Health and Care Bill: Public Bill Committee Written Evidence

1. The Incorporated Society of British Advertisers (ISBA), the Institute of Practitioners in Advertising (IPA), the Internet Advertising Bureau (IAB), and the Food and Drink Federation (FDF) represent the UK advertising industry and food and drink manufacturers. We welcome the opportunity to provide written evidence to the Public Bill Committee as they consider the Health and Care Bill.

2. ISBA the brand advertisers' voice in industry, speaking with one voice on behalf of its members – who collectively represent more than 3,000 household brands. The IPA has approximately 300 agency brands within its membership, representing both creative and media agencies. IAB UK is the industry body for digital advertising, with 1,200 members that include media owners, agencies, adtech companies and brands. The FDF represents 900 food and drink manufacturing and processing firms throughout the United Kingdom, including leading brands and home-grown businesses, large and small. Collectively, we represent the businesses that will be impacted by Clause 125 and Schedule 16 of the Bill, which propose to introduce a 9pm watershed on the TV advertising of products high in fat, sugar, and salt (HFSS); and a total ban on paid-for advertising online.

3. We and our members recognise the importance of reducing childhood obesity and are committed to playing our part**.** We have a history of supporting and partnering with Government to help the UK become a healthier nation. Through projects such as the Daily Mile and Eat Them to Defeat Them, supported by the broadcasters, and many initiatives supported by companies such as Ferrero's Joy of Moving programme, PepsiCo's support for Magic Breakfast, or supporting people to eat more vegetables through the Food Foundation Veg Power campaign, industry has shown how it can play a valuable role in supporting healthier lifestyles and investing in projects which will truly drive down obesity rates.

4. We believe that to tackle obesity, a holistic, evidence-based strategy is needed. However, rather than look at targeted measures to tackle the root causes of obesity, the Government has instead opted for further advertising restrictions. The measures proposed are disproportionate, unsupported by convincing evidence, and come at an unacceptable cost. Specifically, we have concerns in the following areas.

5. **The measures are not supported by the evidence presented by Ministers.** By the Government's own assessment, the impact of the new advertising restrictions will be inconsequential. The Impact Assessment estimates that, depending on their age, overweight and obese boys consume between 146 and 505 excess calories per day; for girls it is between 157 and 291 excess calories per day. Using the Government's impact assessment, the calorie reduction as a result of the advertising restrictions would only be between 0.4% and 1.4% of

the excess calories, and by our own analysis, this will be even less (between 0.02% and 0.08%).

6. Our independent analysis of the final Impact Assessment shows that it is riddled with errors, leading to a gross overestimation of the benefits and underestimation of the costs. In fact, the costs of the proposed policy (£673m Net Present Value) are **likely to be over five times** the benefits (£118m NPV). The result will be a £1 billion hit to industry – for the sake of the equivalent of about 40 calories a year (roughly equivalent to a glass of skimmed milk or an apple per year) removed from the average child's diet. Instead of acknowledging these errors, which ISBA, the IAB, and the IPA highlighted in their joint consultation response, Ministers have ignored it.

7. **The measures are disproportionate.** The measures reach far beyond the Government's stated policy aim of reducing children's exposure to HFSS ads, to include adult consumers.

8. **Children are already exposed to very little HFSS advertising.** The UK has some of the toughest rules in the world when it comes to HFSS ads and children. Analysis has shown that around 95% of all food ads on TV and online are targeted at and seen by adults, with the amount of HFSS ads seen by children even lower thanks to stringent regulation already in place.[1]

9. **They will undermine the Government's own public health policies.** Manufacturers have been working in partnership with governments for two decades to reformulate their products, reducing salt, sugar, and calories, and offering smaller portion sizes. These restrictions will remove manufacturers' ability to make shoppers aware of many healthier products, by specifically targeting the categories businesses have been asked to reformulate.

10. **They will stifle inward investment.** Increased advertising restrictions will have anti-competitive impacts on one of the UK's most dynamic and entrepreneurial sectors – at the same time as the Treasury is announcing measures to support and boost businesses. These policies threaten to stifle economic recovery, creating a barrier to investment.

11. For these reasons, we do not support the Government's measures, and **we are calling for Clause 125 and Schedule 16 to be removed from the Bill.**

12. However, if these proposals are to proceed, they can at least be improved to be more workable. With that in mind, and bearing in mind our agreement with the stated policy aim of tackling child obesity, advertising trade bodies came together during the consultation period on these measures and asked the Committee of Advertising Practice (CAP) – the rule making body for the Advertising Standards Authority (ASA) industry regulator – to develop an alternative system which would deliver exactly what Ministers want, a reduction in children seeing HFSS ads, but without the need for State intervention.

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[1] See Advertising Association, *The Challenge of Childhood Obesity*.

13. This alternative regulation would increase restrictions for all paid-for HFSS ads online, requiring advertisers to demonstrate they have applied robust targeting filters to exclude children's media and content, evaluate ad campaigns to assess and continually improve targeting approaches, and include a renewed enforcement push by the ASA. In comparison to the Government's proposed measures, it would be better at reducing children's exposure to HFSS ads; better at keeping pace with the evolving nature of advertising; better for the public purse, because it would not require the establishment of a new regulator; and not involve the £1 billion projected hit on British industry.

14. The Government has claimed to be "unashamedly pro-tech", and advertising is one area where the UK has a head-start. But instead of working with industry and using the technology available to achieve its policy objective, Government chose to summarily dismiss it in their consultation response, without even exploring with industry how it would work. Instead, they are taking forward measures which are an analogue answer to a digital question. We would encourage Bill Committee members to ask questions of Ministers as to why they have rejected a policy solution based on proven technology, which would work better than their chosen approach, without any investigation.

We call upon the Committee to consider the following amendment:

Clause 125 and Schedule 16 should not form part of the Bill

15. We believe that there are amendments which would benefit the Bill including around the Nutrient Profile Model, potential risks to competition, and protecting UK manufacturing. These are detailed below.

Evidence and consultation required to justify further restrictions

Schedule 16, Part 2 - Section368Z20, Subsection 4; Section 368Z20, Subsection 5

Schedule 16, Part 1 - Section 321A, Subsection 7 & Section 368A, Subsection 8; Part 2 - Section 368Z14, Subsection 9

16. The Bill sets out powers for the Secretary of State to extend the advertising restrictions but does not state that any consultation or evidence is required to extend the restrictions. This could lead to more products or types of advertising being brought into scope.

17. Good policymaking should require consultation and evidence to justify the introduction of burdensome regulation on business, to ensure that it is not disproportionate and that it achieves its objectives. We are concerned that without it being stipulated in the Bill, further restrictions could be brought in without due consultation or relevant evidence being presented to justify them.

18. We therefore suggest an amendment that introduces due process if the Government wish to extend the restrictions, making it a requirement to supply evidence to justify changes.

We call upon the Committee to consider the following amendments:

In Schedule 16, Part 2, Section 368Z20, subsection 1, after "*State*" to insert *", in exceptional circumstances,"*.

In Schedule 16, Part 2, Section 368Z20, subsection 4, after "*appropriate*", to insert *"providing relevant evidence for such amendments."*

18. The Bill will give powers to the Secretary of State to amend 'the relevant guidance'. This could lead to the future adoption of the updated Nutrient Profile Model (NPM), which was consulted on in 2018 and which has long been due for publication.

19. The new NPM would have a considerable impact on the array of products subject to advertising bans and could severely impact the advertising landscape. Under the new NPM, products such as yogurts and high fibre breakfast cereals – which are nutrient dense and important contributors to children's micronutrient intakes – would be considered HFSS. Extending the regulations in this way may therefore have substantial unintended consequences to children's diets.

20. We suggest an amendment that introduces due process if the Government wish to extend the restrictions to use the new NPM, by ensuring that this is consulted upon. Ministers have previously indicated in conversation with industry that they would consult, but this is nowhere specified in the Bill.

We call upon the Committee to consider the following amendments:

In Schedule 16, Part 1, Section 321A, Subsection 7, after "unless", to insert: *"a public consultation has been carried out on the proposed change to the relevant guidance, and". [Watershed]*

In Schedule 16, Part 1, Section 368FA, Subsection 8, after "unless", to insert: *"a public consultation has been carried out on the proposed change to the relevant guidance, and". [ODPS]*

In Schedule 16, Part 2, Section 368Z14, Subsection 9, after "unless", to insert: *"a public consultation has been carried out on the proposed change to the relevant guidance, and". [Online]*

Technical guidance on nutrient profiling

Schedule 16, Part 1 - Section 321A, Subsection 4d; Section 368FA, Subsection 5d

Schedule 16, Part 2 - Section 368Z14, Subsection 6f

21. The Bill sets out that a product is 'less healthy' in accordance with existing guidance entitled 'Nutrient Profiling Technical Guidance', published by the Department of Health on 1 January 2011. We understand that officials are currently updating the nutrient profiling technical guidance, by providing additional information to support businesses in calculating their products' nutrient profiling score.

22. We propose amendments which would allow for future revisions of the relevant guidance.

We call upon the Committee to consider the following amendments:
In Schedule 16, Part 1, Section 321A, Subsection 4d, after "1 January 2011" to insert: "*or any subsequent versions of this document" [Watershed]*

In Schedule 16, Part 1, Section 368FA, Subsection 5d, after "1 January 2011" to insert: "*or any subsequent versions of this document" [ODPS]*

In Schedule 16, Part 2, Section 368Z14, Subsection 6f, after "1 January 2011" to insert: "*or any subsequent versions of this document" [Online]*

Preventing competition issues relating to online shopping

Schedule 16, Part 2 - Section 368Z14, Subsection 3A

23. Under the measures, paid-for branded HFSS product advertisements would be prevented on retailer owned spaces, but retailers would still be able to advertise equivalent HFSS own-brand products (in areas such as offers page, favourites page and product pages which are not in scope of HFSS promotional restrictions). This risks a distortion in competition between retailer and manufacturer products.

24. The Government's own consultation outcome stated that '*communications with the principal purpose of facilitating an online sale'* were excluded from the scope of the online advertising ban, and went on to state that this exemption was to '*ensure that the buying and selling of products is allowed to continue and that consumers have enough information at the point of sale/purchase*'.

25. We believe that the Bill should reflect the Government's intention of allowing products to be advertised freely for the purposes of facilitating an online sale by excluding retailer websites from the scope of the rules. This will also ensure a level playing field for retailer and manufacturer products.

We call upon the Committee to consider the following amendment:
In Schedule 16, Part 2, Section 368Z14, after subsection 3a, to insert:
“in relation to advertisements placed on distributor or retailer websites which are associated with the sale of food or drink”.

Protecting UK Manufacturing

Schedule 16, Part 1 - Section 321A, Subsection 4e & Section368FA, Subsection 5e.

Schedule 16, Part 2 - Section 368Z14, Subsection 6g.

26. The Bill currently stipulates an SME exemption based solely on UK employee numbers. We are concerned that this will result in a competitive disadvantage for UK businesses. As currently drafted, large multinational businesses could be exempt from the restrictions by merit of having less than 250 employees based in the UK. Conversely, businesses that manufacture in the UK but have more than 250 employees will be subject to the restrictions. This may inadvertently encourage companies to divert manufacturing abroad and import, rather than manufacture domestically.

27. We propose that an amendment should be made to the Bill to create a level playing field and to protect UK food and drink manufacturers by including UK turnover within the SME definition. This would be consistent with the Companies Act 2006 and Companies House guidance.

We call upon the Committee to consider the following amendments:
Amend schedule 16, Part 1, section 321A, subsection 4e to read:
“food or drink SME” means a small or medium enterprise, within the meaning given in Section 465 of the Companies Act 2006 [watershed]

Amend schedule 16, Part 1, section 368FA, subsection 5e to read:
“food or drink SME” means a small or medium enterprise, within the meaning given in Section 465 of the Companies Act 2006 [ODPS]

Amend schedule 16, Part 2, section 368Z14, subsection 6g to read:
“food or drink SME” means a small or medium enterprise, within the meaning given in Section 465 of the Companies Act 2006 [Online].

Exemption for brand advertising

Schedule 16, Part 1 – Sections 321A, 368FA, and 368Z14

28. We believe that government has been clear in its view that brand advertising should be permitted and exempt from the watershed and the paid-for online ban. Its response to the consultation stated that “provided there are no identifiable HFSS products in the adverts, brands can continue to advertise”. Ministers have set out their reasons: that they wished to avoid brands being

pigeonholed as synonymous with HFSS products; that companies should have the freedom to reformulate and move towards offering healthier products; and that brand advertising should be out of scope because the focus should be on products of most interest to children.

29. This being the case, and Ministers' strength of view being clear, we believe that the brand exemption should be on the face of the Bill, for two reasons: first, to avoid the exemption's erosion or removal in the future without recourse to amending primary legislation; and second, to provide clear guidance in law to the regulator that brand advertising is to be permitted and that it is the presence of an identifiable HFSS product in an advert that brings that advert into scope of the new rules.

We call upon the Committee to consider the following amendments:
In Schedule 16, Section 1, line 9, insert:

"(4) A brand may continue to advertise, and/or provide sponsorship as a brand, if the advertisement does not include an identifiable less healthy food and drink product." [Watershed]

In Schedule 16, Section 2, line 24, insert:

"(2) A brand may continue to advertise, and/or provide sponsorship as a brand, if the advertisement does not include an identifiable less healthy food and drink product." [ODPS]

In Schedule 16, Section 3, line 26, insert:

"(2) A brand may continue to advertise, and/or provide sponsorship as a brand, if the advertisement does not include an identifiable less healthy food and drink product." [Online]