

HFSS and its future

HFSS refers to products that are high in fat and/or sugar and/or salt. As it is a very nuanced and complex issue, **Thinkbox** have put together this handy guide to shed some light on the subject and help you know what to expect and what it means. Advertisements must neither imply that alcohol can contribute to an individual's popularity or confidence nor imply that alcohol can enhance personal qualities.

What are the current regulations for HFSS brands and products for TV and BVOD?

- HFSS regulations first came into force in 2007, using the 2004/5 Nutrient Profile Model (NPM) to determine whether a product being advertised is classed as HFSS. All food and drink advertisers must provide details of their NPM score to Clearcast, as part of the approval process, if they are planning to have any advertising in children's programming or programming likely to be 'of particular appeal' to children. HFSS brands that have no intention of using such airtime do not need to do this if they are excluding children's programming or programming of particular appeal from their schedule.
- The NPM uses a scoring system whereby four 'negative' factors (energy, total sugars, saturated fat and sodium) can be offset by three 'beneficial' factors (fruit, vegetables and nuts, fibre and protein).
- HFSS advertisers can currently advertise within TV content (both Linear and All 4) at all times of the day provided the programming is not specifically aimed at kids or is of particular appeal to kids (defined as indexing above 120 for kids).
- In addition to the NPM score, the ASA (who are the designated Regulator) define an Advertiser as HFSS if the brand is either synonymous with HFSS or more than 50% of its product range is HFSS. Current ASA guidance can be found [here](#)

What are the new restrictions for TV and Online?

TV and BVOD (broadcaster Video On Demand)

- The new TV rules will see a pre-2100 ban for some (but not all) HFSS products – those that are both a) regarded as HFSS under the NPM and b) included within a list of product categories that will soon be set out in Secondary Legislation – in all airtime, regardless of whether the programming is for or of particular appeal to children, with Broadcaster VOD treated as TV – this applies to the time the programme is viewed.

Online

- Currently, online HFSS ads are not permitted on sites for which more than 25% of the audience are under 16 years of age. In the new rules, any paid-for online advertising will not be allowed for HFSS products. Paid-for space online is defined as any space where a third party has had to pay the owner to display content: this includes but is not limited to, search, display, social media and influencers.

Non-UK regulated on-demand services are captured under the online restrictions.

These rule changes do not apply to SME advertisers nor to brand advertising, precise definitions TBC.

Are there any exemptions?

There are some exemptions which apply that are **designed to balance health benefits and impact on business**:

For both broadcast and online:

- **Brand advertising** - provided there are no identifiable HFSS products in the adverts, brands can continue to advertise pre 2100 (although they will still need to comply with existing ASA brand restrictions in relation to HFSS).
- **SMEs** will be exempt from the government's new restrictions but will remain subject to the ASA's existing rules – we anticipate that this may be measured by those with 249 employees or fewer but there will be Secondary Legislation to define SMEs.

For online, the restrictions won't apply to:

- Owned media
- Business to business advertising.
- Transactional content (to ensure buying and selling can continue and consumers have the information they need).
- Audio only - Podcasts/online only radio will be exempt.

What is the background and timeline for the proposed changes?

- In **2018** Public Health England announced a review of the NPM.
- In **2019** DCMS consulted on future HFSS restrictions for Broadcast and Online with one of the proposed options being a ban on advertising pre-2100.
- In **July 2020**, Government announced its new obesity strategy, with the wider objective of reducing obesity in the population.
- As part of this obesity strategy, DCMS opened a second consultation around a more aggressive approach to digital advertising for which they proposed a total online ban. This consultation closed in **December 2020**.
- The outcome of the 2019 and 2020 consultations were published together in **June 2021**, with the intention to bring in a pre-2100 TV and BVOD ban and a total online ban.
- These plans were included in the Health and Social Care Bill with planned commencement date of the new regulations of **1st January 2023**.
- The Government has now used a clause in the Bill to push back the implementation date of the new rules to **1st January 2024**.
- In addition, as part of Government's wider obesity strategy – **from October 2022**, new in-store restrictions will come into force regarding the promotion of HFSS products. This will include limitations on displaying HFSS products. These new rules will also apply for online stores. The Government has delayed the implementation of restrictions on multi-buy HFSS offers (eg. 3 for 2) until October 2023.

Which categories are captured under the new HFSS regulations?

- Within the new rules, for both TV and online, a defined list of categories has been identified which mirror those identified in the price and location restrictions that the Government has identified as being of most concern to childhood obesity whilst also being heavily promoted
- The list includes: soft drinks, cakes, chocolate confectionery, sugar confectionery, ice cream, morning goods (eg. pastries), puddings, sweet biscuits, breakfast cereals, yoghurts, sweetened milk-based drinks, sweetened juices, pizza, ready meals and meal centres, including breaded and battered products (for example curries, chicken nuggets, breaded chicken/fish), crisps and savoury snacks, chips and similar potato products
- There are also additional 4 categories included to cover out of home (i.e takeaway) main meals, starters, sides and small plates, children's meal bundles, sandwiches.
- To determine whether products in the above categories are HFSS or not, the 2004/05 Nutrient Profiling Model (NPM) will be applied.

Who will regulate the new rules and who will be liable for any breaches?

- Liability will sit with broadcasters for the broadcast restrictions and with advertisers for the online restrictions (for non-UK on-demand platforms, it will be advertisers)
- Ofcom will be the regulator for both broadcast and online, but DCMS expect this will be contracted to the ASA
- For serious repeated breaches, Ofcom will have the power to fine broadcasters or advertisers.

What are the next steps in the process?

- The Health and Care Act was approved on 3rd May 2022.
- However, interested parties (Broadcasters, Clients, Media Agencies, Creative Agencies) still need clarity around the practical implications of the new rules.
- Ofcom will be given the power to appoint a co-regulator – this is likely to be the ASA who will be tasked with providing guidance and translating the new regulations into its existing Codes.

What are the areas in which the Broadcasters are seeking further clarity?

- **Brand advertising exemption:** currently, in addition to the NPM score, the ASA consider a brand to be HFSS if the brand is 'synonymous with HFSS' or 'more than 50% of the product range is HFSS'.

The new rules allow brand advertising (as long as there is no identifiable HFSS product) even for brands synonymous with HFSS, but the existing ASA rules in relation to HFSS brand advertising remain in place.

- **How will the SME exemption work in practice?** We need further clarity on the definition and application of the SME exemption
- **What does success look like?** The new policy is set to be reviewed by Government after 5 years. They have stated that they will draw on a range of measures to assess the success of the policy, including changes to children's exposure to HFSS advertising and rates of childhood obesity.

- **Outcome of 2018 NPM review still not published** – could the list of products in scope increase? (potential changes to the measurement of free sugars and fibre content?). It is likely that there will need to be a further consultation if the 2018 model is sought to be implemented.
- **Clarity of products in scope** - The Government is yet to publish the Secondary Legislation that will define the products in scope of the new restrictions. In consultation, the new proposals have a defined list of categories, which have been identified as those that both fail the NPM and are the biggest drivers of childhood obesity. Once published, this Secondary Legislation will give clarity on which categories which categories are not in scope for the new rules but will remain restricted HFSS under the current ASA rules. These categories are likely to include cheese, olive oil etc.

Still have questions?

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