
CENTER FOR DIGITAL DEMOCRACY



Regulating the Digital Obesogenic Ecosystem

Lessons from the 20-year Effort to Pass the
United Kingdom's Online Ban on Unhealthy
Food and Beverage Advertising

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EXECUTIVE SUMMARY

In 2021, the UK government announced a comprehensive new policy to regulate food marketing. Among its provisions was a ban on all paid advertising of unhealthy food products in the online environment, part of a strategy to “future-proof how we tackle childhood obesity.” Public health scholars and advocates have heralded the policy as one of the most significant government efforts to restrict marketing of unhealthy foods to young people, and the only one to include a ban on digital marketing of such products. This report chronicles the 20-year process by which the UK law came about, along with a discussion of major themes and key lessons for health advocates, policymakers, and researchers concerned about the health of young people in the Digital Age.

Over the last two decades, the UK government has launched a series of initiatives to deal with the country’s serious obesity crisis. Amid growing evidence that marketing of unhealthy foods and beverages is a key contributor to overweight, obesity, and related diseases among children, regulators have sought ways to limit exposure to these harmful advertisements. Political leaders and government agencies have issued dozens of white papers, reports, and other official documents; conducted and commissioned research studies; and solicited public input on a range of policy proposals. A wide spectrum of stakeholders—from medical associations to campaigners to academics—has fought relentlessly to conduct timely research, inform regulators, and work with the press to promote the most effective safeguards. Initially, the focus was on restrictions for television commercials, but as mobile devices, gaming platforms, and social media became an increasingly powerful presence in young people’s lives, it was evident that safeguards were also going

to be necessary for digital media. The complexities of what has now become a large, integrated, data-driven digital marketing system, fueled by Big Data, artificial intelligence, and machine learning, had to be taken into account. While considering various options—including both age- and time-based regulations—policymakers ultimately decided that the only effective approach was a ban on all paid online advertising of unhealthy food and beverage products, though the regulation did have several loopholes, including allowing both influencer marketing and brand promotion.

While implementation of some parts of the law—including the online ad ban—has been delayed until October 2025, other key elements are already in place. For example, marketers are not allowed to place unhealthy foods in premium locations in retail stores, and this provision also applies to digital stores. In the meantime, health advocates are committed to ensuring that the promise of this landmark legislation is fully realized.

KEY TAKEAWAYS:

- One of the notable features of the campaign around food marketing regulation in the UK is the impressive critical mass of civil society organizations representing the public health community that has been actively involved in the effort. Groups involved in the decade-long movement encompassed a wide variety of constituencies, providing a depth and breadth of expertise, particularly on health matters, that was highly valuable throughout the policy process.
- Research also played an important role. Advocates worked closely with a handful of savvy, well-informed academic scholars and experts who were willing to provide timely analysis during policy deliberations, producing reports that challenged the assumptions and methods offered by industry lobbies, and in some cases operating behind the scenes to serve as a “research backbone” for the advocacy community.
- As various policy proposals worked their way through government agencies, industry trade associations sought to minimize the impact on their bottom lines of any regulatory interventions, offering a series of alternative and limited proposals to counter the restrictive measures proposed by government, and deploying an arsenal of delay tactics.
- Government white papers and policy statements repeatedly stressed the fact that obesity and related illnesses disproportionately affect children of color and families living in disadvantaged areas, and political leaders and government officials promised to promote a health agenda for reducing these disparities. But while these values and concerns were addressed in formal policy deliberations and public consultations, policymakers chose to adopt a “one-size-fits-all” approach to regulating advertising of unhealthy foods, concluding that it would benefit all children and, in fact, would likely produce even greater benefits for children in these vulnerable groups.

REGULATING THE GLOBAL DIGITAL OBESOGENIC ENVIRONMENT

Advocates, researchers, and policymakers are continuing their efforts to promote the full implementation of the hard-fought 2021 UK food marketing restrictions. In the meantime, the global obesity crisis continues to rage out of control in most of the world. International health bodies have called for strong government policies to curb the influence of the powerful food and tech industries on young people’s health, with increasing focus on regulating digital media, which has helped spawn a flurry of recent policy activity in countries around the world. While the U.S. remains an outlier in terms of food marketing policy, there is a robust public debate and considerable policymaking activity around a broader, yet highly significant and related, set of issues, including proposals to ban “data-driven advertising” to children and teens, recent children’s privacy laws enacted at the state level, and broad privacy policy legislation that includes provisions for both young children and adolescents. Successful passage of laws and regulations to restrict a large swath of online data and marketing practices could significantly reduce young people’s exposure to digital promotion of unhealthy foods and beverages.

Obesity remains a global problem, and addressing it effectively will require global collaboration. If significant progress is to be made in curbing the influence of digital food marketing, it will be important for policymakers, scholars, and activists to coordinate strategies for successful policy development, advocacy, and application of food-marketing restrictions. Digital marketing is complex, highly technical, and constantly evolving. Regulators will need to stay abreast of fast-moving developments, tracking the deployment of emerging practices and techniques and designing policies to address them. Finally, it will be critically important to develop effective measures for reversing the discriminatory practices and health disparities that disproportionately impact the most vulnerable members of the global population.

In March 2020, during the earliest days of the COVID-19 pandemic, the UK's Conservative Prime Minister Boris Johnson was suddenly taken ill with the virus. As the PM isolated in his Downing Street flat, his aides assured the public that his symptoms were mild and that he was progressing well. "At a time when deaths from the pandemic were continuing to climb," the *Guardian* later noted, "the official message was that Johnson had a firm grip on the crisis and the machinery of power."¹ Within days, however, Johnson's fever had not broken, his cough had worsened, and his breathing had begun to deteriorate. He was rushed to the hospital and given oxygen. Though government officials kept reporting that he was able to continue conducting business, his condition had, in fact, become quite dire, and he was soon placed in intensive care. As one hospital source recalled, "It was touch and go whether he would be put on a ventilator."² After seven days in the hospital, the PM was finally sent home to his country retreat, where he was able to convalesce, resume his duties, and ultimately recover.³

But the experience had given Johnson a scare. As a middle-aged man who was clinically obese, he was particularly vulnerable to the ravages of Covid-19. Within a few months of his brush with the disease, Johnson was announcing a "new government anti-obesity program."⁴ In addition to a public education campaign promoting healthier lifestyle choices, the program included proposals for significant restrictions on advertising and promotion of unhealthy foods, an intervention designed to reduce exposure of young people in order to help address the growing childhood obesity crisis in Britain.⁵ The July 2020 launch began with several well-placed newspaper editorials, a "social media blitz," and a video of the prime minister engaged in an exercise walk. As the *Washington Post* described it,

Johnson was shown "fast-walking in slow-motion—in a white button-down shirt and blue slacks—accompanied by inspirational string music and his dog, Dilyn."⁶

People in the U.S. who read this story might have assumed that the health campaign had originated with the prime minister. But this new initiative was only possible because of a collective effort over nearly two decades—by public health advocates, medical organizations, scholars, and government agencies—which by 2020 had already generated a set of well-developed government policy proposals, backed up by strong scientific evidence. The UK government had issued dozens of white papers, reports, and other official documents; conducted and commissioned research studies; and solicited input from a variety of stakeholders to develop a broad array of policies aimed at addressing the country's extreme obesity crisis. Amid growing evidence that marketing of unhealthy foods and beverages is a key contributor to overweight, obesity, and related diseases among children, regulators sought ways to limit exposure to these harmful advertisements. Initially, the focus was on restrictions for television commercials, but as digital media became an increasingly powerful presence in young people's lives, it became evident that safeguards for online media were also going to be necessary.⁷

Until he became seriously ill, Boris Johnson had dismissed these efforts to regulate the food and beverage industries, criticizing the UK's sugar tax, which had become law in 2018, as a "stealth sin tax," and opposing further proposals to restrict advertising and promotion of foods high in fat, sugar and salt (HFSS) to young people.⁸ His abrupt reversal in 2020 became a crucial turning point. By November of that year, after a series of public consultations, his

government had announced plans not only to eliminate commercials of unhealthy foods and beverages on television during hours when children were most likely to be watching, but also to institute a range of additional restrictions on marketing and promotion in retail and other settings. A key provision was a proposed ban on all paid advertising of HFSS products in the online environment, part of a strategy to “future-proof how we tackle childhood obesity.”⁹

None of this had been a smooth or easy process. The law to restrict digital advertising still included some significant gaps and loopholes. At the time of this writing, while some provisions of the new law were already in place, implementation of the marketing restrictions and online ban had been delayed until October 2025, amid the turbulence and political turmoil of three successive Conservative prime ministers, following Johnson’s decision to step down in July 2022.¹⁰ And as industry lobbyists fought relentlessly to keep the rules from taking effect, advocates continued to press the government to make good on its commitment to institute these critical safeguards.

While the issue of food marketing and child obesity has receded from the public policy agenda in the U.S., it has remained in the foreground of other policy-making bodies in Europe, the UK, South America and elsewhere. In 2010, the World Health Organization (WHO) called for “global action to reduce the impact on children of marketing of foods high in saturated fats, *trans*-fatty acids, free sugars, or salt.”¹¹ Several countries, including Chile and Mexico, have passed laws that specifically regulate marketing of unhealthy foods and beverages to children, and there is already evidence that these policies have reduced children’s exposure to promotion of unhealthy products.¹² However, most of these regulations have focused on more traditional forms of marketing and advertising, including TV commercials and front-of-package labels.¹³

[In recent years, international health leaders have begun to recognize the importance of addressing the role of digital marketing in order to reduce young people’s exposure to promotion of unhealthy foods and beverages.] In 2016, WHO Europe issued a major report based on its comprehensive review of research on digital food marketing, along with an assessment

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of policies across the European region. “The targeted and personalized nature of digital marketing,” the report’s authors explained, “makes it potentially a far more powerful influence on children’s preferences and dietary behavior” than traditional broadcast food marketing. “Action on digital marketing is therefore clearly required to fully implement the WHO set of recommendations and to reduce the exposure, power and impact of all HFSS marketing to children.” The report also urged policymakers to include adolescents in their protections, since they are “developmentally, neurologically and socially likely to be susceptible to HFSS food advertising.”¹⁴ UNICEF’s 2019 report, *Children, Food and Nutrition: Growing Well in a Changing World*, called for a broad regulatory framework for food marketing to children, encompassing not only television but also “games, movies, books and social media for all age groups, as well as businesses and restaurants that give away toys to market unhealthy foods.”¹⁵

Though a growing number of countries have passed laws and regulations that attempt to address some forms of digital food marketing, the UK’s policy appears to be one of the most comprehensive.¹⁶ While its ultimate outcome remains uncertain, understanding how this law came about, the strategies and tactics behind it, the challenges it faced, and how government regulators chose to address those challenges, can offer important insights for advocates, researchers, policymakers, and others around the world who are committed to ensuring a healthier digital media environment for young people.

In the following pages, we have tried to tell this story in as complete a way as possible, knowing that there will inevitably be gaps in our knowledge and understanding of some of the details. As outsiders living in the United States, we relied on interviews with several of our colleagues and other stakeholders who were involved in the campaign, as well as on numerous public documents from government, advocacy, and news organizations. After presenting a narrative of this law's evolution over the past two decades, we discuss some of the major themes that have emerged from our research, including the role of advocates, academics, and government agencies, and the key decision points that ultimately resulted in the final law. We highlight some of the most recent policies enacted around the world to restrict digital marketing of unhealthy foods and beverages, providing a brief overview of related developments in the U.S. Finally, we call for global collaboration to ensure effective safeguards for all young people around the world.

PROTECTING YOUNG PEOPLE IN THE “FATTEST COUNTRY IN EUROPE”

Boris Johnson's struggle with weight is hardly an anomaly in the United Kingdom, where obesity rates are among the highest in Europe, according to the Organization for Economic Cooperation and Development (OECD). In England, obesity has risen faster than in most OECD countries. Among children, overweight and obesity increased substantially between 1990 and the early 2000s, peaking at nearly 40 percent by 2005.¹⁹ By 2010, England had become the “fattest country in Europe.”²⁰ These trends may explain why the UK “was one of the first countries in the world to adopt restrictions on the marketing of unhealthy food to children.”²¹ Additional factors may have also contributed to the UK's role as an early mover in this area, including the fact that it has particularly high amounts of processed foods, and is also a global center for the advertising industry.²²

In 2003, the government's Secretary of State for Culture, Media, and Sport asked the UK's independent regulator of the communications industries, known as Ofcom, to consider strengthening the existing self-regulatory restrictions that were already in place for television

GLOBAL OBESITY AMONG YOUTH

The global obesity crisis continues to rage out of control in most of the world. In a March 2023 report, the World Obesity Federation issued a dire prognosis and warning: “The majority of the global population (51%, or over 4 billion people) will be living with either overweight or obesity by 2035 if current trends prevail,” based on the latest figures. The greatest and most rapid increase is expected among young people between the ages of 5 and 19. “Rates are predicted to double among boys to 208 million (100% increase) and more than double among girls to 175 million (125% increase).” The crisis is particularly troubling among lower income countries, which face “rapid increases in obesity prevalence.”¹⁷ The report strongly urged countries to develop national action to reverse these alarming trends.¹⁸

advertising of food products targeted at children.²³ A year later, the UK's Department of Health published a white paper entitled "Choosing Health: Making Healthy Choices Easier." One of the goals of the government's policy was to "help shape the commercial and cultural environment we live in so that it is easier to choose a healthy lifestyle." With an introduction from Labour Party Prime Minister Tony Blair, the white paper placed a strong emphasis on health equity. "This Government is committed to sustaining an ethos of fairness and equity—good health for everyone in England," the PM promised. As the UK's Health Secretary explained in his own foreword to the paper, "Existing health inequalities show that opting for a healthy lifestyle is easier for some people than others. Our aim must be for everyone to achieve greater health and mental wellbeing by making healthier choices. That means ensuring that those people in disadvantaged areas and groups have the opportunity to live healthier lives."²⁴

While covering a broad range of health-related issues, the white paper placed particular focus on food marketing targeted at children. "When it comes to food, people feel that it is wrong for children to be bombarded with sophisticated marketing that might confuse them and reduces their ability to make healthy choices before they have been able to develop the skills and experience to negotiate their way through the array of choices on offer," the paper explained, noting that in its consultation process there was overwhelming support for "some restrictions on the marketing of unhealthy food and drinks to children." Promising to "work with the broadcasting and advertising sectors on ways to help drive down levels of childhood obesity," the paper called on 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 watching.²⁵

The health agency warned the television and advertising industries that it planned to monitor progress toward reducing exposure, and would take action if there was no change.²⁶

INITIAL AD RESTRICTIONS FOR TELEVISION

By November 2006, after several years of research and consultation with stakeholders, Ofcom issued a set of proposed restrictions for television that included a ban on ads for unhealthy food products "in or adjacent to" programs made for, or "of particular appeal to," children under the age of 16. These restrictions were phased in from April 2007 to January 2009. As legal scholar Amandine Garde and her colleagues explain, the decision to include children as old as 16 drew from existing research on younger children, who were unable to distinguish between TV advertising and program content. Although those between 10 and 15 might be able to distinguish that difference, advertising "still had the capacity to influence their consumption decisions." Moreover, "eating patterns once developed had long lasting effects."²⁷ UK government-sponsored research was able to challenge the argument that people's food choices were only a matter of personal responsibility, but instead very much influenced by environmental factors.²⁸ As one study explained,

weight gain is the inevitable—and largely involuntary—consequence of exposure to a modern lifestyle. This is not to dismiss personal responsibility altogether, but to highlight a reality: that the forces that drive obesity are, for many people, overwhelming. Although what we identify in this report as "passive obesity" occurs across all population groups, the socially and economically disadvantaged and some ethnic minorities are more vulnerable.²⁹

In order to comply with the European Union's Audiovisual Media Services Directive (AVMSD), the UK government also banned product placement on children's TV programs, along with product placement for unhealthy food in any programming.³⁰

Identifying unhealthy foods. One of the major considerations in Ofcom's policy-making process was whether to institute a ban on advertising of all food and beverage products in programs where children would be watching, or to limit the ban to those products that were considered unhealthy. While there was a fair amount of contention around this issue, the agency reported

that most consumer and health organizations, as well as some broadcasters and food manufacturers, supported a policy that would differentiate between healthy and unhealthy foods. Many also argued that by restricting advertising for unhealthy foods, manufacturers might be persuaded to reformulate their products in order to enable them to be advertised. There were also concerns raised that eliminating all food and beverage advertising would remove an important funding source for programming directed at children, especially on the private, commercial channels. Since it had no expertise in nutrition, Ofcom turned to the UK government's Food Standards Agency (FSA) to develop a model for determining which foods are higher in saturated fats, salt, and sugar (so-called "HFSS foods").³¹ The UK nutrient profile model predated WHO Europe's nutrient profile model, which was released in 2015. The UK was one of a handful of European countries, including Denmark, Ireland, and Norway, that had developed, or were developing, nutrient-profile models by that time, as key tools in their efforts to restrict marketing of unhealthy products.³²

Targeting vs. Exposure. [While the new regulations were a significant step forward, there were gaps, loopholes, and limitations that researchers and health advocates pointed out.] An Ofcom study in 2010 found that, although the industry appeared to be complying with the current ad restrictions for children's programming, the amount of commercials for unhealthy foods and beverages in adult programming had actually increased. As additional studies confirmed, the result was an increase in children's *exposure* to HFSS ads. Clearly, restricting only the advertising that appeared in and around programming that *targeted* children was not enough to shield them from the powerful influence of highly compelling commercials permeating general audience programs throughout the day. Stakeholders from the health community, which included the 200,000-member Academy of Medical Royal Colleges, "argued for a 9 p.m. watershed, which would be more effective at limiting exposure."³³ Watersheds were already a staple in children's media policy in the UK, creating a clear demarcation line in TV schedules between evening programming, when content restrictions were less strict as mostly adults were assumed to be watching, and earlier time periods when the audiences would comprise greater numbers of

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children. The concept has been applied for many years to place programming content considered not suitable to children in the later hours.³⁴ Of course, one of the biggest gaps in the new advertising restrictions was that they only applied to broadcasting, leaving digital and other non-broadcast media completely unregulated.³⁵ Even with these flaws, however, the legislation, and the research that underpinned it, were important in laying the groundwork for later, more comprehensive policies.³⁶

THE "PUBLIC HEALTH RESPONSIBILITY DEAL"

The year 2010 saw the election of a new coalition government led by David Cameron (with Nick Clegg, who was later to join Facebook/Meta, leading the Liberal Democrat party), amid an economic crisis that forced the government to rethink many of its spending programs, including those in health.³⁷ The new government launched a "Public Health Responsibility Deal," a broad multi-stakeholder self-regulatory initiative designed to "empower and support people to make informed, balanced choices that will help them lead healthier lives."³⁸ With a strong emphasis on voluntary approaches, the program brought together 27 leading industry representatives, government officials, and experts to develop action plans.³⁹ It established five networks "drawn from across all sectors and public health bodies, working on food, alcohol, behavioural change, physical activity and health at work."⁴⁰ Each network produced a set of pledges, which included changes that various sectors of industry promised to make in the next few years. Government leaders heralded this new program, labeling it "groundbreaking

collaborative work.”⁴¹ But many of the actual pledges were quite vague.⁴² As with other self-regulatory programs, independent academic assessments largely dismissed the public health effectiveness of such pledge-led initiatives.⁴³

The Department of Health and Social Care (DHSC), which oversees the National Health Service (NHS), issued a 2011 white paper entitled “Healthy Lives, Healthy People,” which underscored the official government focus on “voluntary agreements and supporting people in making healthier choices, rather than reducing choice.”⁴⁴ The DHSC commissioned the National Heart Forum (now UK Health Forum) to conduct a mapping and stakeholder analysis, which identified gaps in regulatory and voluntary controls. These included a number of areas that had not been covered by the Ofcom regulations, such as point of sale, sponsorship, and in-school marketing, as well as digital media. However, according to Amandine Garde and her colleagues, the food companies and retailers who engaged with the Responsibility Deal could not agree on “any collective pledge on promotions and marketing, saying the approach would not work on such a ‘commercially sensitive’ issue.” As the authors note, “while the Responsibility Deal has managed to encourage action by some companies on certain issues, such as salt reduction and out-of-home calorie labelling, the scope of action and sign-up overall was limited. There has been little appetite for further action in the area of marketing despite Ministers stating that they expected more action.”⁴⁵

A WATERSHED MOMENT

With the national election of May 2015, the issue of childhood obesity became an official government priority, with marketing and promotion of unhealthy food and beverages an area of emphasis, particularly for Parliament, where ministers saw the need for further action.⁴⁶ The new policy agenda also brought the issue of restricting digital marketing of unhealthy foods into the foreground, though the focus was primarily on sugar consumption. To inform the development of its Childhood Obesity Strategy, the government commissioned Public Health England (PHE), an executive agency within the Department

of Health, to conduct a review of research evidence for policies to reduce sugar consumption. The report, which was released in October 2015, was entitled “Sugar Reduction: the Evidence for Action.” But the scope of its findings and recommendations was much broader. It also recognized and highlighted the need to incorporate digital media safeguards into policy regimes for reducing young people’s exposure to marketing of unhealthy products. “Children in England,” the report found, “are exposed to a high volume of marketing and advertising in many different forms both old (e.g., TV advertising, radio, cinema, press and billboards) and new (e.g., advergames, social media, online advertising), as well as through sponsorship by food and drinks companies of TV programmes, public amenities and events.”⁴⁷ In addition to recommending a tax on full-sugar soft drinks to discourage consumption, the report argued that government should take action to “significantly reduce the marketing and advertising of high sugar food and drinks products across all media including digital platforms and through sponsorship.”⁴⁸ The PHE report was endorsed by the House of Commons Health Select Committee, which offered a further expansion of the recommendations to include extending TV advertising restrictions on unhealthy products to all programs, not just those targeted at children; restricting advertising in non-broadcast media, encompassing online content, print, cinema, and other outlets; limiting certain techniques designed to engage children; tightening the UK’s nutrient profiling model; and considering limitations on brand advertising.⁴⁹

The release of the PHE report raised hope among public health advocates that the government’s Childhood Obesity Strategy would support this broad policy agenda. The Obesity Health Alliance, which was established in 2015, quickly became one of the most important players in the effort to protect children from the marketing of harmful food and beverage products. OHA is composed of more than 40 health organizations that “joined together to advocate for policies to improve population health and address obesity.”⁵⁰ Caroline Cerny was head of the alliance, which she directed for more than 10 years. Her organization was very involved in the deliberations and public debate over Public Health England’s proposals. She and her colleagues conducted their own review of the research evidence.

They were particularly focused on expanding the TV advertising restrictions beyond just the programming designed for and targeted at children, to include larger swaths of the schedule when children were likely to be in the audience. Cerny’s organization had cultivated key sources within the government who shared information with the advocates. They learned that various options were under consideration by the government, including a proposal for establishing 9 p.m. television watershed, which advocates had been supporting.⁵¹

The OHA partnered with the University of Liverpool to conduct a study that documented the failures of the existing TV HFSS ad restrictions. Entitled “A ‘Watershed’ Moment,” the user-friendly report provided quantitative evidence, along with illustrations, that showed how existing rules allowed HFSS advertising “to be shown during family viewing time when the number of children watching TV is at its highest.”⁵⁵ As a consequence, the current rules “do not reflect children’s viewing patterns and therefore fail to adequately protect children from exposure to HFSS advertising.” To correct this problem, the report argued, “the Government must take action to ensure the strongest restrictions apply to programming where the greatest numbers of children are exposed to HFSS advertising. The solution to this problem is to extend existing regulations to restrict HFSS advertising on TV until after the 9 PM watershed.”⁵⁶

Interestingly, even though Public Health England had included among its proposals a possible 9 p.m. HFSS marketing watershed for online as well as TV, the need for safeguards on digital platforms does not appear to have gotten much traction among advocates, other stakeholders, or the press. As Caroline Cerny later acknowledged in an interview, in retrospect people realized the “bigger prize” was online because children are spending so much time there. But they had placed their efforts behind the watershed for television.⁵⁷ As scholar Emma Boyland explained it, “We saw there was some momentum [for restrictions on TV] that might carry through to digital, had greater traction, was more likely to get through (simpler in policy terms), [and] was also a piece of the puzzle that needed attention.” Keeping the focus on television ensured that advocates “didn’t dilute the ask and risk looking unsure.”⁵⁸

ADVOCATES PUSH FOR BROAD POLICIES TO RESTRICT HFSS MARKETING

Civil society organizations—including public health advocates (or “campaigners,” as they are called in England), professional medical associations, academics, and other public stakeholders—played a key role in these and earlier policy deliberations. Many had formed effective relationships with key government agencies, particularly the Department of Health. These activists were in full force during the public debates over Public Health England’s recommendations. For example, the Children’s Food Campaign, run by Sustain, a consortium of NGOs and advocates, commissioned surveys that demonstrated strong public support for policies to restrict advertising of unhealthy foods.⁵² The Royal College of Paediatrics and Child Health reported its own poll results, showing that the British public supported the proposed policy interventions.⁵³ The two largest professional groups, the Academy of Medical Royal Colleges, and the British Medical Association, also endorsed the report.⁵⁴

Passing the Sugar Tax. However, the efforts to strengthen policies around advertising to children were eclipsed by the debate over passing the so-called Sugar Tax. This issue was foregrounded not only in the 2015 PHE report, but also in a subsequent policy document, published a year later, which set out a government goal of cutting childhood obesity in half by 2030.⁵⁹ The top priority of this “Plan for Action” was the introduction of a levy on the soft drink industry across the UK, investing the tax revenue in programs to “reduce obesity and encourage physical activity and balanced diets for school age children.”⁶⁰ Though the legislation engendered strong opposition from industry groups, such as the Food and Drink Federation, it ultimately passed and took effect in April 2018.⁶¹

REGULATING ONLINE — “A WHOLE SYSTEMS APPROACH”

Advocates continued to push for a broader policy agenda that would include strong regulation of food marketing. In May 2018, the House of Commons’ Health and Social Care committee released a new report, urging Prime Minister Theresa May, who had been elected the year before, to include strict regulation of ads as part of the tax measures and national policy plans to cut child obesity.⁶² Arguing for a “whole system” approach, the plan called for a number of policy initiatives, including “a 9 p.m. watershed on junk food advertising,” as well as a “ban on brand generated characters or licensed TV and film characters being used to promote HFSS (high fat, sugar and salt) products on broadcast and non-broadcast media.” In what appeared to be the first official policy to address the role of digital marketing, the parliamentary report also stated that “Government must align regulations on non-broadcast media with those for broadcast media.”⁶³ “We heard consistent evidence,” the committee explained, “that current regulations around non-broadcast media marketing to children are ineffectual, and fail adequately to appreciate the dynamics of children’s non-broadcast media consumption.” Though it chose to use the term non-broadcast media rather than directly identifying digital media, it was

clear that social media and other digital platforms were included in the recommendations, which were designed “to ensure that sites such as Facebook and YouTube amongst others are taking responsibility for helping to reduce exposure of children to inappropriate advertising and marketing, including advergames.”⁶⁴

Focus on Health Disparities. The following month, the government released another white paper, “Childhood Obesity: a Plan for Action, Chapter 2.” Noting that childhood obesity rates in the UK were “among the worst in Western Europe,” the paper highlighted significant disparities among children in low-income households, and those from black and minority ethnic families. “We want to address these disparities,” the paper announced, “to ensure that all children, regardless of background, have the best start in life.”⁶⁵ Even with relatively strict rules in place to limit ads on children’s TV, such safeguards, the paper explained, will be limited by not encompassing young people’s “media habits across all the media platforms which they use.”⁶⁶ Regulators planned to “consult, before the end of 2018, on introducing a 9 PM watershed on TV advertising of HFSS products,” and to consider “similar protection for children viewing adverts online, with the aim of limiting children’s exposure to HFSS advertising and driving further reformulation.”⁶⁷

By this time, it was difficult for policymakers to ignore the importance of digital media in trying to mitigate factors that contribute to childhood obesity and other harms to young people. The UK government’s Information Commissioner’s Office (ICO) was already engaged in research and consultation for what would become its “Age Appropriate Design: A Code of Practice for Online Services,” released in 2021 and laying out a set of responsibilities for tech companies to operate in the “best interests of children.”⁶⁸ WHO Europe’s landmark report, “Tackling Food Marketing to Children in a Digital World,” published in 2016, provided evidence of both the presence and impact of marketing of unhealthy foods in digital media, calling on governments to adopt regulations to reduce young people’s exposure to such marketing on social media, games, mobile, and other digital media platforms.⁶⁹

CONSIDERING ONLINE POLICY OPTIONS

In 2019, the UK’s Department of Health and Social Care (DHSC) and the Department for Digital, Culture, Media and Sport (DCMS) jointly held public consultations, seeking input from industry, civil society, academics, and other stakeholders on proposals for a 9 p.m. watershed for HFSS TV ads, along with a broader exploration of “how the government could go further than a watershed online,” including the possibility of “a total ban of HFSS adverts online.”⁷⁰ As part of its deliberative process, the government heard from stakeholders and academicians about whether industry’s existing Advertising Standards Authority-enforced restrictions to regulate ads targeting children were working, or whether legislation would be necessary.⁷¹ As an industry self-regulatory body, the ASA was responsible for administering the ad restrictions on television, and it continued to fine tune them as the government considered additional changes in the rules.⁷² In anticipation of possible online regulations, and in a strategy to preempt them, ASA had introduced a “new targeting rule” in 2017 for “non-broadcast HFSS food and soft drink advertising.” The rule was based on an “audience composition” principle in online media, stipulating that “No medium should be used to advertise HFSS products if more than 25% of its audience is under 16 years of age.”⁷³

That same year, ASA released the results of a unique study it had conducted to test the effectiveness of its new rule, described as “ASA’s first comprehensive survey of online display advertising conducted using automated data capture technology and online profiles which mimic those of internet users of different ages—Avatars.” Though the report acknowledged that its “monitoring exercise was not intended to replicate the online behavior of children,” it drew conclusions from the research to show the current policies were effective in reducing online exposure.⁷⁴ But advocates pointed out key flaws in the research, conducting their own independent analyses of the data to draw sharply different conclusions.⁷⁵ As Caroline Cerny recalled, “we were able to find loads of breaches.” The process “took months and was painful,” but it “provided evidence to say that the code wasn’t working.”⁷⁶ Public health and

children’s groups also lambasted the ASA study in the press. “The Government should not swallow the ASA’s latest spin on unhealthy food and drink advertising,” argued a spokesperson for the Children’s Food Campaign. “It is clear that whether it is on TV, online, on our streets or in our shops, children are constantly nudged towards less healthy food and drink choices.”⁷⁷

“FUTURE-PROOFING” CHILDHOOD OBESITY POLICIES

When Boris Johnson succeeded Theresa May as prime minister in July 2019, he appeared to have little interest in moving forward with the marketing restrictions. However, in 2020, after surviving the COVID infection that landed him in the ICU, he rapidly shifted his position, endorsing plans for both online and TV ad restrictions as part of the government’s next iteration of the UK’s obesity strategy, “Tackling Obesity: Empowering Adults and Children to Live Healthier Lives,” released in July. This new policy document underscored the relationship between obesity and the current pandemic, noting that “new evidence in the UK and internationally, indicates that being overweight or living with obesity is associated with an increased risk of hospitalisation, severe symptoms, advanced levels of treatment such as mechanical ventilation or admission to Intensive Care Units and death from COVID-19. These risks increase progressively as an individual’s body mass index (BMI) increases.” It also acknowledged that “black, Asian and minority ethnic populations and those living in deprived areas are at greater risk of dying from COVID-19,” due in part to greater levels of obesity among those populations.⁸²

The release of the new policy was accompanied by another consultation process conducted by the Department of Health and Social Care. Its announcement cited widespread public support for further advertising restrictions, including a poll from 2019 that showed 72 percent of the public endorsing a 9 p.m. watershed for television and 70 percent supporting a similar policy for online. The consultation focused on two policy proposals: 1) “to introduce a 9 PM watershed for advertising HFSS products on TV”; and 2) to explore whether and how the government could go further than imposing a watershed policy for

COUNTERING INDUSTRY RESEARCH

UK policy development rules require that a “Regulatory Impact Assessment” be conducted to identify costs and benefits of any proposed regulation.⁷⁸ Academic researchers played an important role in providing critiques of these government-sponsored studies. For example, the Department of Health commissioned a marketing industry group, Kantar, to assess potential costs and benefits of four policy options under consideration. With no established industry methods for determining exposure, Kantar developed an Online Baseline Methodology. In response, Mimi Tatlow-Golden, a Senior Lecturer at London’s Open University, partnered with former digital marketer Daniel Parker to conduct a detailed analysis of the research design and its results, challenging many of the assumptions.⁷⁹ They describe their work in an academic article entitled “The Devil is in the Detail: Challenging the UK Government’s 2019 Impact Assessment of the Extent of Online Marketing of Unhealthy Foods to Children.”⁸⁰ As they explain, determining children’s exposure to advertising in the online environment is substantially different and more complex than it is with television, creating what they refer to as a “wicked problem.” The Kantar model that the government relied on “sought to assess this based on the premise that advertising *spend* data can be used to estimate digital advertising *exposure*.” This led to a flawed conclusion that children were exposed to HFSS

marketing online in tiny numbers compared to television. Tatlow-Golden and Parker identified a number of substantial problems with the model, which seriously undermined its effectiveness and significantly skewed the results. These included equating how much was spent on advertising with the extent of its reach; massively underrepresenting the scale of both digital marketing and marketing for food and drink products; miscalculating digital advertising formats; and underdetermining the total number of food and drink ads as well as children’s exposure to them. As a consequence, the authors explain, “the Government Model consistently and very substantially underestimates online advertising spend, as a result of methods and data sources chosen; and... industry spend data poorly reflect digital marketing activity, further depressing the likely total exposure figure.” In fact, based on their analysis of the marketplace, the actual numbers are more likely to be at least tenfold what they were in the government’s model. Underscoring the fact that self-regulation fails to work, the paper concludes that “evidence for children’s continued exposure to digital advertising for unhealthy foods, and the very significant scale of the underestimate of this Impact Assessment, lead us to conclude that digital advertising is the most significant paid-for media channel for unhealthy advertising to children... [and] ...its reach is likely to extend far beyond what it has paid for.”⁸¹

digital media, including the prospect of introducing “a total ban of HFSS adverts online,” which the document presented as a way to “future-proof how we tackle childhood obesity.”⁸³

The Obesity Health Alliance released a policy statement outlining its support “for the total removal of junk food adverts online and across all types of digital devices,” noting that this action “would go further than any other country in protecting children and show the Government’s commitment to addressing obesity.” The statement cited research on digital marketing practices and young people’s exposure, and called for the regulations to cover all forms of digital marketing including both paid and “earned,” which includes influencer marketing:

The policy should apply to all kinds of digitally served advertising with no exemptions. We know that children consume content that is also popular with adults and that children falsify their age online or use parents’ or shared household accounts. Existing methods to determine a user’s age online are not sufficiently accurate, which means companies cannot guarantee they are not exposing children to their advert. This means that any exemptions based on age inference would not protect children.⁸⁴

Industry reaction to the proposal was swift, strong, and negative, condemning it as “unwarranted” and “draconian,” and accusing the government of operating without evidence. In a subsequent trade association publication, participants described their efforts to influence policymakers. “Together with other industry bodies, we have spent a huge amount of time and effort on engaging with the Government, writing to Ministers including the Prime Minister, responding to the consultation, and talking to MPs to urge a proportionate approach to the issue based on robust evidence,” they reported. In their submissions to the consultation process, industry trade associations attacked many of the analytical methods used by the government to determine the extent of advertising for unhealthy foods and young people’s exposure to it, offering their own alternative proposal for an “age-based precision targeting” system. Such a system, they argued, “would not only be as effective

as the proposed online advertising ban at reducing child exposure to HFSS ads... but would be even more effective.”⁸⁵

There were press reports that PM Johnson was considering a reversal of his support for the ban, which alarmed activists, including celebrity chef Jamie Oliver, British Heart Foundation and Cancer Research, the British Medical Association, the Royal College of Physicians, the Royal College of Pediatrics, Obesity Health Alliance, and others. They joined forces in April 2021 to urge the PM to stay on course and introduce the restrictions.⁸⁶

ADOPTING COMPREHENSIVE RESTRICTIONS

On June 24, 2021, the government released its announcement, adopting both of the proposals outlined in its most recent consultation document, including a 9 p.m. watershed for television HFSS products, as well as a ban on advertising such products online. The document “outlines our proposal for a total online HFSS advertising restriction and asks for your views on how we can design a restriction to effectively reduce the amount of HFSS advertising children are exposed to.”⁸⁷

The revised and expanded food-marketing restrictions (broadcast and digital) were incorporated into the broader Health and Care Bill, which amended the Communications Act of 2003. The policies included a suite of measures related to placement and price promotion in the online environment, as well as restrictions on a number of promotion techniques in retail settings.⁹⁰ The new online ad ban was still somewhat narrow in scope, limited only to “paid-for-advertising” and not affecting the ability of brands to advertise in their “owned media” spaces online, including blogs, websites, apps, or social media pages.⁹¹ While public health advocates were generally pleased with the new policies, they also had concerns about these and other loopholes, which allowed influencer marketing and user-generated content—including brand promotion—to continue. As academic experts told the press, with the use of algorithms, it is easy to get caught in an “HFSS exposure spiral after one

or two interactions with HFSS content.”⁹² However, even with these exceptions, this was still a landmark policy that would significantly limit many of the other online and offline practices for promoting unhealthy food and beverage products, reflecting a comprehensive understanding of the marketing system and the multiple strategies deployed for influencing consumers.⁹³

DELAY

With industry forces increasing the intensity of their lobbying efforts in the wake of the most recent government announcement, the implementation of the law remained uncertain. Public health advocates were encouraged when an endorsement of the anti-obesity measures was included in Queen Elizabeth’s speech to Parliament in 2022. But some were also cautious. “It’s worth remembering that just because the Queen

“CREATING A LEVEL DIGITAL PLAYING FIELD”

The government’s 60-plus-page document explaining its decision on the online ad ban offers a glimpse into the challenges faced by policy analysts when grappling with the commercial digital environment, which proved to be much more complicated, nontransparent, and fluid than that of television. While TV is a linear medium that pushes content out to viewers based on the time of day, online is “an on demand medium commonly targeted to individual users, where time of day is neither a determining factor in what content is consumed, nor a proxy for establishing who is likely to consume it,” the document explains. To support its rationale for adopting an online ad ban, the government cites some of the advertising industry’s own arguments, which trade associations had submitted in opposition to a 9 p.m. watershed for online.⁸⁸ Regulators also highlighted several of ASA’s recent monitoring sweeps, showing how the

current rules on online food advertising were being breached, and comparing the weak and inadequate safeguards for HFSS with much more robust rules governing other harmful products such as alcohol and tobacco. Given this litany of issues and complexities, the government concluded that a “solution building on existing audience-based restrictions is therefore too dependent on an opaque and potentially porous system, over which the advertiser may sometimes have limited control, and applied to an advertising category which is unique in being age restricted in advertising but not otherwise (unlike, for example, alcohol which is age restricted for purchase and consumption).” Responding to industry concerns about “issues of competition,” since some companies have better targeting tools and methods than others, the government argued that the overall ban would “create a level playing field.”⁸⁹

announced the policies, it doesn't mean they have the final go-ahead," commented the advocacy group Action on Sugar in its blog. "Lobbying seems to have increased, with spurious claims for self-regulation gaining momentum.... [T]here is still plenty of time to derail this train which is why we cannot simply ignore the public's support of these policies.... [A]nyone with experience of policymaking knows that it's not over until it's over—it is more important than ever for the Government to stand strong and get these policies over the line as promised."⁹⁴

The new regulations were officially enacted into law in April 2022, and originally due to take effect the following January.⁹⁵ But by May, the government had announced a delay of the ad restrictions until January 2024. The official rationale was economic. The decision had been made "in light of unprecedented global economic situation and in order to give industry more time to prepare for the restrictions on advertising...." according to a government press release. "Economies across the world have been affected by higher-than-expected global energy and goods prices, leading to increased costs across supply chains which are affecting both businesses and consumers."⁹⁶ However, the industry trade association IAB UK, in a posting to its members, offered another explanation for the delay. "Pushing for this outcome," the organization reported, "has been a key part of the IAB's recent lobbying work, in partnership with other industry bodies such as ISBA, the IPA and the Advertising Association."⁹⁷ As the IAB UK's CEO declared, "We're really pleased that the Government has listened to the very valid concerns of digital advertisers, who want to ensure they are complying with the law, and delayed the implementation date for the HFSS ad ban." But the real agenda for the industry became more clear in the sentence that followed: "We still believe that this tokenistic ban is both a missed opportunity to address the root causes of childhood obesity and to pioneer a digital-first, evidence-led solution to further restricting children's exposure to HFSS ads."⁹⁸

Activists were alarmed and outraged by this delay. Celebrity chef Jamie Oliver, a highly visible advocate of government restrictions on unhealthy food marketing, sent a public letter to Prime Minister Boris Johnson:

Today you have thrown away your right to claim England is world-leading in its policies to promote children's health. You have told us time and again that your government would deliver on its strategy, including ending junk food advertising to children, only to u-turn after the law has already passed. At a time when child health has worsened over the pandemic so that now 1 in 4 children leave primary school with obesity, and people who live in lower income areas are twice as likely to be affected, you are delaying policies that are both vital for levelling up and popular with 74% of the public. It is not too late to reconsider and protect the next generation from diet-related disease. Please don't u-turn on child health.⁹⁹

POLITICAL SHAKE-UP AND FURTHER DELAYS

But such appeals likely fell on deaf ears, as the prime minister himself was embroiled in a series of scandals over private parties he had hosted in his Downing Street headquarters in defiance of the country's strict COVID-19 lockdown requirements. Within two months, he had resigned.¹⁰⁰ By September, the new Prime Minister Liz Truss was in place. "As the leader of the traditionally pro-business Tory party," explained an article in the online publication *Food Matters*, "she will be expected to adopt measures which help struggling industries—of which food is one." Employing free-market rhetoric to justify her position, Truss argued that "*what people want the Government to be doing is delivering good roads, good rail services, making sure there's broadband, making sure there's mobile phone coverage, cutting the NHS waiting lists, helping people get a GP appointment. They don't want the Government telling them what to eat.*"¹⁰¹ Almost immediately, the Treasury had ordered an official review of "measures designed to deter people from eating junk food," the *Guardian* reported. "Whitehall sources said the review was 'deregulatory in focus' and is expected to lead to the new government jettisoning a raft of anti-obesity policies inherited from Boris Johnson, Truss's predecessor in Downing Street."¹⁰²

News of the review and Truss's plans to dismantle the recently passed legislation sparked a broad public outcry, with opposition coming from government circles, the public health community, and academe. "Officials at the Office for Health Improvement and Disparities, the part of the Department for Health that formulates policies to tackle major public health problems, were said by a source to be 'aghast' at the prospect of Truss potentially discarding strategies to counter junk food that have been agreed and approved by parliament," the *Guardian* reported. Calling the decision to delay "a kick in the teeth," the Obesity Health Alliance warned the government that it would be "reckless to waste government and business time and money rowing back on these obesity policies, which are evidence-based and already in law."¹⁰³ Even some conservative members of the government were appalled at the idea. Conservative party politician James Bethell, who had been health minister until the year before, challenged Truss's argument that eliminating the regulations would cut red tape and help promote economic growth. "Improving the nation's health is one of the best ways we can increase productivity and workforce capacity and thereby drive growth," he told the press. "So I would be very surprised by any decisions that actually strive to make the UK less healthy."¹⁰⁴ Press reports seemed to confirm this prediction, as Truss's administration faced rising backlash over their plans to dismantle the Sugar Tax, along with the more recent anti-obesity measures. The *Guardian* cited "Whitehall sources" in its reporting that the prime minister would face a number of "legal and parliamentary procedural obstacles to abandoning the soft drinks industry levy."¹⁰⁵

Within a month, however, the issue was moot. Liz Truss was out of office, announcing her resignation on October 20, 2022, "bringing a swift end to a six-week stint in office that began with a radical experiment in trickle-down economics and descended into financial and political chaos, as most of those policies were reversed," reported the *New York Times*.¹⁰⁶

But the regulatory shake-up may have created a further opening for ad industry lobbyists. With the election of Prime Minister Rishi Sunak, they were able to secure another delay in the implementation of the ad restrictions, this time until October 2025.¹⁰⁷ It is clear

from trade coverage that industry's strategy is to ensure that the law never takes effect at all. "The Advertising Association (AA) and the Institute of Advertising Practitioners (IPA)," reported one industry trade publication, "welcome the extra time this gives the ad industry but continue to object to the policy."¹⁰⁸

WHERE THINGS STAND

At the time of this writing, the narrative we have presented on the previous pages is not yet over, and no one knows how it will ultimately turn out—whether it will be a success story or yet another cautionary tale.¹⁰⁹ [The development of policies to restrict advertising of unhealthy food and beverages has taken an enormous amount of time, effort, and energy over the last two decades, involving countless white papers, reports, consultations, and deliberations from multiple branches of government.] A broad spectrum of public health stakeholders—from medical associations to campaigners to academics—has fought relentlessly to conduct timely research, inform regulators, formulate policy, develop strategies, and work with the press to promote the most effective safeguards for reducing young people's exposure to harmful marketing. Government health authorities have repeatedly raised alarms about the persistent childhood obesity crisis,

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making public commitments to address the problem and change the unhealthy media environment in which young people are growing up. A succession of prime ministers has taken up the cause, with varying degrees of support for policies to restrict advertising. Through it all, industry lobbies have worked to minimize the impact on their bottom lines of any regulatory interventions, by offering a series of alternative and limited proposals to counter the restrictive measures proposed by government, and deploying an arsenal of delay tactics, which at this point seem to have worked.

None of these developments took place in a vacuum, and other events—both within and outside of the UK—may well have played a role in the government’s regulatory actions. For example, the Facebook-Cambridge Analytica scandal highlighted how social media platforms interfered with the 2016 Brexit referendum process, as well as the U.S. presidential election, sparking much greater public scrutiny of the tech industry’s operations.¹¹⁰ Social media platforms were also implicated in a series of highly publicized reports documenting how lack of adequate industry safeguards left young people exposed to sexual abuse and other harmful content. Developments outside of the country also influenced UK government actions. Though the Brexit decision ultimately led to the UK’s 2020 withdrawal from the European Union, EU policies such as the General Data Protection Regulation, which took effect in 2018, helped generate greater privacy protections for young people through the ICO’s age-appropriate design code.¹¹¹ Finally, the role of the World Health Organization was critically important in providing leadership, research, and guidance through a succession of high-profile reports and policy statements over the years.¹¹²

It should be pointed out that the entire UK food marketing policy package has not been placed on hold, leaving some important regulations in place. For example, while the legislation on price promotion has been postponed, restrictions on placement promotions remain in place and are being enforced. As a consequence, marketers are not allowed to place unhealthy foods in premium locations in retail stores, and this provision also applies to digital stores.¹¹³ And health advocates are continuing their campaign to ensure the full implementation of this law. Obesity

is still a major threat to the healthy development of children in the UK, as it is in other parts of the world, and the global health community is monitoring the progress of this critical regulatory intervention, which remains the most significant and comprehensive effort to restrict the marketing of unhealthy foods and beverages in the online environment. There is also some evidence that the regulations may have already influenced tech company policies. For example, Google announced in 2020 that it would “restrict the serving of High Fat Sugar Salt (HFSS) Food and/or Non-Alcoholic Beverages (F&B) advertising for minors in the United Kingdom and European Union.”¹¹⁴

KEY TAKEAWAYS

In the meantime, important observations can be made about the entire policy process that may be useful to advocates, scholars, and policymakers in other parts of the world:

Advocacy community. [One of the notable features of the campaign around food marketing regulation in the UK is the impressive critical mass of civil society organizations representing the public health community that have been actively involved in the effort.] Groups involved in the decades-long movement encompassed a wide variety of constituencies, providing a depth and breadth of expertise, particularly on health matters, to the policy process. They were

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also very visible, vocal, and politically engaged, and they coordinated their strategies and messaging to advocate for a comprehensive systems approach. These groups included, for example, medical professional associations, such as the Royal College of Health and the Royal College of Paediatrics and Child Health, which called for government initiatives, including a sugar tax, as early as 2010. These advocates were joined by a host of other professional health organizations that have been actively engaged in the policy process. Specialized health societies, such as Cancer Research UK, provided critical research studies concerning the link between obesity and cancer, and conducted educational campaigns to raise public awareness. Groups such as Action on Sugar and Action on Salt have also been critical to the effort. And broad coalitions like the Obesity Health Alliance, the Children’s Food Campaign, and Sustain played a critical role in promoting the issues in the media and advocating for policy proposals with regulatory authorities. Another very visible advocate is celebrity chef Jamie Oliver, who has been at the forefront of the campaigns over the years to regulate marketing of unhealthy food and beverages to children. In addition to helping to popularize the issue, Oliver has organized young people through his organization, Bite Back 2030, founded in 2019 and described as “a youth-led movement working to achieve a world where all young people have the opportunity to be healthy, no matter where they live.”¹¹⁵ Interestingly, it does not appear that digital rights or privacy groups were involved in the efforts to regulate digital marketing, even though they could have lent expertise to the movement.¹¹⁶

Role of academics. Advocates have been able to rely on a handful of savvy, well-informed academic researchers who were willing to provide timely analysis during the policy-deliberation process, in some cases challenging the assumptions and methods offered by industry participants. Some of these scholars had already become well-versed in contemporary digital media practices, which enabled them to engage comfortably with the often arcane and technical terminology employed in industry filings. To augment their own expertise, researchers such as Mimi Tatlow-Golden partnered with industry professionals, enabling them to conduct detailed and rigorous analyses to challenge the government’s own Impact Assessment models.

These scholars and their colleagues serve as part of the “research backbone” for the advocacy community, offering their skills and knowledge throughout the policy process. Though they may not be at the table during key negotiations with the government, they are available to provide timely evidence that is needed to support advocacy and to counter industry lobbying efforts. For example, one scholar remembered receiving an email from an advocate asking her to look at a proposed exemption for a particular product category. In response, she pulled together a rebuttal documenting the high amount of sugars in such products, and the representatives were able to use this knowledge to strike down the proposed exemption “right there on the scene.” She was also able to respond to other attempts by industry to weaken or delay the rules. Academics played a more proactive and strategic role in coordinating efforts among the advocacy and research communities, including organizing workshops designed to “get everybody on the public health/advocacy side singing from the same hymn sheet and presenting a united front—the same key messages, the best possible evidence, consistent calls, prioritizations, etc.”¹¹⁷

Research played a central role throughout the more than 20 years of policy development. As Amandine Garde explains, each of the incremental steps of the process, which included a succession of policies and regulations, involved a series of research studies, formal government deliberations, policy proposals and decisions, which were all critical to the final policy. There was “important learning” for everyone along the way as all of these policies progressed. For example, the 2006 Ofcom television advertising rules, which also included the development of a UK nutrient profile to determine which foods and beverages were unhealthy, helped lay the groundwork for later, more comprehensive policies. She also highlighted the importance of critical analyses of the watershed policy in determining that this approach would not work online. This included the growing body of research, much of which was commissioned by the government, on the effects of marketing on children’s behavior, along with the creation and testing of various evaluation mechanisms. As advocates, policymakers, and academics learned from these experiences, it became increasingly clear that a more comprehensive approach to the problem of unhealthy food marketing was needed.¹¹⁸

All of these researchers are part of an informal international network of scholars and researchers that are working closely with their governments in Canada, Australia, and other countries, and with the World Health Organization and UNICEF, to help design and develop policy solutions for effectively addressing the impact of unhealthy food marketing to youth.¹¹⁹

Regulating digital. In the time that it took for the TV advertising restrictions to work their way through the regulatory process, the entire media system was continuing to expand and evolve. Among policymakers and advocates, there was a growing realization that addressing only television advertising would be insufficient to reduce young people’s exposure to unhealthy food and beverage marketing. Instead, the complexities of what has now become a large, integrated, data-driven digital marketing system, fueled by Big Data, artificial intelligence, and machine learning, must be taken into account.¹²⁰ Some advocates admit that they were late to the game in including digital marketing in their policy goals, realizing only later that it would be impossible to protect children and teens from these influences without addressing the growing social media, gaming, mobile and other digital platforms that have become so pervasive in young peoples’ lives. As they looked to digital, they drew from more conventional regulatory models, suggesting the use of an illusory “watershed” for the digital media. It was only when they realized how unrealistic that idea was—reinforced by the comments of the advertising industry itself—that policymakers decided to develop an alternative approach for digital marketing. With the initial plan to apply a TV-watershed model to digital media shown to be inadequate, so were efforts to apply an audience-composition model—which was not successful even for television regulation, as academic researchers pointed out. Ultimately the government opted for a bifurcated system, with a watershed set at 9 p.m. for television, but an entire advertising ban for some, but not all, forms of online marketing.

The decision to institute a ban on marketing of unhealthy foods online would suggest that this policy is broad enough to reduce significantly young people’s exposure to HFSS promotions. However, as advocates have noted, the ban still allows many forms of digital marketing to continue. As this and other policies move

forward, it will be important for key public health stakeholders—including regulators and advocates—to be equipped with sufficient understanding of the digital marketplace to develop sophisticated approaches to regulation, and to combat industry strategies for averting regulation altogether. Though digital marketing has already surpassed television advertising in its reach and influence on young people, researchers and policymakers remain slow in their uptake and understanding of how to address the unique features of the digital marketplace. It is also important to underscore that broader, more general policies that are aimed at offering safeguards to address issues such as privacy and unfair marketing and data practices in the tech industry can also affect digital food marketing, and are a useful strategy for advocates and policymakers seeking to reduce the impact of both egregious and covert marketing of unhealthy foods and beverages.

Equity issues. [Throughout the two decades leading up to the 2022 adoption of the TV and online ad restrictions, government white papers and policy statements repeatedly stressed the fact that obesity and related illnesses disproportionately affect children of color and families living in disadvantaged areas.] Political leaders and government officials have promised to promote a health agenda for reducing these disparities and creating an environment—

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including a media environment—that will ensure that all members of the population, regardless of race or income, will have the opportunity to live healthy lives. These values and concerns were addressed in formal policy deliberations and public consultations. However, policymakers ultimately chose to adopt a “one-size-fits-all” approach to regulating advertising of unhealthy foods, concluding that it would benefit all children and, in fact, would likely produce even greater benefits for children in these vulnerable groups.

For example, as part of their 2020 consultative process for considering “a total online advertising restriction for products high in fat, sugar, and salt (HFSS),” the Department for Health and Social Care and the Department for Digital, Culture, Media and Sport solicited “views on the impact of these advertising restrictions on people with protected characteristics and steps that could be taken to mitigate the impact, against the government’s duties under the Equality Act 2010.”¹²¹ One of goals of the consultation was also “to consider the potential for these advertising restrictions to reduce inequality in health outcomes experienced by different socioeconomic groups.”¹²² After reviewing that evidence, the paper concluded that because “children from lower socio-economic households spend more time watching TV and online... these individuals are more likely to be affected by any restriction to HFSS advertising.” In other words, generic policies for reducing exposure to HFSS advertising should have a greater impact on youth in low-income communities without the need to develop any specific policies for targeting these populations.¹²³

However, the limitations of restricting only paid advertising need to be taken into account when considering whether such a policy will redress these inequities in digital marketing to youth of color and those in low-income households. For example, we know that food and beverage brands are appropriating some of the most powerful “multicultural” icons of youth pop culture and enlisting these celebrities in marketing campaigns for sodas, “branded” fast-food meals, and caffeine-infused energy drinks, circumventing traditional paid advertising to reach and engage black and brown youth. This increased exposure to digital marketing of unhealthy foods subjects them to multiple layers of vulnerability, reinforcing existing patterns of

health disparity that many of them experience, which include living in under-resourced communities and lacking access to fresh food and health-care services.¹²⁴ If and when the ban on online advertising is rolled out, it will be important for policy makers and scholars to conduct impact assessments to determine not only if exposure to ads is proportionately reduced for youth of color, but also whether these reductions might be offset by a rise in exposure to other, non-traditional forms of marketing in the online environment.

COMBATTING THE GLOBAL DIGITAL OBESOGENIC ENVIRONMENT

[As advocates, researchers, and policymakers continue their efforts to promote the full implementation of the hard-fought 2021 UK food marketing restrictions, international health bodies are pushing for strong government policies to curb the influence of the powerful food and tech industries on young people’s health, with increasing focus on regulating digital media.] The World Health Organization recently called for “mandatory regulation” of food marketing, which is

As advocates, researchers, and policymakers continue their efforts to promote the full implementation of the hard-fought 2021 UK food marketing restrictions, international health bodies are pushing for strong government policies to curb the influence of the powerful food and tech industries on young people’s health, with increasing focus on regulating digital media.

now viewed as a “children’s rights concern, particularly in relation to the Convention on the Rights of the Child.”¹²⁵ In a July 2023 report, WHO offered a set of guidelines for governments to follow, identifying the most important elements of successful regulations: effective laws “protect children of all ages; use a government-led nutrient model to classify foods to be restricted from marketing; and are sufficiently comprehensive to minimize the risk of migration of marketing to other age groups, other spaces within the same medium or to other media, including digital spaces.”¹²⁶ WHO’s regional Office for Europe has urged all EU member countries and stakeholders to combat “obesogenic digital environments.”¹²⁷

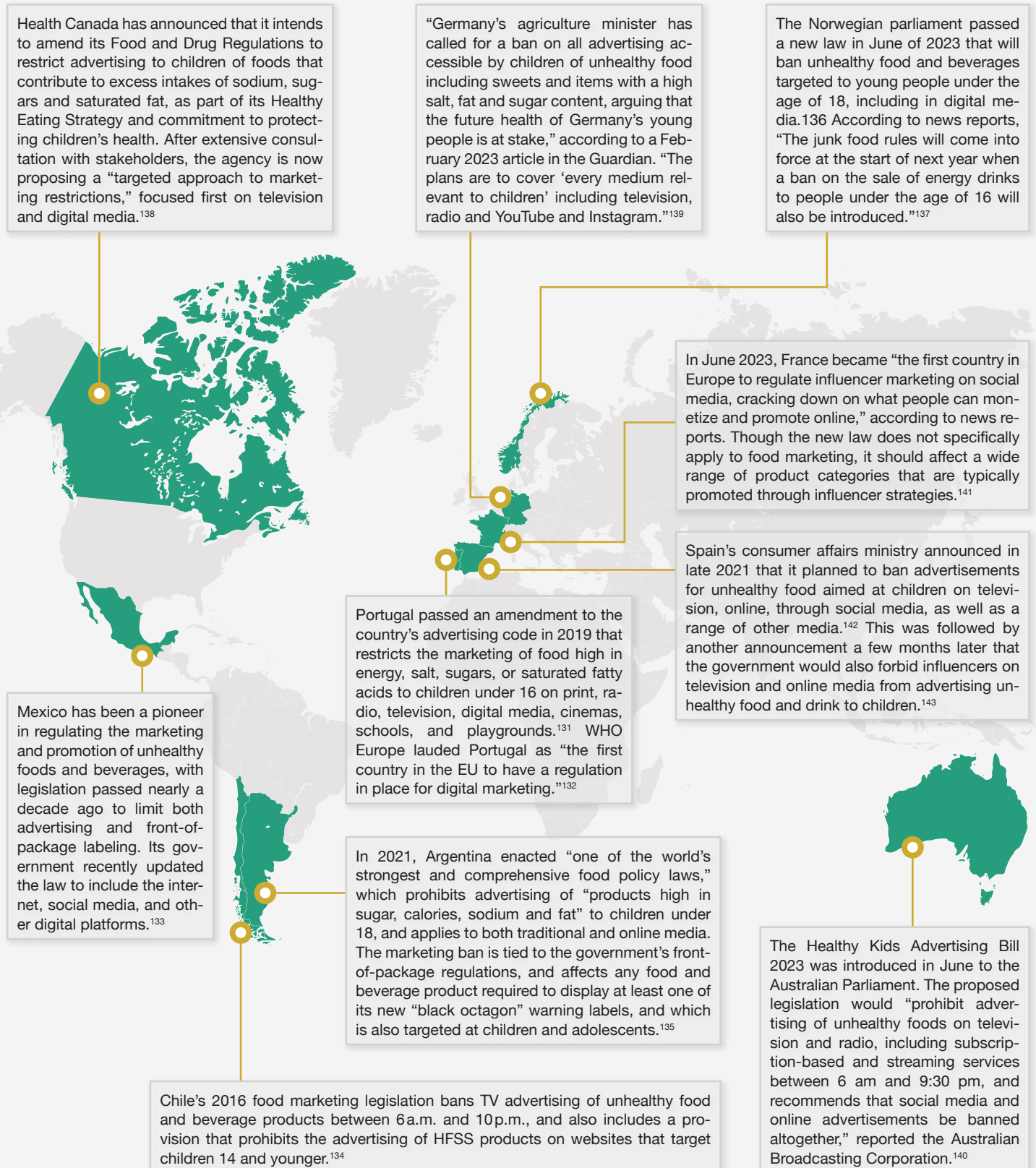
There has been a flurry of recent policy activity in a number of countries, with many governments introducing provisions that specifically address digital media.¹²⁸ It may be too early to determine whether these policies will be able to rein in the pervasive and increasingly sophisticated digital strategies deployed by global food and beverage companies.¹²⁹ Our own brief review suggests that most policy development has not involved the same kind of in-depth, comprehensive, multi-year efforts undertaken by UK authorities; in some cases, internet, digital, and social media provisions appear to have been tacked on to existing policies or those in development. Many of the new regulations have been introduced only in the last few months, and some are still in development. Scholars and advocates have already raised concerns about gaps and flaws in some of the new policies. For example, several recent academic articles assessing Portugal’s 2019 amendment to its advertising code have pointed out that its failure to include influencer marketing in its restrictions (a flaw shared by UK’s policy) will allow celebrities and social media stars to continue promoting unhealthy brands and products to their huge numbers of online followers, circumventing the noble intentions of the advertising restrictions to shield young people from exposure.¹³⁰ And industry forces are likely already mobilizing to thwart new policy initiatives and weaken implementation of existing ones. Nonetheless, the rate and scope of change across these and other countries is noteworthy, suggesting that governments may have finally reached a tipping point in the realization that only comprehensive regulations will be able to reduce young people’s exposure to the flood of persuasive messages targeting them across the contemporary media and marketing landscape.

Recent policies and health initiatives in the European Union could also affect the regulation of unhealthy food marketing to young people. For example, the EU’s Digital Services Act (DSA) has established new safeguards for protecting children and adolescents online. In addition to banning the use of targeted advertising for minors, the DSA prohibits “manipulating users’ choices through ‘dark patterns’” and other techniques. While the DSA is currently in effect, its full enforcement requirements will begin in early 2024.¹⁴⁴ The “Best-ReMaP” public health initiative is a three-year “joint action” by EU member states focused on a core set of issues, including the role of sustainability, product reformulation, public procurement, evaluation and “reducing the impact of harmful marketing of foods to children.” Its governing structure includes a consortium of governmental health, child-welfare and food-safety agencies, a host of affiliated entities, and specific mission-directed project teams and lead agencies.¹⁴⁵

[When compared to many countries around the world that have instituted food marketing regulations, the U.S. remains an outlier, due to a variety of legal, political, and historical reasons. The issue has fallen off the policy radar in recent years, and regulatory agencies have been reluctant to revisit it.]¹⁴⁶ However, there is a robust public debate and a considerable policymaking

When compared to many countries around the world that have instituted food marketing regulations, the U.S. remains an outlier, due to a variety of legal, political, and historical reasons. The issue has fallen off the policy radar in recent years, and regulatory agencies have been reluctant to revisit it.

SNAPSHOTS OF ONLINE FOOD MARKETING POLICIES AROUND THE WORLD



Obesity remains a global problem, and addressing it effectively will require global collaboration.

activity around a broader, yet highly significant and related, set of issues. These include legislative proposals to ban “data-driven advertising” to children and teens, efforts to update and raise the age limit for the 1998 Children’s Online Privacy Protection Act (COPPA,) comprehensive privacy policy legislation that includes provisions for children, as well as a recently passed “Age-Appropriate Design Code,” passed in California and modeled on UK policy.¹⁴⁷ The U.S. Federal Trade Commission is also currently conducting a broad inquiry into regulating “commercial surveillance,” which includes considerations related to children and teenagers.¹⁴⁸ The focus of much of the U.S. policy debates over technology has been more on mental than on physical health. For example, in May 2023, the White House issued a set of “actions to protect youth mental health, safety and privacy online,” highlighting how “the number of children and adolescents with anxiety and depression has risen nearly 30% in recent years.” It also raised concerns over the “sensational and harmful content” delivered to young people, and called into question the “excessive data collection” that generates “troves of paid advertising.” The U.S. Surgeon-General issued an advisory on social media and youth mental health, which he called “an urgent public health issue.”¹⁴⁹ What will ultimately come of these multiple initiatives remains to be seen, but successful passage of laws and regulations to restrict online data and marketing practices could also significantly reduce young people’s exposure to digital promotion of unhealthy foods and beverages.

[Obesity remains a global problem, and addressing it effectively will require global collaboration.] If significant progress is to be made in curbing the influence of digital food marketing, it will be important for policymakers, scholars, and activists to coordinate strategies for successful policy development, advocacy,

and application of food-marketing restrictions. Digital marketing is complex, highly technical, and constantly evolving. Regulators will need to stay abreast of fast-moving developments, tracking the deployment of emerging practices and techniques and designing policies to address them.¹⁵⁰ [Food, technology, advertising, and data companies must all be held accountable.] While there may not be one piece of “model” legislation that would apply in every region or country, there are important policy principles, key provisions, and practical lessons to be gleaned from real-world advocacy experiences.¹⁵¹ Regulating digital marketing may need to involve coordination among a number of different agencies, as in the case of the UK policy, where media and tech industry regulators were able to work with health authorities to research and design policies that would be effective across a changing media landscape. A number of questions need to be considered: For example, to what extent can broad regulations that restrict commercial data and privacy practices impact the marketing of food and beverage products in the digital environment? How do you build in effective ways to evaluate the impact of the policies? What has been tried in other countries and what works best? The industry has an enormous amount of measurement and other proprietary data on what works and what doesn’t work in digital marketing campaigns, including effects on

Food, technology, advertising, and data companies must all be held accountable.

individual consumers and those within multicultural demographic categories. How can regulators tap into that information? Finally, how can we ensure that the policies enacted to protect young people from harmful marketing of food and beverages will be able to address discriminatory practices and health disparities that disproportionately affect the most vulnerable members of the global population?

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