

**Consultation response:  
Television advertising of food and drink products to children:  
option for new restrictions**

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Summary

**The National Heart Forum (NHF) welcomes the implementation of rules to high fat, sugar and salt (HFSS) products in accordance with the nutrient profiling scheme published by the Food Standards Agency.**

**We are pleased to note that Ofcom accepts the point of principle that advertising restrictions for HFSS food and drinks should apply to children up to 16.**

**We welcome the extension of the scheduling restrictions to include children up to 16.**

**We are concerned that using the BARB 120 index to implement protections to older children means that the reduction in advertising impacts for under 16s in modified package 1 remains low (41%), offering only half the benefit of a 9pm watershed restriction (82%).**

**We remain convinced that a genuine and proportionate reduction the exposure of under 16s to HFSS advertising will only be achieved with a 9pm watershed restriction.**

**We are concerned that by limiting the proposed content rules to pre-school and primary-aged children, and not to all children up to 16, these rules are**

**not consistent with the scheduling rules and contribute to an incoherent regulatory framework.**

**We believe that in order for the content rules to operate effectively within a complaints-based regulatory system, it is necessary for BCAP to clarify how the content rules will be implemented and by what measure infringements will be judged.**

**We recommend that Ofcom conducts and publishes a discrete impact assessment of the content rules before taking a final decision.**

### General comments

We welcome the opportunity to comment on the proposed option for restrictions on TV food and drink advertising to children. While we do not believe these rules go far enough for reasons set out in this response, we are pleased to note Ofcom's commitment to review the effectiveness of the new restrictions, and that it will look to advertisers and broadcasters to follow both the 'spirit and the letter' of the rules.

### Response to consultation question

In light of the impact of modified package 1 in particular on the revenues of music channels, Ofcom is seeking views on modified package 1 in so far as it extends the restrictions contained in package 1 to children up to 16.

### **Scheduling restrictions should be extended to all children up to 16**

We are pleased that Ofcom has accepted that new rules should reduce the impact of HFSS food and drink advertising on all children – up to the age of 16. We welcome the principle that scheduling restrictions in modified package 1 are extended to include children up to 16.

### **Audience index mechanisms fail to capture most-watched programmes**

However, in choosing to use the index threshold of 120 to identify programmes where the restrictions will apply, we believe that Ofcom is illogically proposing rules which it knows will fail to deliver proper protection to children up to 16.

Using an index to measure programmes which are *relatively* more popular with children than adults does not apply advertising restrictions to the programmes such as early evening soaps which, in absolute terms, are popular with large numbers of children, since these also attract a large adult audience.

To illustrate this point, using 2005 viewing data obtained by Which?, we calculated that the 120 index will not apply restrictions to those programmes watched by the largest numbers of children in that sample period. (See table 1).

**Table 1. Sample weekday in October 2005 showing programmes with highest absolute audience of 4-15s**

Date	Time	Programme	Child audience fig 000s (Which? figures)	Total audience figures (BARB)	% of audience that are children	120 index (children ≥15.6%)
24.10.05	19.30	Coronation Street	1.29m	12.64m	10.2%	Below
29.10.05	19.00	The X Factor	1.23m	8.60m	14.3%	Below
29.10.05	20.15	ITV 50 Ant & Decs Gameshow	1.12m	8.33m	13.4%	Below
24.10.05	19.15	Emmerdale	0.924m	9.29m	9.9%	Below

*Based on BARB data purchased by Which? for 4-15s and total audience data available from the BARB website and BARB information on how the audience index is calculated for the UK.<sup>1</sup>*

### **A 9pm watershed captures most-watched programmes**

All of the programmes mentioned above would be covered by a restriction up to the 9pm watershed. We therefore remain convinced that a genuine and proportionate reduction in the exposure of under 16s to HFSS advertising will only be achieved with a 9pm watershed restriction. The reduction in advertising impacts for under 16s in modified package 1 (41%) is just half the reduction achieved by a 9pm watershed restriction (82%).

### **Rationale for index of 120 is flawed**

Moreover, we do not accept Ofcom's rationale for setting the index as high as 120. The primary reason given by Ofcom for adopting the 120 index mechanism is that it would be consistent with restrictions on alcohol and gambling (Annex 7 – Impact Assessment, 6.22). However, the BCAP advertising guidance note no. 5 states that *“In the case of products with a scheduling restriction of 16 or 18, the ASA will normally regard the restriction as relevant to any programme where the 10-15 audience, indexed against the all-individuals audience, produces an index*

<sup>1</sup> The total UK population of 4-14 year olds is 7.62m which is 13% of the total population (58.79m) (Based on Census 2001 ONS). Assuming that the 120 BARB rating for 4-15s (ie. 20% over the population average) translates to a child audience percentage of 15.6% of the total audience.

*greater than 100.”*<sup>2</sup> Therefore, to be consistent with alcohol and gambling, an index of 100 would be applied, not 120 as proposed.

### **Evidence for varying index threshold appears incomplete**

We note Ofcom’s argument that lowering the index threshold (below 120) would have no effect on reducing advertising impacts. However, the modelling presented<sup>3</sup> is based on a viewing index for 4-9 years, not 10-15 years as we would expect. Without modelling the downward variation of the index *for all children*, we do not see how Ofcom can be sure that reducing the index threshold to 90 would *“have no material effect on the number of HFSS impacts restricted.”*

### Comments on proposed changes to content rules

We note that Ofcom is not inviting comments on the content rule changes. However, since it appears Ofcom has not yet reached a decision on the matter of the ages to which the protections should apply, and that the proposals raise an inconsistency in approach between scheduling and content rules, we would like to make the following comments:

### **Consistency with scheduling rules**

We welcome the decision by Ofcom to require that nutrient profiling should apply to rules 7.2.3, 7.2.4 and 8.3.1. This ensures coherence with the differentiation between HFSS and non-HFSS products within the proposed scheduling rules.

We are concerned that by limiting the proposed content rules to pre-school and primary-aged children, and not to all children up to 16, these rules are not consistent with the scheduling rules. We believe that the content rules should logically be applied in advertisements aimed at all children up to 16.

### **Implementation of content rules**

It is not explained in the consultation document how it is proposed that the rules 7.2.3, 7.2.4 and 8.3.1 will be implemented under the revised BCAP code, and therefore not transparent how it would be judged whether advertisers and broadcasters were in breach of the rules.

We understand that where the scheduling rules apply, the content rules would not be triggered since no HFSS advertising would be permitted, i.e. on children’s channels, during children’s programming and programmes which are of particular appeal to children under 16 (according to the audience index).

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<sup>2</sup>[http://www.cap.org.uk/cap/codes/broadcast\\_codes/Guidance\\_Notes/Advertising+Guidance+Note+No.5.htm](http://www.cap.org.uk/cap/codes/broadcast_codes/Guidance_Notes/Advertising+Guidance+Note+No.5.htm)

<sup>3</sup> Annex 7 Figures 6.3 and 6.4

However, nowhere in the proposed rules does BCAP specify how it should be judged whether an advertisement is 'targeted directly at pre-school and primary school children', so we do not understand how these content rules would be triggered during viewing times that are not covered by the scheduling restrictions.

For example, an advertiser might argue that an advertisement for a fast food children's meal which features a collectible toy could be shown during Emmerdale on ITV1 – when large numbers of children are watching – because from a scheduling point of view, the advertising slot cannot be said to 'target' pre-school and primary children since under the audience index calculations children are not disproportionately represented in the audience.

It is vital in a complaints-based system of regulation that it is clear what criteria will be used to determine 'targeting', so that viewers know if the rules are infringed.

Before deciding whether the revised content rules are meaningful and adequate, we believe that Ofcom should conduct a discrete impact assessment of the content rules, since it is not possible to judge the effect of the content rules as distinct from the scheduling rules from the impact assessment already presented. The assessment should aim to model how the content rules will apply in order to deliver protection for children from inappropriate advertising techniques for HFSS products during the hours when large numbers of children are known to be watching television as part of a mixed audience.

Without such an assessment, it is not possible to know whether these rules are likely to alter current advertising practices, making it difficult to accept assurances that these content rules are a meaningful or effective addition to the code revisions that apply to scheduling.