



Secondary Legislation Scrutiny Committee

Uncorrected oral evidence: Food (Promotion and Placement) (England) (Amendment) Regulations 2023

Tuesday 17 October 2023

4 pm

Watch the meeting

Members present: Lord Hunt of Wirral (The Chair); Lord De Mauley; Baroness Harris of Richmond; Lord Hutton of Furness; Baroness Lea of Lymm; Baroness Ritchie of Downpatrick; Lord Rowlands; Lord Russell of Liverpool; Lord Thomas of Cwmgiedd.

Evidence Session No. 1

Heard in Public

Questions 1 - 12

Witnesses

I: Neil O'Brien MP, Parliamentary Under-Secretary of State, Department of Health and Social Care; Kevin Dodds, Deputy Director, Healthy Weight and Nutrition Policy, Department of Health and Social Care.

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Examination of witnesses

Neil O'Brien and Kevin Dodds.

Q1 **The Chair:** This is a formal evidence-taking session that is on the record and being webcast live. A verbatim note is being taken, which will be put on the public record in printed form and on the parliamentary website. We will send you a copy of the transcript of the session for the amendment of any errors. Before we start, I need to ask my fellow committee members whether they have any interests that they wish to declare for the record. There being no interests, let me say that this session is scheduled to last for up to 60 minutes. We may ask you to provide supplementary information to support your answers.

I start by saying that we are delighted to welcome Neil O'Brien, the Parliamentary Under-Secretary of State for Primary Care and Public Health at the Department of Health and Social Care. Would you like to introduce your colleague?

Neil O'Brien: I will leave him to introduce himself. I am grateful for your time and for having me here today. I wonder whether it would be helpful to add a bit of framing context at the start of the session. There are issues of both policy and process here. In terms of policy, I want to reassure the committee that the Government remain extremely passionate about and committed to tackling obesity, which is a huge and growing problem for the country, people, the NHS and so on.

We have done a huge number of things. We have the sugar tax. We have brought in calorie labelling for cafés and restaurants. We have brought in location restrictions. We are bringing in an advertising watershed in 2025. We are now spending about £200 million a year on healthy school food, £330 million a year on school sport through the PE premium and £300 million in capital for youth facilities. We are doing a lot on obesity and, indeed, on the clinical side by bringing in new weight loss drugs. The Prime Minister has announced £40 million to start rolling those out.

The reason why we made this decision, which was a difficult one, was simply the unprecedented level of food price inflation. As the committee will know, over the past decade, food price inflation has been about 0.6% a year. As you all know, food is a larger part of the consumption basket of poorer households, so that is obviously regressive when it is higher. It went from being 0.6% a year to being, in March and April, about 19%—a staggering record level—because of the Russian invasion of Ukraine. It is still around 14% in the year to August.

We did not want to do anything at that point to make the problem of food price inflation, which hits poor households so much, any worse than it already was. That was the policy rationale. It does not reflect any backing away from our desire to tackle the problem of obesity. It is simply that it was a terrible time to do anything that could have even slightly raised food prices further. With that, I will leave my colleague to introduce himself. I look forward to getting into some of the questions of process as well.

Kevin Dodds: Good afternoon. I am the Deputy Director for Healthy Weight and Nutrition. I have been in post for three years. I am here to support the Minister and support you in your inquiries.

The Chair: That was a very helpful opening statement. Thank you again for coming to answer our questions. We have asked you to come and answer our questions in person, Minister, because, as you will be aware, this is a second offence by the Department of Health and Social Care on this specific policy topic. Our questions, as you have already indicated, will address both the policy implemented by this instrument and the deficiencies in the way in which that policy decision has been presented to the House.

I will ask the first question then hand over to my colleagues to follow up with further questions. The lack of supporting detail in the Explanatory Memorandum to the preceding 2022 regulations was strongly criticised in our 15th report of this Session. It led to a regret Motion. In that debate, Lord Markham, your ministerial colleague, undertook to feed Peers' concerns back to the department. Why, then, does the Explanatory Memorandum to these 2023 regulations have so many of the same flaws? In that 2022 debate, Lord Markham provided some analysis of the progress of the overarching policy in reducing calorie intake and portrayed this multibuy element as a minor feature in the wider programme. Why did the Explanatory Memorandum to this instrument not offer a similar contextual explanation?

Neil O'Brien: Particularly for the 2022 regulations, I apologise profusely that we did not follow the 21-day rule, which is obviously extremely undesirable from my point of view. It was the result of the churn of Ministers at that time; I apologise again for that. With this year's regulations, partly because of that, we ensured that we followed the 21-day rule, which is an important principle.

On the content of the consultation, it was an extremely narrow one in one sense. The policy has not changed; it is merely delayed. It is not that we are not doing it. Everything about it remains the same. It is not that we are overhauling it, changing it, changing the shape of the profile of the benefits or anything like that. It is simply about moving it to a point where we firmly expect that food price inflation will be lower and will no longer hit poorer households in the way it has been over recent times.

In terms of the detail of what the regulations will do, we know that they will have a cost. There is a transition cost for businesses. We regard it as, over the longer term, the right policy still but there is a cost. There is a £5 million familiarisation, product assessment and IT cost and a net annual cost to businesses of about £7 million. We might regard it as a good policy for the long term—we still do—but one does not, for the reasons that I gave at the start, want to do anything at this particular time that risks adding to food prices. That is the explanation for why it is as it is. It is not a change of policy; it is simply a delay.

Kevin Dodds: That is exactly right. As you mentioned, Lord Markham undertook to feed back the very strong feedback, and he did that. There are things we can point to that have changed. The 21-day rule is the most obvious one. There were other things that we tried to do. It sounds like they may not have hit the spot. In the Explanatory Memorandum, for example, although it was a narrow and targeted consultation, and therefore did not have many responses, we tried to set out the nature of those responses and the issues that were raised. We have tried to put some extra information in there.

We can take on the chin what you are saying, which is that that does not meet what you were expecting, but it certainly reflects an attempt on our side to use that more fully. I know that there are other points as well around the impact assessment, for example, that we will probably come back to. Those were also points that we have reflected on but we have pointed to the published IA as being the best one to use.

Neil O'Brien: To address your question, which I forgot to address there, you mentioned that Lord Markham had suggested that, of the two policies, the multibuy policy and the location policy—they are twin policies, in a sense—the majority of the benefit comes from the location policies, which were put into effect in 2022. That is correct. About 96% of the health benefit comes from the location restrictions. The residual is in the multibuy policy. In terms of the health impact, the one that we have gone ahead with is the much larger one, so he was correct to say that.

The Chair: You may be aware that our Leader in the Lords and your Leader in the Commons have laid down some pretty clear guidelines as to the nature of an Explanatory Memorandum. It has to explain so that Members of both Houses are aware of exactly what the instrument is seeking to do. We are increasingly vigilant about the nature of these Explanatory Memoranda. They should be simple, easy to read and readily understood. If we can get that message through, legislation will undoubtedly improve, at least in the understanding of the legislators who have to discuss, debate and pass these regulations.

Neil O'Brien: I absolutely accept that, as a long-term user of those Explanatory Memoranda. As a Back-Bencher and someone on committees, I have always found them extremely useful. If this has fallen short on this occasion, I can only apologise.

Q2 **Lord De Mauley:** In that debate on 6 December on the regulations, Lord Markham said that Tesco and Sainsbury's had already implemented a voluntary ban on multibuys—indeed, that he hoped and expected that the rest of the market would follow voluntarily. Has that trend continued? It is now 10 months on. You presumably have a view on that.

Neil O'Brien: Tesco and Sainsbury's have maintained their policies but we have not seen large parts of the market go over on to a voluntary policy. We have not seen a wholesale flipping over into that over the past 10 months. The need for the legislation will remain and we hope to implement it at the right time.

Lord De Mauley: That seems to answer that.

Q3 **Lord Thomas of Cwmgiedd:** As I understand them, the original regulations allowed for a 12-month transitional phase. Although that has been left in these regulations, you have delayed it by two years and consultees pointed out that the industry actually had an awful lot of time due to the addition of the two years. Why do you need the other 12 months?

Neil O'Brien: Before I turn to Kevin on this point, broadly speaking, it is a problem of avoiding food waste, which we are all keen to avoid. Where there is a transition mechanism, it is not for every single product. It is for things where there is built into the packaging something such as "buy one, get one free", "three for two" or "20% extra". There is a difficulty about when you must start and stop because things have a shelf life and you do not want them to have to be removed from shelves simply because of the packaging. That is the rationale for having that 12-month window, which we still think is broadly necessary. I wonder whether Kevin could give a more erudite explanation.

Lord Thomas of Cwmgiedd: With respect, you forget, I think, that it was 12 months in the original regulations and you have now added two years. Are you, or are the manufacturers, seriously suggesting that all this stuff is manufactured and packaged such that it needs three years to unwind it?

Neil O'Brien: It is not that things are necessarily lying around for three years. It is all about when you stop; different things will stop at different points as a result of the 12-month window.

Lord Thomas of Cwmgiedd: Can you explain that to us so that we understand it? As the Chair has rightly said, it does not make much sense to the ordinary, non-technical person that you need this immense period of time. One knows about chocolate, potatoes, crisps and things. They do not normally last all that long. If you cannot give the answer now, surely the manufacturers would be able to provide us with a detailed analysis of why three years are needed.

Neil O'Brien: The timelines are different for different products. For things where it is not on the packaging, right from the start of the restrictions, you will not be able to sell them in that same volume price way that you have been doing before. There are quite long timelines in terms of what you purchase, what you package and production runs for things. Although I can see that one could have a policy debate about it, if you are trying, as we are, to avoid a load of food waste, the rationale for it is broadly that one.

Lord Thomas of Cwmgiedd: You must have the facts and figures by illustration to a particular product at your fingertips, because you made this policy on that basis.

Kevin Dodds: We did. As you say, it is something that was raised by consultees, so we had to consciously weigh up the arguments both ways. It is fair to say that there are arguments both ways. The context for this is

that the intention was to delay the policy; to make it clearly understood what was happening would be to delay the policy. What people were asking for, albeit for what I am sure they thought was a good reason, would have been to change the policy.

Lord Thomas of Cwmgiedd: You had a 12-month delay originally. I understand that. You have now brought in another two-year delay. Why do you still need the original 12 months? If you could illustrate it by reference to a product or production line, it might help one understand what is really rather a difficult argument.

Neil O'Brien: Rather than us coming to this now, why do we not give you, via letter, some examples of the timelines and issues?

Lord Thomas of Cwmgiedd: This must condescend to detail. For example, let us take a packet of crisps made by such and such a company, or a chocolate bar, which are what are in multibuys. What is it in that production process that needs three years rather than two years? That is the key point.

Kevin Dodds: It is the key point but the answer is that the intention is not to give a three-year lead-in time. The intention was genuinely to delay the policy in order to give some space to industry. If we were expecting that, while delaying the policy, industry would still be undertaking the same steps to go through its product lines and adjust its packaging before the policy comes into effect—essentially, to say that you should be using that time now—that would not be fully delaying the policy. You would not be fully ameliorating the £5 million transition cost and the £7 million ongoing cost. You would start to bring them into the current period. The objective was to fully delay any impact on industry, including by suggesting that it would not need to use that extra time to start doing now things that it would have had to do. It should be able to delay that by two years.

Neil O'Brien: It is worth also adding, as we wrote to you, that it is not just about the product. Some of these products, such as soft drinks, have a very long shelf life. It is also about the timeline for commissioning, buying, purchasing and producing them, and so on. There is a whole lead-in to the thing appearing on the shelf, as it were. We will get you some more details.

Lord Thomas of Cwmgiedd: I hear what you say but I still simply do not understand why you give them three years. You were originally giving them 12 months and you are now giving them three years, but there we are.

The Chair: Thank you for your offer to supply some further detail. Several of my colleagues want to ask supplementaries.

Q4 **Baroness Harris of Richmond:** Good afternoon, Mr O'Brien. I apologise for having to be a remote member of this committee. The change in policy was announced in 2023. We are told that all consultation responses were "considered in light of ensuring this instrument serves the intended purpose of delaying the implementation of the volume price promotion restrictions". Why did you bother consulting at all if the decision had

already been made? Further, why did you not publish the views of organisations representing health interests?

Neil O'Brien: There are two parts to your question. The answer to the first of them is that it is always sensible to consult on the detail. You often learn something about the detail of what you are doing. At least, it prompts difficult questions for us to ensure that we have truly scrubbed every angle of it in terms of the detail. Secondly, you never know what might come forth and whether there is some clinching or killer objection or counterargument, which did not come forth on this occasion.

On the debate about the policy, there is something a bit different about simply delaying a policy versus changing it or inventing a new one. We were not doing either of those things on this occasion. The policy remains exactly as it was. Indeed, we have just had a debate about whether it should have done so, but it remained exactly as it was and was simply delayed. That makes it slightly different from if we had been inventing this policy from scratch or announcing something completely new.

The Chair: There is also the point about the publication of the list of organisations.

Neil O'Brien: We consulted with a combination of health NGOs, people in industry and enforcement officers. It was a very narrow consultation in the sense that it did not have a con doc because it was a very simple question. It was simply to delay an existing policy rather than tweak it in any way, so it was a slightly different exercise from us consulting on our planned clamp-down on vapes or our planned smoke-free generation measures, which have to go through an extensive process because there are many different variables, choices and new and novel questions. With this, it was really just taking one thing and changing the start date.

Kevin Dodds: That is exactly right. On the consultation, there is still a value to that. We wanted to make sure that the policy was well understood by the people who would be implementing it. In that sense, they had some extra time to check the legislation and reassure us that our feeling that it was clear was matched by the people who were going to have to implement it. Given the wider points you make about making sure that secondary legislation is always done in exactly the right way, there will be occasions when legislation is not exactly right and has to be corrected. Making sure that that is not the case, by exposing it for feedback before you lay it, is probably an example of good practice.

Q5 **Baroness Harris of Richmond:** The question that I asked initially has not really been answered. It is the same point that Lord Thomas made about being absolutely clear with whom you are consulting and putting that down, even if you do not consider that it is terribly important. It is important for those people with whom you have consulted to know that their views have at least been taken into account—or not, as you seem to be implying here.

Neil O'Brien: In one sense, all the different groups and individuals we talked to will know the outcome of the consultation. They know what we decided to do and they know that they were heard by the department as

we made the decision. The deficiency is not in the question; it is in my understanding of it. I am not sure that there is more one can say to that point.

Q6 Lord Rowlands: Listening to your responses to Lord Thomas's questions raises one very simple question in my mind: is this going to be the last delay in regulation on this issue or will we be here again in 12 months' time?

Neil O'Brien: Our policy is to bring this in in 2025. If you look at the food price inflation that I mentioned at the start, we can see that it is now starting to come off. It is still at an exceptionally high level. It is down from 19% to 14% in August, so still very high, but it is now coming down. That is also the rationale for having some clarity, having delayed it by a year in 2023.

Lord Rowlands: You can assure us that we are not going to be in this position next year with yet another regulation.

Neil O'Brien: One of the reasons for putting it to 2025 was to get to a point of certainty and not end up kicking the can one year at a time on it. It is to have it at a point where we can be a bit more confident that the current inflationary pressures will have washed out of the system.

Lord Rowlands: So we are clear, can we be reasonably reassured that this is the last?

Neil O'Brien: Yes. We want to do these things. We regard them as important. We still think that they are the right policies. It is a delay. It could not have been worse timing to bring it in, really. That was the choice that we were faced with. As I said at the start, it does not mean that we are backing away from these policies.

Q7 Lord Russell of Liverpool: Minister, I was a headhunter for 30 years. We did a lot of work with some of the enormous food and drink manufacturing companies that manufacture these products. I think you will know yourself from your background working with Mr George Osborne that, if there is one thing that industry requires of a Government of whatever political persuasion, it is a degree of certainty. A degree of certainty enables you to plan ahead, particularly when you have large, multinational supply chains where you have to plan far ahead.

In your consultations, it does not appear that you consulted with the right people who run the supply chains. In turn, the efficiency of those supply chains sets the price that the manufacturers will try to get from the retailers. It does not sound as if your consultation actually spoke with those people, because I suspect that the cumulative delays are significantly increasing the costs for these large manufacturing companies rather than making their lives simpler.

Neil O'Brien: There are several things to say about that. On your first point about the desirability of certainty, I completely agree. That is one reason why we are putting this off by a year again: to move it to a point in 2025 where we think that we should be safely away from inflation so that

it would be credible and everyone could work towards this deadline and have the certainty that they want.

One small point I would make is that this particular industry and the unavoidably complex nature of food and nutrition is such that that was one argument for not, as it were, monkeying about further with the legislation, simply delaying it rather than reopening it. As you will know, as a committee that has followed these issues, there are a lot of different interests that will always want to dispute where the nutrition profiling model has put their product and a lot of questions from parliamentary colleagues about why such and such a product is in scope of HFSS and another is not.

Because of the intrinsic nature of the food business, it is not particularly easy to explain to people why this thing is in this category, why this thing is regarded as a more healthy product within that category and so on. Not wanting to reopen that, having made a clear decision that manufacturers and retailers can operate off the back of, is one reason for not reopening these things. We see the same debates about the watershed and what is in the scope of that. Indeed, the same was true of the location restrictions. One reason why we went ahead with those but not this was the retailers had already got quite far down the track in implementing it. It would have been fruitless to have delayed it at that point.

Kevin Dodds: I just want to reassure the committee that the inputs of industry were absolutely critical. We speak to them regularly, as you would expect, particularly through the representative bodies. We shared and consulted with the representative bodies in this delay consultation as well as the full ones. I would agree with you that what we hear most consistently is that certainty is the thing that they want.

Neil O'Brien: Your underlying point is a good one that we are very seized of. One reason why we have created the Food Data Transparency Partnership is exactly because of a desire for the department to have a better understanding of what is going on in industry and a better dialogue with industry than we have had to date, rather than having to rely on commercially purchased data on the composition of people's diets. It is also so that we can talk to manufacturers and retailers more directly about what is going on out there.

Q8 **Baroness Ritchie of Downpatrick:** The impact assessment has not been updated, apparently because this instrument is being made only to delay the implementation date of the volume price promotion restrictions by two years. That would imply that obesity rates remain constant. Can you provide us with the latest statistics?

Neil O'Brien: I can. Among adults, we had around 26.2% obesity in 2016 and 28% in 2019. Among reception-age children, we had around 9.7% obesity in 2018-19 and 10.1% in 2021-22, so it has gone up.

This is a problem that we are seeing all over the developed world, although obviously there are variations. Countries such as Japan and Korea are

doing better. They are actually on a decay path. Across the rest of the developed world, we see this explosion in obesity, which is one reason why we are taking all the different measures that I mentioned at the start and why we are particularly interested in the rollout of the new anti-obesity drugs as a potentially game-changing event in that potentially devastating global trend. We think that those drugs have the potential to become, like statins, something that is adopted on a large scale and causes an inflection in the terrible trend that we have seen over 40 or 50 years on obesity.

One thing I would say about the nature of this policy is that it is not so much that we are describing it simply as a delay because nothing is changing on obesity. Obviously, it is over time. I would almost describe the nature of this policy as exponential, in terms of when the benefits of it accrue. They are very much backloaded towards the end of the 25-year period that we looked at in setting it out. Because of the way in which obesity and BMI work, the gains at the start of it are relatively limited but accrue to something substantial and really worth having over the much longer term.

I am not quite sure how to phrase this but, in terms of the delay over the two years, in the first instance, given the numbers that I have mentioned, the 1.8% rise over four years will not be particularly perceptible. The key thing is to do it. In the long term, it will make a difference. In the short term—I will be completely candid with you—it will not make a huge amount of difference. The benefits accrue over the long term. That is how I would frame it.

Kevin Dodds: Maybe it is also worth reflecting on the obesity statistics that you asked about. Those are the latest statistics. You will have noticed that they are not completely up to date, just because of the way that these are collected as national statistics. There are surveys and they need to be quality assured. Even if a new impact assessment were to be done now, which we did not think was needed because the policy was the same, it would not be able to show child or adult obesity following the delay. The very latest data that we have is still from before when the policy would have originally come into being.

Neil O'Brien: When you look at these trends, there are not sudden inflection points, either in this country or anywhere globally. There is a big problem, which is growing over time. That fact, sadly, has not yet changed but there are things that we are working on that have the scope to change it over the longer term.

Baroness Ritchie of Downpatrick: I have a further question. The original impact assessment stated that "around a fifth of children in England are overweight or obese by the time they start primary school aged four to five, and this rises to one-third by the time they leave aged 10 to 11". Does this not mean that, by delaying the start of these restrictions for a total of four years, more than 100,000 children will have become fat, which the original measure could have helped to prevent? Further to that, surely a delay in the implementation date will only contribute to the obesity figures.

Neil O'Brien: Those reception obesity figures that I mentioned to you are not changing a huge amount over time. As I said, in 2018-19, it was 9.7% and, by 2021-22, it was 10.1%. There is a lot of churn in the data around the pandemic. The quality of the data suffered and lots of other things happened so the official data is still settling after that.

We know that there is a problem. That is the reason why we are making this suite of policies. We can see that obesity levels, certainly among adults, are rising over time. You can debate whether it was the right thing to delay this policy; that is absolutely a reasonable thing to discuss. I stress that, on balance, our view was this: because of the unprecedented nature of food price inflation and the way it was hitting poorer households—by the way, the Government were giving every household, on average, about £3,300 worth of energy price and direct financial support over that period—it was right to delay this.

You could argue the other way. You could say, "This is such an important thing to do that you should have got on with it". Our judgment, on balance, was that it was right to delay it. One could take the other view; reasonable people could.

Baroness Ritchie of Downpatrick: Will you be carrying out a further assessment in the next six or 12 months around the whole issue of children and obesity?

Neil O'Brien: We will continue absolutely to monitor what is happening with childhood obesity very actively. We fund this thing called the National Child Measurement Programme, which is a kind of super screening where we measure all children in primary school. It is not just sampling; it gives you incredibly granular detail, school to school and individual to individual. We are working on ways to further improve the way we use that policy. We will continue to monitor everything that is happening in this space because it is hugely important.

The Chair: So I see. We are of course quoting from the impact assessment. There is a worrying statistic that, from the start of primary school to when children leave primary school, there is such a significant difference. Will you continue to monitor that particular area of statistic? I think that it is one that will worry a great many people.

Neil O'Brien: Definitely, yes. We monitor it in great depth. We can see that there is a huge gradient by income deprivation. It is much higher in income-deprived areas. It absolutely is a big focus for us. We will continue to work on this and do things on it.

Q9 **Baroness Lea of Lymm:** May I discuss the benefit-cost analysis and implications of deferring the restrictions policy? As I understand it, the original impact assessment had a high ratio of monetised benefits to costs. In fact, it said that the ratio of benefits to costs was something like 14:1 over a 25-year period and, I think, there was a present value estimate in there as well. Presumably, the cost of deferring the policy by way of deferred benefits is not trivial, although I note your comment that the

location policy has been implemented and the contribution from that was part of the calculation.

I looked at the impact assessment and I thought that, even though that benefit-cost ratio seemed so high, nevertheless it seemed to be slightly underestimated. It struck me that a couple of items had been excluded, although I am sure that you will put me right if I am wrong. The monetised cost referred to health benefits, social care benefits, NHS cost savings and the boost to the economy because of lower premature mortality. Those estimates seemed to exclude the fact that there will be lower sickness benefits payments—or have I missed something? They struck me as being quite relevant. Also, there did not seem to be any estimate of the benefits of the economic boost because of lower morbidity—that is, less sickness.

In other words, those two components seemed to have been missed out. Under those circumstances, you may have thought, “We have underestimated the benefits. Therefore, we have underestimated the potential costs of deferring the policy”, if you know what I mean. I wonder whether the department had looked at these particular issues since the original impact assessment, which was signed off in 2021. If I may say so, specifically, when they were talking about the economic boost because of lower morbidity, they said that their model did not have the parameters to calculate it. In other words, it was too difficult to estimate. Is that still the case? Have there been any developments on these components? I am just curious.

Neil O’Brien: It is a great question. It definitely takes into account both mortality and morbidity; it looks at both in different ways. Part of the answer is the point I was making earlier on: if you are trying to work out the BCR of a policy that is running over 25 years and the economic benefit of it is something like £283 million over a 25-year period, because of the timescales that we are talking about, the uncertainties, even with the best economic forecasters in the world, are inevitably extremely high.

It attempts to look at mortality and the effect of that in giving you a lower workforce, not to put it in too stark or inhuman terms, but it also looks at morbidity via effects on the employment rate. It has both of those things in it although I would, particularly knowing who I am speaking to, caution against overly reifying these things to the umpteenth decimal point where we are talking about a health benefit costed out into economic effects. It is difficult. Over 25 years, there is even more uncertainty. It is probably about as good as it can be when you are trying to cost the economic impact of something with high uncertainty over a really long period. It is as much sense as we will get, but you know better than anyone else I can think of the difficulties of such a forecast.

Baroness Lea of Lymm: Do I gather that the department has not done much more work on this?

Neil O’Brien: Because the policy is, broadly speaking, exactly the same and the benefits are following that exponential curve over 25 years, in reality, little will have changed. It is over such a long period of time and the uncertainty is so high that the two-year delay is not the main thing

that is going to introduce a source of error into that economic impact—
[*Interruption.*]

The Chair: Minister, will you have to leave us to vote?

Neil O'Brien: Yes.

Sitting suspended for a Division in the House.

On resuming—

Neil O'Brien: I apologise for that.

The Chair: We understand; it is all part of democracy. We are grateful to you for returning.

Q10 **Lord Hutton of Furness:** Minister, can I take you back to the Explanatory Memorandum? It states that the delay you have announced will support businesses and allow them to focus on making food more affordable, and will make it easier for consumers to make healthier choices. What is the evidence that this further two-year delay will achieve either of these two things? There is no evidence for that in the Explanatory Memorandum.

Neil O'Brien: We can see that there is definitely a cost to implementing this policy. I have mentioned some of the different types of cost around familiarisation, IT and so on. There is then a second question about, given that there is a cost, who bears it. It is always difficult in economics to know where the incidence will be but we can see that several of the supermarkets are showing declines in profitability, which is supportive of the hypothesis that they are not just going to trouser all this extra resource—that is, there is not a huge amount in profit. It will have an impact and be passed through to customers as well.

For example, Asda saw a decline in its profitability of about a quarter, while Morrisons saw its adjusted earnings down about 15% last year. I do not think that anyone in the debate disputes that there is a cost in the short term of implementing these things. There are reasons, although one can never prove these things, to think that it is not simply going into increasing supermarket profits but into having a positive impact, albeit marginal, in terms of not increasing food price inflation.

Lord Hutton of Furness: Can you explain to us how this change in policy is going to make it easier for consumers to make healthier choices? You say that that is what this change in policy will do.

Neil O'Brien: The core logic of it is what I set out at the start, rather than anything else. It is about delaying, past the point where we have this peak of food price inflation, this policy, which has a cost in the short run, even though we think that it has benefits in the long term. That is the logic for what we have done.

Lord Hutton of Furness: That is the logic for easing the inflationary pressure on consumers. It is not an argument for allowing them to make healthier choices. That is quite a different argument, is it not?

Neil O'Brien: Perhaps we have phrased this badly. By giving them more money, it is giving them the choice. You could say, "Hang on a minute: the reason why you chose these products is that they are the less healthy ones and we know that the volume restrictions tend to be more focused on unhealthy products". That logic is still the case, which is why we are doing the policy.

On the point about choice, not just this but the things that we have done in terms of direct support for households have been about giving people choice, which they can then use to make healthy choices. As I say, the core reason why we have done this is to avoid the cost. We have discussed before Lord Markham's comments that there have been some voluntary things happening among the retailers. There are good things being done all the time by producers, which have made voluntary reductions—particularly in things such as salt, which have made a big difference over time. The core reason why we have done it—I will be completely blunt with you—is to do with the cost rather than anything else.

Lord Hutton of Furness: I understand that and I have a grain of sympathy with you on that. However, you are making two big new policy statements here as to why this delay is a good thing: it is going to allow businesses to focus on making food more affordable and is going to make it easier for consumers to make healthier choices. There is not any evidence, is there, that either of those two things will happen because of the delay in the restrictions on multibuy offers? There is no evidence; if there was, it would be in the Explanatory Memorandum.

Neil O'Brien: There is a resource cost and a reduction in people's choice from having this cost imposed on them as consumers. There is an opportunity cost to the retailers, which they can use to do other things. I would not overstate that as the logic of the policy. It is to do with the cost.

Lord Hutton of Furness: It perhaps should not have been in the Explanatory Memorandum.

Neil O'Brien: It sounds like we should have rephrased that.

Kevin Dodds: It is a small point but I recognise that it is an important one. What we were trying to convey there is that the delay was for businesses through the impact of not having the £5 million for transition costs and £7 million for ongoing costs.

Businesses then have a number of different objectives. We know that and we are not absolutely clear how they will respond. We know that they were interested in reducing cost to consumers and in helping consumers make healthy choices. In some cases, that was because they voluntarily followed the volume price reductions. In other cases, they have done some voluntary reformulation. In some cases, they are putting healthier products on promotion. The logic we were trying to set out in the Explanatory Memorandum is that step one is to support businesses in order to allow them to focus on making food more affordable and/or making it easier for consumers to make healthier choices.

Lord Hutton of Furness: They might just trouser the savings and distribute it to their shareholders, might they not? That is a perfectly rational decision that these companies might make. You have completely overblown the claims here in your Explanatory Memorandum. There is no evidence to support either of these things and, as you have both said, neither of them might happen, so what is it doing in the Explanatory Memorandum?

Neil O'Brien: You make a fair point about the framing of it. The emphasis in the document, in fairness to us, is on the cost saving. In terms of our public communication about why we are doing it, it has been to do with that. As Kevin says, there have been some positive trends in the industry. Tesco and Sainsbury's have nigh on half of the market share so that is a positive thing. Some retailers have been doing good stuff, as have some food manufacturers. If you are saying, "You have overstated that particular part of the argument", I take that on the chin.

Sitting suspended for a Division in the House.

On resuming—

Lord Hutton of Furness: I have a quick point to make, Minister. You have stressed repeatedly to us today the reason for this delay, which is about the impact on food inflation. Can you tell the committee what you think the impact of delaying this policy has been on food inflation?

Neil O'Brien: I am not sure that I can give you a number for that. I can tell you that the sign is unambiguous. It is clearly positive in not increasing it. In terms of trying to take an individual policy decision like this and turn it into a macro forecast for inflation, I do not think that we have ever done that.

It will not be large. It definitely will not be a large number but the sign is unambiguous because it will, in the short term, definitely have a cost, even though we think that it has benefits in the long term. I cannot give you an answer to that. I do not think that there is necessarily a meaningful way of doing it. It will not be large but it will not be going in the wrong direction, if I can put it that way.

Lord Hutton of Furness: So, for a very small benefit, you have delayed this policy for two years without knowing what the impact of that will be on obesity or the cost to the National Health Service. Is that more or less right?

Neil O'Brien: It will also have a small impact, as we have alluded to earlier in this conversation, on the eventual impact of the policy, which, as I have stressed, has its impact at the thick end of the 25-year period that we are looking at it over. In both directions, the key thing is to do it in the longer term, rather than it having a huge impact either way at this time on either the health or the economic side.

Lord Hutton of Furness: From the point of view of helping the House understand policy such as this, if the Government are making a claim, as

they have done here, that it is necessary to delay a policy for two years because of its impact on food inflation, yet you cannot tell us what the impact on food inflation is as a result of this change, it leaves us scratching our heads in understanding how we can make sense of your arguments today.

Q11 Lord Russell of Liverpool: The good news for you, Minister, is that you have largely answered the question that I was going to put already, so that gets you off the hook. Paragraph 39 of the original impact assessment said that research conducted for the department indicated that multibuys influenced consumers to buy up to 20% more than they had intended when they came into the premises. Has your research been updated at all? Do you believe that that is still the case? In that case, in your efforts to try to cap the prices of food through delaying this policy, if it is the case that consumers who are still able to access multibuys because of this delay will actually buy 20% more than they would have done, I cannot quite see how that adds up. Perhaps you could explain.

Neil O'Brien: I am not aware of any evidence to suggest that the broad research finding that we alluded to, which is that multibuy discounts are skewed towards unhealthier product—particularly products that are bad in terms of childhood obesity—has changed. We think that that is still the same. To put it colloquially, you do not get multibuys for broccoli. You get them for crisps, chocolate and all those other things that are high in fat, salt and sugar. That broad direction has not changed, I do not think.

Kevin Dodds: I absolutely agree with that. At the time we published the impact assessment, we were drawing on evidence that PHE had commissioned, which tracked trends through time. It seemed to be relatively consistent through that period that it was always of the order of 20%. For products that were put on promotion, an extra 20% would be bought. We do not have more up-to-date information than when the IA was published. We will be keeping it under review so, if there is extra information, we will bring that forward. We at least had a time series that showed that there was some consistency in that estimate of it being approximately 20% extra consumption.

Lord Russell of Liverpool: Could I gently point out that, during the time series over which you did that research, the levels of inflation were considerably lower than they are at the moment? If, at a time of lower inflation, your research was telling you that multibuys encouraged consumers to buy 20% more than they would have done otherwise, I put it to you that that would perhaps have increased even more when consumers were more and more worried about rising prices. I would have thought that the lure of having a multibuy to enable you to make your budget stretch further was fairly irresistible.

Neil O'Brien: That is certainly possible. We continue to monitor it through various routes. It is fair to say that it is a slightly mixed picture. Another thing that the time series showed is that there was a slight decline in the use of volume promotions by retailers. They remained as effective, in terms

of the extra 20% of expenditure, but they were being used slightly less throughout our time series.

We know that the retail sector innovates and changes a lot. As you say, it has been through an extremely testing time. There have been new entrants that use consistently low prices. We are alive to the fact that these things can change, so we need to keep on top of the data and be transparent about it as we get it.

Q12 Lord Rowlands: You drew attention in earlier exchanges—or the department did—to a recently announced £40 million two-year pilot project to help more people with obesity have access to the newest and most effective obesity drugs. That would suggest that there is a significant shift in emphasis from prevention to cure. Am I right in thinking that?

Neil O'Brien: No. There is no let-up in the emphasis on preventive measures. To reassure the committee, we continue to want to press ahead in terms of solving the problem. We also want to make the maximum use of these incredibly exciting new drugs. In the tests of semaglutide and tirzepatide, we are seeing people lose up to 15% of their body mass while on them.

As someone who is passionate about this, I would say that we need to do all these other things on the preventive side and we must continue to press on with them. When you look at the international trends on obesity and their likely consequences for the NHS and public health—it is brilliantly brought out in the Case and Deaton book *Deaths of Despair*, which is about the potential impact in terms of pain and the future health problems of a growing obese population—you look at those numbers and think, “We need something new as well as all the preventive measures in the world”.

No country at present has cracked this. Although there are individual case studies—North Karelia is an exciting one—where a difference has been made, you cannot see any country in the world that has managed to get to an inflection point on the global obesity epidemic. We are hugely excited about the new drugs. We are testing and rolling them out at scale but it does not mean that we are going to drop all these other things and just rely on the drugs to make all our problems go away—absolutely not.

Lord Rowlands: You are actually delaying the preventive measure and promoting a cure.

Neil O'Brien: We are getting on with huge numbers of other policies. I listed some of them at the start; I will not recapitulate. We will get on with these ones as well. It is just a question of timing. Broadly speaking, we remain enthusiastic about prevention as well as cure.

The Chair: Minister, Mr Dodds, thank you very much indeed. The information you have supplied has been enormously useful. You may like to reflect on whether you might improve the Explanatory Memorandum and hold it up as the gold standard of how every department should aspire to publish easy-to-understand, easily recognisable, persuasive Explanatory Memoranda. They are sorely needed. This session has been very useful for

all of us in understanding the rationale behind the policy. If we may take up your kind offer to supply some further information, perhaps we could deal with any further questions in correspondence. Thank you very much indeed for coming.