

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT FOOD (PROMOTION AND PLACEMENT)
(ENGLAND) REGULATIONS 2021

Monday 15 November 2021

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The Committee consisted of the following Members:

Chair: GRAHAM STRINGER

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|---|---|
| † Bell, Aaron (<i>Newcastle-under-Lyme</i>) (Con) | † Lewell-Buck, Mrs Emma (<i>South Shields</i>) (Lab) |
| † Bhatti, Saqib (<i>Meriden</i>) (Con) | † Lewis, Clive (<i>Norwich South</i>) (Lab) |
| † Bradley, Ben (<i>Mansfield</i>) (Con) | † Norris, Alex (<i>Nottingham North</i>) (Lab/Co-op) |
| † Burgon, Richard (<i>Leeds East</i>) (Lab) | † Richardson, Angela (<i>Guildford</i>) (Con) |
| † Dinenage, Caroline (<i>Gosport</i>) (Con) | † Smith, Henry (<i>Crawley</i>) (Con) |
| † Double, Steve (<i>St Austell and Newquay</i>) (Con) | † Throup, Maggie (<i>Parliamentary Under-Secretary of State for Health and Social Care</i>) |
| Eagle, Dame Angela (<i>Wallasey</i>) (Lab) | † Twigg, Derek (<i>Halton</i>) (Lab) |
| † Furniss, Gill (<i>Sheffield, Brightside and Hillsborough</i>) (Lab) | |
| † Henderson, Gordon (<i>Sittingbourne and Sheppey</i>) (Con) | Jonathan Finlay, <i>Committee Clerk</i> |
| † Jones, Fay (<i>Brecon and Radnorshire</i>) (Con) | † attended the Committee |

First Delegated Legislation Committee

Monday 15 November 2021

[GRAHAM STRINGER *in the Chair*]

Draft Food (Promotion and Placement) (England) Regulations 2021

4.30 pm

The Chair: Before we begin, I remind Members that they are expected to wear face coverings and to maintain distancing as far as possible. This is in line with current Government guidance and that of the House of Commons Commission. Please give each other and members of staff space when seated and when entering and leaving the room. I remind Members that they are asked by the House to have a covid lateral flow test twice a week if coming on to the parliamentary estate. This can be done either at the testing centre on the estate or at home. It would be a kindness to email any speaking notes to hansardnotes@parliament.uk. Similarly, officials in the Gallery should communicate with Ministers electronically.

4.31 pm

The Parliamentary Under-Secretary of State for Health and Social Care (Maggie Throup): I beg to move,

That the Committee has considered the draft Food (Promotion and Placement) (England) Regulations 2021.

It is a pleasure to serve under your chairmanship, Mr Stringer. This statutory instrument introduces restrictions on promotions of less healthy products sold in-store and online in England. It requires businesses in England with over 50 employees to restrict promotions of less healthy products. Promotions of less healthy products will be restricted by location, which will apply to store entrances, aisle ends and checkouts, and their online equivalents. Promotions of less healthy products will also be restricted by volume price, which will restrict buy-one-get-one-free and three-for-two offers. The restrictions apply to the products that are of most concern in relation to childhood obesity, while allowing the healthiest products within categories in scope to be excluded.

The aim of this policy is to reduce the overconsumption of products that contribute to children being overweight or living with obesity. We aim to achieve this by shifting the balance of promotions towards healthier options and maximising the accessibility of healthier promotions.

The instrument applies only to businesses in England. However, Scotland, Wales and Northern Ireland have been engaged throughout the consultations. Subject to Parliament's approval, the regulations will come into force from 1 October 2022. The Government announced their decision to introduce legislation to restrict promotions in our healthy weight strategy in July 2020. These regulations and other proposed measures will support people in achieving and maintaining a healthy weight.

The policy will play a vital role in ensuring that we achieve our ambition of halving childhood obesity by 2030.

Obesity has huge costs to society. The indirect cost to the UK economy of obesity-related conditions is an estimated £27 billion each year. Improving poor health outcomes is a key part of the Government's levelling-up agenda. Children living in the most deprived areas are more than twice as likely to be obese than those living in the least deprived areas. We know that tackling obesity will have a positive impact on children's health, and may therefore help in improving health disparities across the country.

The covid-19 pandemic has highlighted the impact that obesity can have on people's health. People who contract covid-19 are more likely to suffer worse symptoms and are at increased risk of dying if they live with obesity. This demonstrates why tackling obesity is an immediate priority to support individuals and the NHS. Data shows that children and adults in the UK are consuming too much sugar, saturated fat, salt and calories. However, they are not consuming enough fibre, fruit and vegetables.

The shopping environment plays an important part in the way that products are marketed to us, with simple factors such as the location of products significantly affecting purchases. UK food and drink promotions reached record levels in 2015 and were the highest in Europe, with 40% of the food and drink people purchased being on promotion. The latest data shows that we buy almost 20% more as a direct result of promotions. Less than 1% of food and drink products promoted in high-profile locations are fruit or vegetables. Research shows that promotions can influence food purchases and often determine eating habits. Currently, such offers tend to be widespread for less healthy, processed and treat-type products, at the expense of healthier choices.

Children are vulnerable to the techniques used to promote sales. Although promotions appear to be mechanisms to help consumers to save money, the data shows that they increase consumer spending by encouraging people to buy more than they had intended. Consumers typically do not stockpile their extra purchases to take advantage of the lower price; instead they increase their consumption.

Some businesses already have policies in place to restrict promotions. While we are grateful for their action, such commitments are not implemented consistently or at scale, so they do not support a level playing field for either businesses or consumers.

The introduction of legislation will help to ensure that healthier food is more accessible, ultimately saving families money and supporting people to lead healthier lives. We recognise that smaller businesses may find implementing the restrictions more challenging, which is why we are requiring only medium and large businesses to restrict promotions. Guidance to support the regulations is being developed with input from businesses and local authorities, and will be published to support implementation after Parliament has approved the regulations. We understand that the change is significant and want to ensure that businesses are supported to comply.

One in three children leaves primary school overweight or obese, and around two thirds of adults are above a healthy weight. The need for action is clear. We know

that people struggle to choose healthier options in the face of endless prompts to consume less healthy food. We are tempted to buy foods that are not on the shopping list, but hard to resist. These promotion restrictions mark the start of a change in this environment to empower people to make healthier choices.

4.36 pm

Alex Norris (Nottingham North) (Lab/Co-op): It is a pleasure to see you in the Chair, Mr Stringer.

The regulations are the latest part of the Government's obesity strategy to come through the system. The official Opposition have so far been quite gentle with the Government about the strategy because, although it is modest and misses many impactful elements, we want it to happen, so we have sought not to scare off the Government from acting. That is also true for issues of promotion and placement, but it is hard not to be a little disappointed, as I shall set out shortly.

The case for change in this area is strong. The UK has among the highest childhood obesity rates in western Europe. One in four children is overweight or obese when starting primary school, and the number is one in three by the time they move on to secondary school. These children are more likely to become obese adults—at present, one in four adults is obese—and therefore to be at risk of diabetes, heart disease, fatty liver disease, cancers and mental health conditions. The situation is worse in poorer communities such as mine. Indeed, one in three adults in the most deprived areas is obese, compared with one in five in the least deprived. The discrepancy among children is even more alarming: more than twice as many children are obese in the most deprived communities compared with the least, and that gap has nearly doubled under this Government.

It is important to state that any health improvements arising from the regulations, or indeed from the entire obesity strategy, will be knocked into a cocked hat by the impact of the cut to universal credit, which will push those with the least back on to cheaper and less healthy food options. There is therefore a disconnect between the regulations and the rest of the Government's policies.

The regulations control high fat, sugar and salt food and drink. Such products can be part of a balanced diet, but their regular overconsumption has a significant impact on people's health and wellbeing and leads to the diseases that I listed. There is no doubt that in-store promotions are incredibly effective in influencing what people buy. As the Minister said, people buy 20% more than they intended due to promotions. Again, that hits the poorest hardest, because they do not realise savings from that approach; they just consume more.

Cancer Research UK has shown that greater volumes of HFSS are likely to be purchased by those who are overweight or living with obesity, so there is a direct correlation between promotions and obesity. It is therefore right to take action to address the situation, not by limiting people's freedom of choice, but instead by supporting them to make healthier choices. The public are aware of the issue and support change. I note from the regulations' impact assessment that the majority of consultation responses were positive about such an approach, and academic evidence supports it.

I want to explore some practicalities with the Minister. First, this is to be enforced by local authority trading standards. The Government have slashed resources for trading standards over the last 11 years, including only three weeks ago in last month's Budget, so I hope the Minister will tell us what assessment she and her officials have made of the capacity of local authority trading standards to enforce any of this. Similarly, I have received many concerns—I am sure other Members have too—from representatives of the business sector about questions that they think the Government have not yet addressed. Indeed, the Food and Drink Federation, the British Retail Consortium and the Association of Convenience Stores have compiled a list of 25 priority questions. I hope the Minister will commit today to engage properly with those organisations and to address each of those questions.

I have some questions of my own for the Minister. The new rules will apply, as she said, to medium and large entities. This is a mirroring caveat to those introduced in the Calorie Labelling (Out of Home Sector) (England) Regulations 2021, which we dealt with in the summer. They made sense in that case because requiring smaller businesses to calculate the calories in their products and provide bespoke menus to demonstrate that would have been an onerous responsibility. That would apply to the placement element of these regulations, because if a business is smaller it will be harder not to have things near the till. That seems fair. But why does it apply to promotions? Why is it more onerous for small businesses rather than medium businesses or franchises to not provide a three-for-two or a buy one, get one free? I think of my own childhood: if we wanted to buy cigarettes before we were allowed to, we knew the shops that would sell them to us. Similarly, I fear that children will know, because they are crafty, the difference between an independent shop that can sell two for one and a chain shop that cannot. That will create a market disruption that will undermine the goals of the regulations. I would be interested to hear the Minister's thoughts on that.

On the timeline, the Minister said that she wants to support businesses to make sure that they can do this. There is a strong sense from the sector that October 2022—less than a year away—will be too soon to implement it. It will be costly and complex, and businesses are asking for a six-month delay. Normally, my instinct would be to say, "Well, in the case of health and wellbeing, we need to get on with it and business will be creative and find a way." But in this case, we have asked these same businesses in the last year to reconfigure their stores to make them covid secure for staff and for customers, and they have stepped up and done a magnificent job. We are now asking them to do a secondary configuration, still within the covid-secure measures, and perhaps then another reconfiguration after covid security is no longer needed. That is quite a big ask, and I am keen to hear from the Minister whether the Department has considered that. If not, will she engage with the industry to talk about the timelines?

The detail of the regulations will be in the guidance. We respect that some of the more technical issues, such as what constitutes a specialist store or what is a meal deal—an existential question for the 21st century—will not be on the face of the regulations, but we are asking business to make a really significant change in 11 months'

[Alex Norris]

time and we still cannot tell them now what changes we will ask them to make. They will need to know the details to give them even a fighting chance of making that deadline. In which case, can the Minister say when the guidance will be published, because the sooner that can be done the better?

My final point is one of great frustration that the regulations are not as good as they could be for many of the reasons that I have just mentioned, including handling the issue through secondary legislation. Recently, I and other colleagues—including the Minister, for a while—spent weeks just down the corridor dealing with the Health and Care Bill in Committee for sitting after sitting between the beginning of September and the end of October. Part 5 of the Bill included elements of the obesity strategy, especially the advertising ban, and that gave us the opportunity to table amendments, take evidence and have full discussions of those provisions. We will have similar opportunities to improve them in the remaining stages and in the Lords. Why were these draft regulations not treated in that manner? If we had done that, we would have pursued many amendments, because there are holes in the regulations. Instead, however, we have been given a take-it-or-leave-it proposition.

We will not vote against something that we think will have a positive impact on the public's health, but I hope the Minister—she is relatively new to her role and I know her well from our east midlands work—will be reflective about her practices and those of her Department. The ban on flavoured tobacco was pushed through in a similar manner, but fundamental questions were not really addressed. There was not an awful lot of engagement with business or political colleagues, and the thing has not worked—there are workarounds—because the regulations contained gaps that Ministers could easily have been helped with. However, due to a lack of flexibility and pragmatism those gaps were not closed and the ban has not worked, and Ministers will eventually have to return to the matter. I fear that today's draft regulations will face the same fate, because the workarounds are quite clear.

I will not impede the proposal's progress today, but the Opposition are disappointed, and I hope the Minister may address some of our disappointments in her closing remarks.

4.46 pm

Gordon Henderson (Sittingbourne and Sheppey) (Con): I have a couple of questions because I am slightly confused as to the definition of “prepacked” with regard to prohibited goods. The draft regulations refer to various categories of food, including

“Category 3: Breakfast cereals including ready-to-eat cereals”.

What is meant by “ready-to-eat” when it comes to “other oat-based cereals”? Oat-based cereals, such as oat flakes and Oatibix, are actually very good for people, so I wondered whether they are included in that category.

4.47 pm

Maggie Throup: I thank the hon. Member for Nottingham North for his contribution and support and my hon. Friend the Member for Sittingbourne and Sheppey for his query.

The hon. Member for Nottingham North asked several questions. On the cost to the consumer, as I said in my speech, promotions tend to be a mechanism to help consumers save money, but data shows time and again that they increase consumer spending by encouraging people to buy more than they intended and to buy items that they did not intend to purchase, which also increases their consumption.

On enforcement, the Government are committed to ensure that enforcement of regulated policies is proportionate and fair and to support local authorities and the judicial system with any additional costs they incur as a result of enforcing these powers.

On striking a balance, this is about trying to support the consumer while also supporting businesses, which is why we felt it was fair to exempt smaller and microbusinesses and apply the regulations to medium and larger businesses only, basing the definition on floor space as well. That approach is more measured than having something apply across the board. It is important that we get this right, as the hon. Gentleman said, to ensure that we have an impact on the nation's health while allowing businesses to implement the measures proportionately.

The hon. Gentleman asked about implementation and the guidelines. Obviously, we will publish the guidelines once the legislation has been passed, and it is important to ensure that we continue to involve the different parties to get things right. There has been a lot of engagement already, and we must ensure that it continues.

My hon. Friend the Member for Sittingbourne and Sheppey asked about prepacked products. Such products have the contents printed on their packaging, whereas it is hard to know the contents of some non-prepacked products. Once again, this is about taking a measured approach.

As the hon. Member for Nottingham North said, this legislation is part of a range of measures that form part of our healthy weight strategy, which will empower people to live healthier lives. They want to do that, and the strategy will help them. This policy is a critical part of that strategy.

Our published impact assessment shows a positive net present value for the policy, outlining how the health benefits outweigh the costs to business, which I hope reassures the hon. Gentleman. Our estimates show that the policy will have a net benefit to society of around £7 billion pounds over the next 25 years. The location restrictions alone would provide NHS savings of over £4 billion pounds. It is estimated that an average person will consume 50 to 70 fewer calories a day as a result of the restrictions. Small reductions in calorie intake, sustained over time, can help to address the significant incidence of overweight and obesity. We are committed to making the healthier choice the easy choice for families.

I understand that these are novel requirements, and we want to ensure that we are supporting businesses to implement them. We took the decision to extend the implementation date from April 2022 to October 2022 as we believe that strikes the best balance between allowing businesses enough time to prepare while not significantly delaying the health benefits, so the implementation date has already been extended once. We will continue to work closely with stakeholders in preparation for implementation, as I have indicated,

and further evaluate the impact of the promotion restrictions to ensure that they achieves the health benefits and policy aims effectively.

Our ambition is to halve childhood obesity by 2030 and reduce the gap in obesity between children from the most and least deprived areas. All of us need to get behind that ambition and play our part in making and

facilitating healthier decisions, providing healthier options, and creating healthier environments. I commend the draft regulations to the Committee.

Question put and agreed to.

4.52 pm

Committee rose.

