketing messages.

Websites for the youth market typically feature branded games, competitions, promotions, characters, sports sponsorship, and 'kids only' zones that enable children to interact directly with the company, for instance, voting on new flavours or pack designs.

[...] The use of mobile phones is also greatly on the increase, bringing opportunities for promotional text messages. A high proportion of young people own a mobile phone, including 63% of young Kenyans, 90% of young people in the UK, 88% in Finland; 90% in Norway, and 16.5 million young Americans.<sup>36</sup>

Companies may run websites with specially designed children's areas, with simple computer games and prizes, cartoons and free graphics or animations available to download. To market their product, there is extensive branding on the site.

Some brands are also using internet social networking sites to target potential customers and promote products. These sites can range from chat rooms to full-blown virtual worlds, where children are given the chance to talk to each other. The National Consumer Council (NCC) has asked parents to be vigilant of indirect, unchecked advertising:

Parents should be aware that the internet is highly commercial. Every hour that a child spends in front of the computer is like letting them run loose in a shopping centre.<sup>37</sup>

According to research carried out by the BHF, only 1 in 4 parents are aware that food and drink companies use text or email competitions to advertise to children.<sup>38</sup>

## **D. In-school marketing**

In the UK, various marketing schemes in schools have included sponsored exercise books, displays, activities and samples. A long-running marketing campaign has also

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<sup>36</sup> International Association of Consumer Food Organizations for the World Health Organization consultation on a global strategy on diet and nutrition, "*Broadcasting bad health – why food marketing to children needs to be controlled*", July 2003

<sup>37</sup> National Consumer Council press notice, [Make Marketing online fairer and more transparent for children - say NCC and childnet](#), 6 December 2007

<sup>38</sup> British Heart Foundation webpage: ["Don't target my kids campaign"](#) [on 16 April 2008]

encouraged children to collect tokens from crisp packets, which schools could exchange for free books.<sup>39</sup> In its observations of marketing in UK schools, the IACFO concluded:

Unlike in the US, the UK government has not made an assessment of commercial activities nationally, so little data is available about how much schools use or rely on commercial materials to supplement state-funded catering, educational and sports equipment. However, several recent examples of national school-based promotions by food companies have been the subject of media attention and public-health concern. In May 2003, the UK's largest union of teachers voted to allow teachers to reject future commercial schemes in school, despite government support for such activities.<sup>40</sup>

## E. Sponsorship

HFSS foods are promoted to children by various types of sponsorship, for instance, sports events and movies popular with children. Some large companies (usually fast food restaurants) sponsor children's clubs, competitions and events. The marketing idea is to encourage younger children to view the product as fun. Companies may focus their attention on the teenage market through sponsorship of music events and endorsements from pop singers and sports celebrities.

## F. Product placement

Another marketing technique is product placement. For example, companies may decide to make drinks and confectionery available in vending machines in cinemas, shopping centres and bus stations.

# IV Current regulation

## A. Broadcast advertising

### 1. The Ofcom restrictions

The Public Health White Paper in 2004 pressed for action on the advertising of unhealthy food to children, especially on TV:

55. The Government is keen to see real progress in this area. On television, we will work with the broadcasting and advertising sectors on ways to help drive down levels of childhood obesity. In particular we will look to Ofcom to consult on proposals on tightening the rules on broadcast advertising, sponsorship and promotion of food and drink and securing their effective implementation by broadcasters in order to ensure that children are properly protected from encouragement to eat too many high fat, salt and sugar foods – both during children's programmes and at other times when large numbers of children are

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<sup>39</sup> International Association of Consumer Food Organizations for the World Health Organization consultation on a global strategy on diet and nutrition, "*Broadcasting bad health – why food marketing to children needs to be controlled*", July 2003

<sup>40</sup> Advertising Information Group notices, April 25 2003

watching. It should also include options for broadcasters and advertisers to participate in healthy living promotions.<sup>41</sup>

After two consultation exercises, Ofcom announced their decision in February 2007:

#### Conclusions

1.12 After a detailed examination of all consultation responses and the available evidence, Ofcom has decided for the reasons set out in this document that Modified Package 1 should be adopted. Accordingly, the following package of measures to restrict the scheduling of television advertising of food and drink products to children will be applied:

- scheduling restrictions will be confined to food and drink products that are assessed as HFSS as defined by the FSA's nutrient profiling scheme;
- advertisements for HFSS products must not be shown in or around programmes specifically made for children (which includes pre-school children). For the avoidance of doubt this measure will remove all HFSS advertising from dedicated children's channels;
- advertisements for HFSS products must not be shown in or around programmes of particular appeal to children under 16; and
- these restrictions will apply equally to programme sponsorship by HFSS food and drink products.

1.13 Ofcom has also decided that, alongside these scheduling restrictions, revised content rules will apply to all food and drink advertising to children irrespective of when it is scheduled. The full content rules are set out in Annex 4 of this Statement. Key elements of the content rules include a prohibition on the use of licensed characters, celebrities, promotional offers and health claims in advertisements for HFSS products targeted at pre-school or primary school children.

#### Implementation and timing

1.14 The revised content rules, set out in Annex 4, will come into force for new campaigns with effect from the date of this Statement. Any campaigns that are already on air or in planning must comply with the new rules from 1 July 2007.

1.15 The scheduling restrictions, set out in Annex 3, will come into force in two stages as follows for all channels except children's channels:

- with effect from 1 April 2007, HFSS advertisements will not be permitted in or around programmes made for children (including pre-school children), or in or around programmes that are likely to be of particular appeal to children aged 4-9; and
- with effect from 1 January 2008, HFSS advertisements will not be permitted in or around programmes that are likely to be of particular appeal to children aged 4-15.

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<sup>41</sup> Department of Health, [Choosing Health: Making healthy choices easier](#), November 2004 (Cm 6374)

1.16 Children's channels will be allowed a graduated phase-in period, with full implementation required from 1 January 2009 (see further section 5).

1.17 In accordance with the co-regulation arrangements put in place by Ofcom and its co-regulatory partners, responsibility for interpreting the rules rests with the Broadcast Committee on Advertising Practice (BCAP), while the ASA is responsible for securing compliance. All the new rules, both for scheduling and for content, will form part of and be included in the BCAP Television Advertising Standards Code.

1.18 The scheduling restrictions and revised content rules will apply to all channels transmitted by UK broadcasters whether aimed at UK audiences or outside the UK.<sup>42</sup>

## 2. Has the TV advertising ban been a success?

In November 2007, the Consumers Association magazine *Which?* published a report arguing that the viewing restrictions were missing a high proportion of the programmes that are most popular with children under 16. Ofcom concentrated on programmes with the highest proportion of children watching. However, the largest numbers of children watched the same programmes as adults, so the proportion of children watching those programmes was lower. Programmes such as Ant and Dec's Saturday Night Take-away and the X Factor were not covered.<sup>43</sup> Indeed the Department of Health has estimated a 26 per cent rise in the past two years in the number of times children watched HFSS food adverts during these family programmes.<sup>44</sup>

The BHF commented:

Which? research carried out in September 2007 showed that unhealthy products such as Frosties, Mars Planets, Kinder Bueno, Milky Way, Smarties and Twix were still being advertised during 8 of the 10 top programmes watched by the under 10s because they are not covered by the new rules.<sup>45</sup>

Different views on the TV marketing ban were expressed after Alan Johnson's statement on obesity in November 2007:

**Philip Davies (Shipley) (Con):** As someone who used to work in marketing for a supermarket chain, may I tell the Secretary of State that proposals to ban so-called junk food advertising on television and to introduce a state labelling system will not make any difference to childhood obesity? They will simply be another triumph for the nanny state. (...)

**Alan Johnson:** (...) In my view, the reason why advertising restrictions should go much further is that about 70 per cent. of children watch television programmes outside the traditional children's viewing times. I think that that is

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<sup>42</sup> Ofcom, [Television Advertising of Food and Drink Products to Children Executive Summary](#), 2007

<sup>43</sup> Which? *Marketing of unhealthy foods to children*, November 2007

<sup>44</sup> "More children are watching junk-food adverts despite ban", *Independent*, 7 April 2008

<sup>45</sup> British Heart Foundation webpage, ["Don't target my kids campaign"](#) [on 16 April 2008]

making a big contribution and will make a bigger contribution, but it is just part of the answer.<sup>46</sup>

Concern has been expressed about the effect on children's TV programmes. The *Guardian* reported:

The future of UK children's programmes on commercial television now looks "bleak", according to the Five chief executive, Jane Lighting. Ms Lighting reiterated her channel's commitment to well-regarded pre-school brand Milkshake! but said the future looks difficult for Five. (...)

She added: "However, these restrictions will deny us substantial revenue and make the economics of producing children's programmes a lot more difficult in the future."The long-term future of UK-produced children's programming outside the BBC is bleak."<sup>47</sup>

The Department of Health has commissioned Thomson Intermedia to look broadly at the expenditure and advertising behaviour across all broadcast and non-broadcast media, with the aim of publishing a report in spring 2008. The Department is keen to see what measures the food and drink and advertising sectors are taking on a voluntary basis to effect a change in the promotion of HFSS products.<sup>48</sup>

An Ofcom review of the restrictions on advertising unhealthy foods to children is expected to start in July 2008. Alan Johnson asked Ofcom to report early findings by September 2008.<sup>49</sup>

## **B. Non-broadcast advertising**

### **1. System of self-regulation**

Non-broadcast advertising is regulated by a system of self-regulation. The Committee of Advertising Practice (CAP) is the industry body responsible for the UK's advertising Codes. The Advertising Standards Authority (ASA) is an independent body responsible for ensuring that advertisers follow the Code. It is funded by the advertising industry by way of a levy.

Non-broadcast advertisements include advertisements:

- in print (i.e. in newspapers and magazines)
- on posters and bill-boards
- in the cinema
- in new media (e.g. banner advertisements and pop-ups on the internet; advertisements on mobile phones sent using standard SMS text messaging; viral emails etc)

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<sup>46</sup> HC Deb 17 October 2007 c838

<sup>47</sup> "Junk food ad ban 'draconian', says Five", *Guardian*, 17 November 2006

<sup>48</sup> HC Deb 21 March 2007 c1004W

<sup>49</sup> HC Deb 22 January 2008 c1500

- sales promotions

However, CAP does not cover packaging, flyposting or advertisements that originate outside the UK. It should also be noted that not all types of commercial communication in new media are covered by the Code, for example, if a company makes a claim on its own website it does not fall within the scope of the Code. This is because the ASA does not rule on the editorial content of publications, except where space has been bought to promote a product, service or cause.<sup>50</sup>

## 2. Non-broadcast Code

CAP writes the 'British Code of Advertising, Sales Promotion and Direct Marketing' (the Code), which lays down rules for advertisers to follow.<sup>51</sup> The Code states that all marketing communications should be legal, decent, honest and truthful - they should not mislead or offend. The Code contains specific rules that cover advertising to children; they should contain nothing that is likely to result in a child's physical, mental or moral harm.

In July 2007, CAP updated this Code to tighten the rules governing the advertising of food and drink to children in line with new restrictions on broadcast advertising. The Code makes it clear that advertisements should be prepared with a due sense of responsibility.<sup>52</sup> Specifically, marketing communications addressed to or targeted at children should not:

- try to sell to children by directly appealing to emotions such as pity, fear, or self-confidence;
- suggest that having the advertised product somehow confers superiority, for example making a child more confident, clever, popular, or successful;
- use high-pressure or hard-sell techniques or pester-power;
- present products and prices in a way that suggests children or their families can easily afford them;
- actively encourage children to eat or drink at or near bedtime, to eat frequently throughout the day or to replace main meals with confectionery or snack foods;
- give a misleading impression of the nutritional or health benefits of the product as a whole;

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<sup>50</sup> CAP Code does not cover manufacturer-owned websites but the Incorporated Society of British Advertisers (ISBA) has published guidance on best practice principles.

<sup>51</sup> [CAP Code](#)

<sup>52</sup> [CAP Code 47.1 to 47.11](#)

- disparage good dietary practice or the selection of options, such as fresh fruit and vegetables that accepted dietary opinion recommends should form part of the average diet.

Under the Code all marketing communications featuring a promotional offer linked to food or drink products of interest to children should not:

- create a sense of urgency or encourage the purchase of excessive quantities for irresponsible consumption;
- seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive;
- use promotions, nutrition or health claims, licensed characters or celebrities popular with children in advertisements directed at pre-school or primary-school children; but advertisements for fresh fruit or vegetables may use those techniques.

A criticism of the CAP Code is that it does not differentiate between HFSS and non-HFSS products. In response, CAP has argued that its remit is to ensure non-broadcast advertisements are honest, legal and decent; it is not to ban HFSS products and ads for them. CAP cannot force advertisers to encourage healthy eating but can say what they must not do.

### **3. Sanctions**

If the ASA Council upholds a complaint, the offending advertisement must be withdrawn or amended. According to the ASA, the majority of advertisers act quickly to comply with the Code but for the few who do not, the following sanctions are available:

- bad publicity – an advertiser's reputation can be damaged if he is seen to be flouting the Code;
- CAP can issue 'Ad Alerts' to its members, including the media, advising them to withhold services from the offender (such as access to advertising space);
- CAP members can revoke, withdraw or temporarily withhold recognition and trading privileges from the offender;
- Persistent offenders can be required to have their marketing material vetted before publication;
- the ASA Director General can refer the offending advertiser to the Office of Fair Trading (OFT) for legal proceedings.

## **C. Voluntary initiatives by food and drink industry**

The food and drink industries have undertaken several voluntary initiatives. For instance, the Food and Drink Federation has issued its own Food and Health Manifesto and some companies have improved the nutritional information they put on their packs.

Some companies have voluntarily:

- reformulated products to reduce fat, salt, sugar and additives;
- stopped targeting advertisements and promotions for HFSS products at children;
- instigated healthy-living advertising and promotional campaigns and nutritional education campaigns;
- entered into schools and community partnership programmes advocating healthy lifestyles.

A group of eleven food companies (including Coca-Cola, Nestlé, Mars and Burger King), representing more than 50% of the food and beverage advertising spend in the EU, has signed an EU pledge to stop marketing unhealthy food to children under 12 years old by the end of 2008. This programme is supported by the Incorporated Society of British Advertisers (ISBA) and the World Federation of Advertisers.<sup>53</sup>

Those advocating greater restrictions on the promotion of HFSS foods to children argue that self-determined action by the food and advertising industries will never go far enough to protect children.

## V Food Products (Marketing to Children) Bill

### A. Background

The *Food Products (Marketing to Children) Bill* is a Private Member's Bill introduced in the House of Commons by Nigel Griffiths MP on 5 December 2007 as Bill 19 of 2007-08. It is due to have its Second Reading on 25 April 2008.

The purpose of the Bill is to introduce legislation to stop marketing strategies aimed at children and teenagers, which encourage the consumption of HFSS foods. Summarising the significance of the Bill, Nigel Griffiths has said:

There is no single solution to childhood obesity but tougher restrictions on the way unhealthy foods are marketed to children are essential.

If children are not exposed to sophisticated ads for unhealthy foods, parents will find it easier to encourage healthy eating and the whole country will benefit.<sup>54</sup>

The Bill has received wide support from a number of health and consumer organisations in the UK. For instance, the BHF has said:

Young children are particularly susceptible to junk food advertising, which continually urges them to put their hearts and long-term health at risk. How can our children be expected to make informed food choices if healthy food messages are constantly drowned out by a tidal wave of junk food marketing?

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<sup>53</sup> "Food companies sign EU ad pledge", *Guardian*, 11 December 2007

<sup>54</sup> "Second Bill seeks ban on junk food ads", *Guardian*, 4 December 2007

This was a major omission from the Government's obesity strategy, and the Government must take action now by banning all junk food marketing to children. We urge all MPs and parents to support MP Nigel Griffiths' forthcoming Bill on this issue.<sup>55</sup>

It is reported that some fifty organisations have written to MPs calling on them to support the Bill including the BHF, National Heart Forum (NHF), Cancer Research UK, Diabetes UK, National Obesity Forum, Which?, and Sustain (the alliance for better food and farming and the co-ordinator of the Children's Food Campaign).<sup>56</sup> A total of 192 MPs have already signed an Early Day Motion (EDM) in support of the Bill.<sup>57</sup>

However, the Incorporated Society of British Advertisers (ISBA) has criticised the Bill for being too simplistic in approach:

Banning advertising will not make children fitter or thinner. If you look at Sweden, for instance, where they do not advertise food to children, childhood obesity is just as much a problem as in the UK. There are no quick fixes and anyone who advocates one is misleading the public.

This private members' bill fundamentally misunderstands the nature of the obesity problem. Advertisers are as concerned as anyone else to help find a solution but a crude ban is too simplistic.

The reality is that obesity is a complex social phenomenon. Other factors such as exercise and the influence of parents – who, after all, control the family budget – are far more important.<sup>58</sup>

## **B. The main provisions of the Bill**

The Bill consists of just four clauses. It creates a new offence under clause 2. Specifically, it would be an offence for a person or body to advertise or promote to children 'less healthy' food products. Products would be classified as 'less healthy' according to the provisions of a new section to be inserted into the *Food Standards Act 1999* by clause 3 of the Bill. The Bill makes a distinction between broadcast and non-broadcast media:

- In the case of the broadcast media, an offence is committed if the less healthy food product is advertised or promoted by the broadcaster, if the advertisement or promotion is broadcast between the hours 5.30 am and 9 pm in the UK.<sup>59</sup>
- In the case of non-broadcast media, an offence is committed if the less healthy food product is advertised or promoted by the person or body responsible for

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<sup>55</sup> British Heart Foundation press notice, [Young children bombarded by tidal wave of junk food marketing, says heart charity](#), 21 February 2008

<sup>56</sup> [Letter to MPs from Childrens Food Campaign and others](#), 21 January 2008

<sup>57</sup> [EDM 445](#), 29 November 2007 (link gives full list of signatories)

<sup>58</sup> ISBA press notice, [Food ad ban supporters are misleading the public](#), 4 December 2007

<sup>59</sup> [Clause 2\(2\)\(a\) of the Bill](#)

distributing or otherwise circulating the advertisement or promotion, provided that it is targeted at children.<sup>60</sup>

For the purposes of the Bill, an 'unhealthy food' will include drink products and will be determined by a system or model published by the FSA.<sup>61</sup> However, for the avoidance of doubt, clause 2(3) stipulates that a 'less healthy food product' will include any brand name which is associated with the food product in question or similar less healthy food products.<sup>62</sup>

Under clause 2(6), the Secretary of State may, by regulations, issue guidance regarding the content and nature of advertisements and promotions which may be permitted.<sup>63</sup> However, before making any such regulations, the Secretary of State must consult:

- the FSA
- the Office of Communications (Ofcom), and
- Any other organisation he considers appropriate.

Under the provisions of the Bill, a person or body guilty of an offence under the Bill is liable on summary conviction to an unlimited fine. The Secretary of State may make a request to the Sentencing Guidelines Council to produce guidance on the appropriate levels of fines.<sup>64</sup>

## VI Comment from interested parties

Research has raised concerns about rising levels of childhood obesity and diet-related non-communicable diseases. It is generally accepted that the cause of the problem is the over-consumption of HFSS foods, the under-consumption of fresh foods, fruit and vegetables and a lack of exercise. However, the impact of marketing to children and rates of consumption of HFSS foods is open to fierce debate.

It is not possible in this section to provide a comprehensive list of all organisations who have campaigned on this issue, nor is it possible to provide a breakdown of the growing body of published research. Instead, this section aims to provide a flavour of the main arguments and divergent views that have fuelled the debate.

### A. Arguments in favour of further marketing restrictions

A number of health and consumer organisations in the UK have called for further restrictions on the marketing of unhealthy food products to children. The primary argument is three-fold:

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<sup>60</sup> Clause 2(2)(b) of the Bill

<sup>61</sup> Clause 3 of the Bill

<sup>62</sup> Under clause 2(6)(b) the Secretary of State may, by regulations, issue guidance regarding the meaning of 'associated with' for the purposes of clause 2(3).

<sup>63</sup> Regulations under clause 2(6) will be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

<sup>64</sup> Clauses 2(4) and 2(5) of the Bill

- that marketing of HFSS foods to children influences public health;
- that there is a link between the marketing of HFSS foods and the adoption of unhealthy eating patterns by children; and
- that childhood levels of obesity in the UK are epidemic.

## 1. Public health

Reporting on the relationship between marketing and public health, the World Health Organization (WHO) has said:

Marketing approaches matter for public health. They influence our own – and in particular our children’s – patterns of behaviour. Given that they are designed to succeed, they have serious consequences for those at whom they are targeted.<sup>65</sup>

Concerned about rising levels of obesity and diet-related diseases among the population worldwide, the WHO has said:

Although referred to as ‘non-communicable’ diseases, obesity, cardiovascular disease, cancer, osteoporosis, dental caries and diabetes are communicated through the cultural environment – from parents to children, from food corporations to consumers, from industrialised country to less-industrialised country.<sup>66</sup>

In November 2007, 53 countries in the World Health Organization European Region signed a Charter on counteracting obesity, which pledges substantially to reduce the extent and impact of commercial promotion of energy dense foods and beverages. In addition, an IACFO report called for internationally effective policies that protect children from developing dietary habits that may result in disease and premature death.<sup>67</sup>

In the UK, the National Heart Forum (NHF) and the Royal College of Physicians (RCP) are conducting a policy development project to look at how to move the country towards sustainable better health.

## 2. Patterns of food consumption

The question of who is responsible for shaping a child's eating preferences is keenly contested.

A recent article in *Which? Consumer Policy Review* argued that a child's power to exercise freewill is limited; the child is heavily conditioned by its environment:

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<sup>65</sup> Gro Harlem Brundtland, Director General of the World Health Organization, in an address to the 55<sup>th</sup> World Health Assembly, 2002

<sup>66</sup> World Health Organization, *World Health Report, 2002*

<sup>67</sup> International Association of Consumer Food Organizations for the World Health Organization consultation on a global strategy on diet and nutrition, “*Broadcasting bad health – why food marketing to children needs to be controlled*”, July 2003

Children are not hard-wired to crave cola and hamburgers from weaning, but they can be conditioned to do so. Combining food, toys, play areas, birthday parties, celebrities and clowns on television, websites and in cinemas all works successfully to fascinate and imprint young minds and to reinforce association between brand and product. And the commercial freedom to win over young consumers carries a high cost in terms of the consequences a nutritionally poor, calorie-dense diet; a cost that children themselves are not equipped to weigh against their so-called 'choices'.

Policymakers recognise a particular duty of care towards children, as vulnerable members of society, with a limited degree of control over their environment. How this duty is expressed depends on where it is judged that parental responsibilities end and state responsibilities begin, how an 'enabling state' believes it should act to support parents, and at what age children are considered to merit special protections.<sup>68</sup>

Various health organisations have argued that there is a link between the marketing of HFSS foods and the adoption of unhealthy eating patterns by children. For instance, the *British Medical Journal* (BMJ) has called on the UK Government to introduce legislation to protect children from advertising which promotes foods that contribute to an unhealthy diet:

Voluntary approaches are not working, so statutory controls are needed to end commercial activities which promote these foods specifically to children.<sup>69</sup>

On 25 September 2003, the FSA published its review of the effects of HFSS food promotion on children.<sup>70</sup> It called for tighter restrictions on food advertisements which target children to 'address the imbalance' between advertisements for healthy and unhealthy foods. However, the FSA stopped short of calling for an outright ban. It commented:

This report is a call to action. Children are already eating too much fat, sugar and salt, yet we allow them to be systematically targeted with advertising for unhealthy foods [...]

Children's advertising shows unhealthy foods in the best possible light – associating fatty and sugary foods with popularity, happy playground relationships and sporting success [...]

Food companies are expert at selling junk food and soft drinks to children using advertising, packaging and free gifts, but the one thing that repeatedly gets left out is good nutrition. It's time that food producers and advertisers used their expertise to sell healthier foods to children.<sup>71</sup>

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<sup>68</sup> *Food and diet: whose responsibility?* Jane Landon for Which? Consumer Policy Review, Volume 17, Number 6, November/December 2007

<sup>69</sup> "Protecting children from unhealthy food advertising", editorial from the *British Medical Journal*, February 2000, vol.320, p.328

<sup>70</sup> Food Standards Agency, [Review of research on the effects of food promotion to children](#), September 2003

<sup>71</sup> Food Commission press notice, *FSA review of advertising welcomed, but actions needed*, 25 September 2003

Recent surveys indicate that parents are also concerned about the impact of marketing on their children. A survey by the Welsh Consumer Council concluded:

Many parents felt under pressure from their children's demands as a result of the attractive and powerful advertising they saw on TV during children's programmes.<sup>72</sup>

The Chartered Institute of Marketing conducted a survey in 2002 and found that 75% of parents said that children see too much advertising.<sup>73</sup> In 2002, the 'Parents Jury' campaign was set-up, co-ordinated by the Food Commission. An independent jury of over 1,300 parents, it seeks to improve the quality of children's foods in the UK.<sup>74</sup>

Various arguments are used by those organisations seeking a ban in the UK on advertising HFSS foods to children, including:

- The current self-regulatory advertising controls are insufficient - advertising undermines children's health, which is deteriorating in the UK.
- Research suggests a link between advertising of HFSS foods to children and growing levels of obesity - food promotion has an effect on children's food preferences, food purchases and consumption.
- Food promotion not only increases sales of particular food brands, but also increases the sales of whole categories of food.
- The food items which predominate in children's advertising are generally classified as unhealthy. The advertised diet contrasts with that recommended by public health bodies.

### 3. Rising levels of childhood obesity

Childhood levels of obesity in the UK have been described as 'epidemic'. Looking specifically at children in England, the Government has estimated that 18% of 2 to 15 year olds are currently obese and a further 14 % overweight.<sup>75</sup> Looking at the causes of this trend, the BMJ has said:

Eating diets high in energy-dense fat is a major contributory factor in the raising trend in overweight and obese children.

More than half of 4 to 18 year olds have some dental decay, largely caused by frequent consumption of sugar-laden products. Recent research has also

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<sup>72</sup> International Association of Consumer Food Organizations for the World Health Organization consultation on a global strategy on diet and nutrition, "*Broadcasting bad health – why food marketing to children needs to be controlled*", July 2003, section 1

<sup>73</sup> Ibid

<sup>74</sup> [Parents Jury webpage](#) [on 16 April 2008]

<sup>75</sup> Department of Health press notice, "*Extra £372 million increases opportunity for all to make healthier choices*", 23 January 2008

identified links between the consumption of sugar sweetened drinks and obesity, and between low fruit and vegetable consumption and asthma. In the longer term, a diet high in fatty, sugary and/or salty foods increases the risk of developing coronary heart disease, some cancers, hypertension, diabetes and numerous other health disorders.<sup>76</sup>

The BHF, in its campaign ‘Protecting children from unhealthy food marketing’, has called for a complete ban on all forms of marketing of HFSS food to children:

We’re demanding a complete ban on all forms of marketing of junk food to children. That’s because we believe that junk food advertising aimed at children is contributing to rising rates of childhood obesity.

Children face hundreds of advertising messages every day, not just on TV, but on the internet, on packaging and in the texts they receive on their mobile phones. A lot of this advertising is designed to reach children without their parents even knowing about it.

Did you know that children under 16 spend £13 million on sweets and snacks each week in the UK?<sup>77</sup>

Those advocating greater restrictions on the promotion of HFSS foods to children argue that self-determined action by the food and advertising industries will never go far enough or fast enough to tackle the obesity crisis. In their view, there is an obvious conflict of interest; less food being bought and consumed means less profit. The issue was considered in a recent *Which?* article:

Few now dispute that the food and marketing industry influence dietary choices and that they have a part to play in tackling obesity and diet-related disease. By signalling a limited willingness to be part of the solution, the food industry clearly hopes to retain control over the actions it will take – such as introducing healthy options or running healthy eating campaigns – but more importantly, to defend against actions it wishes to avoid having imposed such as advertising restrictions or nutritional labelling, which could damage profitability.<sup>78</sup>

## B. Arguments against further marketing restrictions

Other organisations (including advertising trade bodies) object to the introduction of further restrictions on the basis that the role of marketing (in particular, advertising) and the nature of consumer choice are misunderstood and that other important external factors that influence children are ignored.

The primary argument is four-fold:

- that children are not passive consumers;

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<sup>76</sup> “Protecting children from unhealthy food advertising”, editorial from the *British Medical Journal*, February 2000, vol.320, p.328

<sup>77</sup> BHF [Food4Thought campaign](#) webpage [on 16 April 2008]

<sup>78</sup> “Food and diet: whose responsibility?” Jane Landon for *Which? Consumer Policy Review*, Volume 17, Number 6, November/December 2007

- that there are many complex causes for childhood obesity – it is too easy to blame marketing;
- that the influence of advertising is limited; and
- that the television advertising ban has not worked (discussed in section IV A(2) above)

## 1. Children are not passive consumers

The ASA has stated that children are not simply passive consumers but active discriminators of advertising messages. In its booklet “Children and advertising: ASA schools and colleges resources”, the ASA quotes statistics from the Independent Television Commission (ITC) evaluation in 2000 of children’s understanding of advertising.<sup>79</sup> It found that:

- 81% of three to six year olds remember having seen the Coca Cola logo and 69% remember the McDonald’s yellow ‘M’
- By the age of five or six, most children are aware of the rudiments of advertising
- By the age of eight, children are aware of the promotional and persuasive role of advertising

The ASA concludes;

For the purposes of judging ads against the advertising codes a child is described as someone under 16 years old. It is recognised, however, that children of different ages are at different stages of development; 6 year olds, for example, have less experience and life skills than teenagers. So when interpreting the advertising codes, advertisers should remain aware that a child’s perception and reaction to an advertisement is influenced by their age, their experience and the context in which an advertisement reaches them.<sup>80</sup>

## 2. There are many complex causes for childhood obesity

Those organisations against the introduction of further restrictions argue that the interplay of responsibilities for rising levels of childhood obesity is complex. It is too easy to simply blame the food, drink and advertising industries.

For a 20 year trend, average calorie consumption has been stable or dropped slightly, but people are engaging in far less physical activity. The food industry has argued variously that children’s lives have become more sedentary and a solution to obesity lies in their exercising more, not eating less. They argue that food (unlike tobacco and alcohol) is essential to life and it has not yet been proven that any particular foodstuff is addictive in the accepted sense.

The food industry also argues that it is the child (or more likely the parent) who decides whether or not to eat a healthy diet and to keep active. However, it acknowledges that

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<sup>79</sup> The ITC has ceased to exist from 18 December 2003 and its duties have been assumed by Ofcom, the Office of Communications

<sup>80</sup> [“Children and advertising: ASA Schools and Colleges resources No.4”](#), Advertising Standards Authority

this decision can be heavily influenced by a number of factors including the individual's environment; education; culture and income. Of the various factors, income is seen to be the most influential; the poorer, less advantaged sections of society endure higher rates of obesity and diet-related ill health.<sup>81</sup>

The position of the Advertising Association (AA) is given in its paper "*Food Advertising to children*":

Public concerns relating to advertising to children are difficult to define with precision and are often inter-linked with the emotionally charged issues of education, security, parental responsibilities, privacy, health, youth culture and increasingly, new media. Society has a heightened perception that children are more at risk from negative external influences than at any other time in history. At the same time there appears to be a parallel perception that parents, guardians, carers, teachers and others in authority are finding it increasingly difficult to influence children in their choices. It should be noted that this is no less true of advertisers.

Increasing fears about the impact of societal change on children's safety, security and health, are often translated into proposals for advertising restrictions and bans. Since advertising is the most visible and accessible form of 'external influence' it is easily targeted by those seeking an all encompassing panacea to society's ills. It is supposed that if action is taken to restrict commercial communication then a defined range of dietary and health problems will disappear. This solution appears logical, easy and cheap but in fact is simplistic, counter-productive and wrong. Not only that but it represents a clear misunderstanding of the role of advertising and the nature of consumer choice. It also ignores the many other, more important, factors that influence our children and their health.<sup>82</sup>

The advertising industry questions the assumption that there is a direct causal link between advertising and increased levels of obesity among children. The AA argues that it is difficult to define children's advertising:

There are major practical problems inherent in trying to define what children's advertising is. A ban on the advertising of children's products at specific times or during children's programming will always be ineffective given the nature of children's viewing habits and their propensity to prefer adult programming. This is particularly so given the growing household penetration of second television sets in the home (often in children's bedrooms). Restricting a ban to advertising in children's programmes does not address this problem but will have a major impact on children's programming. Confining it to defined products or sectors will inevitably have a major commercial impact on a large sector of British business as will the impracticability of instructing manufacturers only to advertise these products in a way which will not appeal to children; the children will remain interested in the category but will be denied inter-brand competition and information about product innovation.

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<sup>81</sup> "*Food and diet: whose responsibility?*" Jane Landon for Which? Consumer Policy Review, Volume 17, Number 6, November/December 2007

<sup>82</sup> Advertising Association (AA), *Food Advertising to Children*, 24 November 1997

These will be the commercial effects but, most importantly, the evidence to justify such draconian and anti-competitive intervention is just not there. Serious research (including two MAFF studies) indicates that the effect of competitive brand advertising for individual products has at best a marginal effect on overall dietary behaviour.

The biggest influences are socio-economic factors – changes in family structures, parental and peer group pressures, exercise, income, lifestyle, aspirational factors (such as seeking to lose weight) and conscious dietary choices (such as vegetarianism).<sup>83</sup>

The industry argues that obesity is multi-factoral in nature and points to the importance of other factors such as:

- lack of physical activity among children;
- family structure;
- poor family eating habits and food choices;
- changing attitudes to food (and an increased preference for fast foods);
- genetics; and
- a family's socio-economic status.

### **3. The influence of advertising is limited**

According to the advertising industry, the influence of advertising is limited and, in some cases, very small. Again, various arguments are used by those opposed to further restrictions on HFSS food promotion to children, including:

- There may be a case for more advertising of those foods which experts believe to be essential to a balanced diet but this is a very different strategy from one of trying to bring about improvements through impractical prohibitions and bans.
- An advertising ban will be commercially dangerous and ineffective.
- Children's commercial television would collapse without advertising income.
- Advertising does not incite children to pester their parents; such pestering occurs whether there is advertisement or not.
- Children are consumers with noticeable sums of pocket money and have preferences like everyone else. The assumption that they are incapable of making informed choices and, in this context, are being manipulated by advertising overstates and misrepresents the potency and role of advertising.
- Children understand adverts better than parents think they do and advertising educates children.

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<sup>83</sup> Ibid

- Advertising exercises a right to commercial freedom of speech.<sup>84</sup>

Other organisations warn against “creeping nanny state” intervention into personal freedoms. The food and advertising industries argue variously that it is the customer and not the industry who ‘calls the shots’; everything a food company produces is driven by consumer demand.

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<sup>84</sup> Advertising Association, *Food Advertising to Children*, 24 November 1997

## **Appendix: Regulation of advertising in other EU countries**

Throughout Europe there is a wide divergence of views on the ethics of advertising aimed at children and the need for advertising controls.

Sweden does not permit advertising aimed at children under the age of 12, does not allow programmes to be interrupted by advertising and does not permit advertising before or after children's programmes.

Norway also bans advertisements to children under the age of 12.

Austria, Belgium (Flemish part only) and Luxembourg prohibit advertising before and after children's programmes.

Greece prohibits advertising of toys to children between 7 am and 10 pm; advertising of war toys is prohibited at all times.

Denmark has a ban on advertising to children five minutes before and after children's programmes.

In Italy the national broadcast regulator has banned television advertising aimed at children during cartoons.

Finland and Germany prohibit advertisements that attempt to persuade a child to buy a product through a direct offer.

In France advertisements are seen as part of preparing children for future life in a consumer society – but are regulated.

Poland has banned television and radio marketing aimed at children.

Looking at regulatory comparisons worldwide, the World Health Organisation (WHO) concludes:

[Television advertising] is the most widely regulated; 85% of the 73 countries surveyed had some form of regulation on television advertising to children and almost half (44%) had specific restrictions on the timing and content of television advertisements directed at children. Two countries and one province have banned television advertising to children. The effect of such bans on children's diets is, however, difficult to evaluate: existing bans tend to be undermined by cross-border advertising (i.e. advertising that originates in another country) and other marketing techniques, factors which complicate evaluation. Twenty-two countries have some form of regulatory or self-regulatory clause on food

advertising, but the degree of implementation of these clauses and their effect on children's diets has likewise not been evaluated.<sup>85</sup>

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<sup>85</sup> "Marketing Food to Children: the Global Regulatory Environment", Dr Corinna Hawkes - World Health Organization, 2004