

## CONSULTATION ON RESTRICTING PROMOTIONS OF FOOD AND DRINK HIGH IN FAT, SUGAR OR SALT

### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual  
 Organisation

If you are responding on behalf of an organisation, what type of organisation is it?

- Industry representative body  
 Manufacturer  
 Retailer  
 Out of home provider (e.g. fast food outlet, coffee shop, restaurant)  
 Public sector  
 Third Sector  
 Other (please specify)

If you are responding on behalf of a retailer or out of home provider, please state the size of this business:

- Micro (fewer than 10 employees)  
 Small (between 10 and 49 employees)  
 Medium (between 50 and 249 employees)  
 Large (more than 249 employees)

Full name or organisation's name

Scotland Food & Drink

Phone number

0131 335 0940

Address

Scotland Food & Drink  
1F1, Ratho Park One  
88 Glasgow Road  
Newbridge

Postcode

EH28 8PP

Email

[joe@foodanddrink.scot](mailto:joe@foodanddrink.scot) (Policy Manager)

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

**Information for organisations:**

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

## QUESTIONNAIRE

### Section 1. Foods that would be subject to restrictions

#### Question 1

Which food categories should foods promotion restrictions target?

- Option 1: Discretionary food categories (paragraph 61)
- Option 2: Discretionary foods + ice-cream and dairy desserts (paragraph 62)
- Option 3: Categories that are of most concern to childhood obesity (paragraphs 63-64)
- Option 4: All the categories included in the UK-wide reformulation programmes (paragraph 65)
- Other (please specify)
- Don't know

Please explain your answer.

Please see our accompanying letter outlining our position more fully on these proposed regulations.

The current cost crisis has compounded the already significant impacts of Brexit and covid and we need to wait for some of the most severe headwinds our industry has ever seen to ease, before considering further regulation on business. The situation is so severe that we have asked the Scottish Government to pause all forthcoming regulation.

In addition to this being the wrong time for further regulation, we think these regulations will potentially harm Scotland's food and drink producers disproportionately whilst not achieving the overall objective of reduced obesity. This is because the intervention as outlined will tweak the supply side of food and drink whilst doing very little to address the underlying causes of obesity, which are intrinsically aligned to health inequalities. To be successful, they require other measures to be more fully implemented first, including those outlined in the Scottish Government's 2018's "A Healthier Future – Scotland's Diet & Healthy Weight Delivery Plan" and actions aligned to a fairer economy as detailed in the National Strategy for Economic Transformation,

It is important to recognise that eating good food is not an inevitable consequence of making it harder to find or afford less healthy foods. Improving the diet of our nation ultimately depends on people across Scotland being more able to access and afford good food, as well as being in a position to make positive choices around their health and wellbeing.

If the regulations proceed, which should only be once the industry is again on a secure footing, we do not believe the scope of restrictions should extend beyond the categories previously identified: discretionary products. The impacts can then be assessed and, as we have outlined, we expect these to be small given the comprehensive solutions needed to tackle the underlying social and psychological determinants of health inequalities in Scotland which are fundamentally about transport, environment, housing, education, income and work, all of which our members and the industry support by generating jobs and responsible economic growth for Scotland.

**Question 2**

Should nutrient profiling be used within all targeted food categories to identify non-HFSS foods? (see paragraphs 68-72 for information on nutrient profiling)

- Yes
- No
- Don't know
- Other (please specify)

Please explain your answer.

The alternative to nutrient profiling is category-wide restrictions which would restrict products which have no connection to the intention of the regulation. This would be unfair.

We believe that continued funding for SME reformulation support is important as it enables innovation which will benefit Scotland as we look to develop new products to sell into domestic and international markets. That said, reformulation is not the only solution.

There is something very special about Scotland's producers who use quality, natural, locally sourced ingredients in a traditional way to produce food and drink we can all enjoy responsibly.

Scottish businesses who produce food and drink in a responsible way should be championed for their ability to provide jobs, deliver economic growth, and move towards sustainable production methods. We are proud to have some of those businesses as members and to be working with them to responsibly promote and grow sales into domestic and international markets. Occasional indulgence is an entirely legitimate part of a healthy diet.

**Question 3**

If nutrient profiling were used, do you agree with the proposal to only target pre-packed products and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge? (see paragraphs 73-74 for further information):

- Yes
- No
- Don't know
- Other (please specify)

Please explain your answer.

We accept that NPM is more challenging for non-pre-packed products but are concerned by the potential lack of a level playing field. Producers who pre-pack (and therefore produce a highly controlled product with an easily understood nutritional profile) should not be unfairly restricted compared to non-pre-packed products if the latter are always considered out of scope.

You might, for example, find out-of-scope products promoted in prominent locations within stores even though they have the same nutrient profile or even higher levels of FSS as an in-scope pre-packed product and would be considered by most people as HFSS. This would send the wrong message to consumers and reduce the impact of the measures.

## Section 2. Price promotions

### Question 4

What are your views on the proposal to include the following within the scope of multi-buy restrictions:

#### Extra Free:

- Agree
- Disagree
- Don't know

#### Meal Deals:

- Agree
- Disagree
- Don't know

We acknowledge that “extra free” is likely to lead to additional calorie consumption (the core problem this regulation is attempting to resolve) and evidence supports this.

We do not accept that meal deals are a cause of extra calorie consumption, especially among the demographic most affected by obesity. Meal deals are, by contrast, a way for consumers to save money and enjoy a range of food and drink. Meal deals already include a range of nutritious snacks and healthy drinks to choose from.

Addressing the underlying causes of obesity (i.e. the complex reasons that cause people to overeat) is key to improving the choices people make within a meal deal.

The principle of choice is important and occasional indulgence is legitimate within a healthy diet. As such, we would support regulation that requires meal deals to always include healthier, nutritious food and drink (i.e. whole foods or HFSS compliant products) within the overall range of food and drink on offer.

Please explain your answers.

### Question 5

What are your views on the proposal to restrict unlimited refills for a fixed charge on targeted soft drinks with added sugar?

- Agree
- Disagree
- Don't know
- Other (please specify)

Please explain your answer.

Responsible consumption is made difficult by the offer of unlimited refills, so we support the restriction of these.

However, there is a risk that artificially sweetened drinks become the norm within such environments, and it would be a perverse outcome of a health regulation to allow unlimited consumption of products where there is limited evidence that their consumption reduces obesity and there are potential negative outcomes from excess consumption of some of their ingredients.

### Question 6

Should other targeted foods be included in restrictions on unlimited amounts for a fixed charge?

- Yes
- No

Don't know

Please explain your answer.

The core of the proposed legislation is to reduce calorie consumption and the availability of "unlimited" anything is likely to drive consumption.

**Question 7**

What are your views on the proposal to restrict temporary price reductions (TPRs)?

Agree

Disagree

Don't know

Other (please specify)

Please explain your answer.

We cannot support restrictions on temporary price promotions (TPRs) which are a hugely valued tool among Scotland's producers. This is because they:

1. Help Scotland's producers drive volume sales during certain periods of the year which maintains product viability in challenging retail environments. This affects product choice, it does not drive significant additional consumption overall.
2. Give Scotland's producers a point of difference from international competitors.
3. Enable the introduction of new products and exposure for Scottish products which do not have the marketing budget of competitors.

Our members and others we have contacted feel strongly that a restriction on temporary price restrictions (TPRs - known more commonly by consumers as an item being "on sale", "on offer" or "discounted") will significantly disadvantage Scotland's food and drink producers.

We consider the evidence in favour of this restriction to be weak and it would significantly deviate from the regulatory position currently adopted in England, thus impacting on businesses operating across the open border of the UK internal market, for no good reason.

TPRs are designed to encourage a switch from one product to another, not to increase the overall volumes purchased or consumed. We understand some evidence exists to show that there is an increase in sales from TPRs but, having spoken to the author of one of those reports, the limitations of that study (i.e. the unknown quantity of replacement calories likely to be found elsewhere) and the evidence showing the limited reduction in confectionary sales (and knock-on increase in other categories such as cake) from checkout restrictions, it is not sufficiently robust to justify restrictions.

We understand there is a view that TPRs encourage "impulse buying", but most discretionary items are within most peoples' means, even at full price (especially if we end up with everyday low prices) and people welcome the savings that discounts afford them.

One of the studies referenced within the Scottish Government's consultation documentation about the impacts of TPR (a Kantar report commissioned by Public Health England) shows that:

"A typical household would now have to spend 16% more (or an extra £630 in a year) if they wanted to buy their annual selection of promoted items at full price."

This is across all promotions, but we calculate that TPR restrictions alone would cost households between 5-10% (£210-£420) a year more, whilst reducing purchase volumes by only 2-4%. The discrepancy between these figures (i.e. anything purchased that was not additional) is effectively a cost burden on households at a time they cannot afford it.

The FSS 2018 report "Monitoring Retail and Purchase Price Promotions", on which it seems the decision for a TPR is in part being based, includes the comment: "we are not able to infer from the data whether changes in purchase on promotion would result in any changes in calorie purchase."

Continued...



Continued...

We feel it is vitally important to:

1. Recognise the role of TPRs for Scotland's producers and retailers to help them generate exposure for local produce which, in a highly competitive, international market, is made much more difficult if this tool is taken away.
2. Recognise that the evidence to show that restricting TPRs would lead to significant *reduced* consumption (which is after all the core purpose of the proposed HFSS regulations) is simply not strong enough to warrant these restrictions.
3. Note that obesity is a multi-factored issue which leading experts repeatedly stress cannot be solved through separate mechanisms but must be tackled through a whole systems approach from early intervention, education, planning and the built environment, inequalities and more.

Lastly, it should be noted that in the rationale given by the UK Government for not including TPRs in their own HFSS regulation, they stated:

"In addition, we are only targeting volume price promotions that require the consumer to purchase more in order to take advantage of the discount. These types of promotions have been shown to specifically encourage and stimulate over-purchasing to a larger extent compared to simple price reductions"

We strongly feel there are insufficient grounds for restricting TPRs in Scotland and cannot support their inclusion in the regulations.

**Question 8**

Are there any other forms of price promotion that should be within scope of this policy?

- Yes
- No
- Don't know

Please explain your answer.

Volume controls are acceptable, as they clearly link to the core purpose of these regulations. We should, however, assess their performance over time and review as necessary.

**Section 3. Location and other non-price promotions**

**Question 9**

Should the location of targeted foods in-store be restricted at:

Checkout areas, including self-service:

- Yes
- No
- Don't know

End of aisle:

- Yes
- No
- Don't know

Front of store, including store entrances and covered outside areas connected to the main shopping area:

- Yes
- No
- Don't know

Island/ bin displays:

- Yes
- No
- Don't know

Please explain your answers.

As set out earlier, we don't believe the obesity challenge will be solved through these regulations given the limited range of other measures currently having a measurable and sustained impact. However, should we end up with regulations, we accept restrictions on location, except end of aisle, which is where many local foods are currently promoted. We need to support local food production to shorten supply chains and achieve our environmental, social and economic goals. Allowing end of aisle for HFSS product in Scotland will provide an incentive for retailers to use that space for local products, without the complications of attempting to legislate for this.

We are unsure about bin displays and islands because of ambiguity around England's position here. We would prefer alignment (other than for aisle ends, due to their use for local promotions) to avoid complications for retailers who operate UK wide.

### Question 10

Should any other types of in-store locations be included in restrictions?

- Yes (please specify)
- No
- Don't know

Please explain your answer.

### Question 11

If included, should the location of targeted foods online be restricted on:

Home page:

- Yes
- No
- Don't know

Favourite products page:

- Yes
- No
- Don't know

Pop ups and similar pages not intentionally opened by the user:

- Yes
- No

Don't know

Shopping basket:

Yes

No

Don't know

Checkout page:

Yes

No

Don't know

Please explain your answers.

We do not yet fully understand the implications of restrictions on promotions for online shopping and look forward to exploring this further if and when the regulations progress. A level playing field is important but so too is considering the evidence around whether online shopping is a significant part of the problem and the mechanisms that drive additional purchase in this space.

**Question 12**

Should any other online locations be included in restrictions?

Yes (please specify)

No

Don't know

Please explain your answer.

**Question 13**

Are there other types of promotions (in-store or online) not covered by our proposals for restricting price and location promotions that should be within scope?

Yes

No

Don't know

Please explain your answer.

#### **Section 4. Places that would be subject to restrictions**

It is proposed that promotions would apply to any place, both physical premises and online, where pre-packed targeted foods are sold to the public. This would include:

- **Retail** such as supermarkets, convenience stores, discounters and bargain stores (including online sales)
- **Out of home** such as takeaway, home delivery services, restaurants, cafes, coffee shops, bakeries, sandwich shops and workplace canteens (including online sales)
- **Wholesale** outlets where there are also sales made to the public (including online sales)
- **Other outlets** such as clothes shops, tourist shops and pharmacies (including online sales)

#### **Question 14**

Which places, where targeted foods are sold to the public, should promotions restrictions apply to?

##### Retail:

- Yes
- No
- Don't know

##### Out of home:

- Yes
- No
- Don't know

##### Wholesale (where sales are also made to the public):

- Yes
- No
- Don't know

Other outlets:

- Yes
- No
- Don't know

Don't know

Please explain your answers.

A level playing field is important.

**Question 15**

Are there other places/ types of business to which the restrictions should apply?

- Yes
- No
- Don't know

Please explain your answer.

It is proposed that the restrictions would not apply to: other wholesale outlets (where sales are only to trade); and where sales are not in the course of business, for example food provided through charitable activities, for example bake sales.

**Question 16**

Are there other places/ types of business which should not be within the scope of the restrictions?

- Yes
- No
- Don't know

Please explain your answer.

A level playing field is important.

## Section 5. Exemptions to restrictions

### Question 17

Do you agree with our proposal to exempt specialist businesses that mainly sell one type of food product category, such as chocolatiers and sweet shops, from location restrictions?

- Yes  
 No  
 Don't know

Please explain your answer.

Location restrictions would be unworkable in these kinds of shops.

### Question 18

If exemptions are extended beyond our proposal to exempt specialist businesses that mainly sell one type of food product category, should exemptions be applied on the basis of:

	Yes	No	Don't know
Number of employees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floor space	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
None	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Don't know	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answer.

We do not have sufficient understanding of the implications to form a position here and other stakeholders and partners are better placed to respond.

**Question 19**

If you agreed in question 18 that businesses should be exempt from location restrictions based on number of employees, what size of business should be exempt?

- All businesses in scope of restrictions (i.e. no exemptions based on employee number)
- All in scope except businesses with fewer than 10 employees (micro)
- All in scope except businesses with fewer than 50 employees (small and micro)
- All in scope except businesses with fewer than 250 employees (medium, small and micro)
- Other (please specify)

Please explain your answer.

We do not have sufficient understanding of the implications to form a position here and other stakeholders and partners are better placed to respond.

**Question 20**

If you agreed in question 18 that businesses should be exempt from location restrictions based on floor space, what size of business should be exempt?

- Less than 93 square metres (1000 square feet)
- Less than 186 square metres (2000 square feet)
- Less than 279 square metres (3000 square feet)
- Other (please specify)



Please explain your answer.

We do not have sufficient understanding of the implications to form a position here and other stakeholders and partners are better placed to respond.

**Question 21**

Are there any other types of exemptions that should apply?

- Yes
- No
- Don't know

Please explain your answer.

**Section 6. Enforcement and implementation**

**Question 22**

Do you agree with the proposal that local authorities are best placed to enforce the policy?

- Yes
- No
- Other (please specify who)
- Don't know

Please explain your answer.

It is unclear what resource Local Authorities would require to enforce this or what alternatives exist. Enforcement is clearly important to ensure a level playing field.

**Question 23**

If local authorities were to enforce the policy, what resources (for example staffing/ funding) do you think would be required to support enforcement?

Please explain your answer.

It is unclear what resource Local Authorities would require to enforce this or what alternatives exist. Enforcement is clearly important to ensure a level playing field.

**Question 24**

What do you think would be an appropriate lead-in time to allow preparation for enforcement and implementation of the policy?

- 6 months
- 12 months
- 18 months
- 24 months
- Other (please specify)
- Don't know

Please explain your answer.

We have suggested 24 months to provide our vulnerable yet vital food and drink producing businesses with time to recover. This will also allow time to ensure that the wider efforts to combat obesity are in place and therefore, if and when retail restrictions are put in place, they are more likely to be effective as they will be part of a comprehensive solution and not so easily circumnavigated by communities and households currently blighted by health inequalities.

### Question 25

Are there any further considerations, for example as a result of the coronavirus pandemic, EU exit or rise in cost of living, that need to be taken into account in relation to enforcement?

Please explain your answer.

Not in relation to enforcement but those issues are linked to the cost crisis facing businesses and why in our view this regulation should be paused.

## Section 7: Legislative framework

### Question 26

Do you agree that Scottish Ministers should be able to make provision in secondary legislation, following consultation, to regulate in relation to specified less healthy food and drink and to arrange for enforcement (including the setting of offences and the issuing of compliance notices and fixed penalty notices)?

- Yes
- No
- Don't know

Please explain your answer.

Without these the regulation would be very difficult to implement and enforce.

## Section 8. Impact Assessments

### Question 27

What impacts, if any, do you think the proposed policy would have on people on the basis of their: age, sex, race, religion, sexual orientation, pregnancy and maternity, disability, gender reassignment and marriage/civil partnership?

Please consider both potentially positive and negative impacts and provide evidence where available. Comment on each characteristic individually.

Comment

We don't have a strong view on this but welcome further discussion.

### Question 28

What impacts, if any, do you think the proposed policy would have on people living with socio-economic disadvantage? Please consider both potentially positive and negative impacts and provide evidence where available.

Comment

As stated above, the evidence around *additional* consumption is weak, and studies have made clear their limitations around understanding the real-life effect of the continued purchase of non-promoted HFSS product in middle of aisles and non-pre-packed products in both retail and out of home environments. In terms of the cost impact, we also need to consider the shift towards greater promotion of new, reformulated and highly promoted "HFSS compliant" product which tends to be more expensive.

In simple terms, the difference between the additional cost of obtaining HFSS products which were previously promoted (around 30% of volume purchased) and the reduction in purchase volumes (likely to be significantly less than 5%) is effectively a cost burden on households.

To put it another way, HFSS product will continue to be sold at 95% or more of current volumes yet the savings currently enjoyed on 30% of purchases in that category will be removed. This will result in higher grocery bills overall.

### Question 29

Please use this space to identify other communities or population groups who you consider may be differentially impacted by this policy proposal. Please consider both potentially positive and negative impacts and provide evidence where available.

Comment

If businesses suffer, then the outcome could be job losses which will impact on communities. If business income falls, then the money available to the government also falls and that reduces that amount available to invest to address the environmental and social challenges.

**Question 30**

Please tell us about any other potential unintended consequences (positive or negative) to businesses, consumers or others you consider may arise from the proposals set out in this consultation.

Comment

We have outlined these above.

**Question 31**

Please outline any other comments you wish to make on this consultation.

Comment

We are grateful for the open and constructive dialogue we have had with your directorate, including the team involved in this consultation. The offer to meet with businesses was welcomed and we are encouraging selected members to complete the Impact Assessment to provide further insight.

Please consider our letter as well as the responses included here and look forward to further dialogue.