

Restricting promotions of food and drink high in fat, sugar or salt – Consultation on the detail of proposed regulations

Scotland Food & Drink - Respondent information form

Are you responding as an individual or an organisation?

Organisation

Industry representative body

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Please indicate your publishing preference:

Publish response with name

Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Background:

Scotland Food & Drink is a leadership and membership body, aiming to help food and drink businesses along Scotland's supply chain reach their potential and to responsibly grow the value and reputation of food and drink from Scotland into key markets of Scotland, the UK and the world.

We work in partnership to deliver the national strategy for food and drink, Sustaining Scotland; Supplying the World: <https://foodanddrink.scot/our-industry/industry-strategy/>

We offer support and services to businesses large and small, including market and capability development opportunities, events, awards, regular news updates, networking, advocacy and representation and more.

Find out more: <https://foodanddrink.scot/>

QUESTIONNAIRE

Section 1: Foods subject to restriction

1. Do you agree with the proposal to be consistent with the category descriptors set out in Schedule 1 of the UK Government regulations for England?

Yes

Consistency is important, and alignment with the UK Government for category descriptors helps with this and has been mentioned as a priority by our member businesses.

2. Do the food category descriptors set out in Schedule 1 [and included in Annex D] sufficiently describe the food categories within scope of regulations?

Yes

The descriptors seem clear but will require further supplementary guidance (some of which has been produced for England, including by Food and Drink Federation and British Retail Consortium) which we would be happy to help develop, test or disseminate, to help ensure wide awareness and understanding of the requirements across Scotland.

3. Please provide any additional comments on the proposed approach to foods in scope of the policy.

Whilst we absolutely recognise the good intentions of this policy, which is rightly attempting to tackle obesity and its associated impacts across Scotland, we are concerned by the proposals where the Nutrient Profile Model is the only way to determine whether products within the selected categories are in-scope of the restrictions. At the same time, products with any nutrient profile, potentially higher in fat, salt and/or sugar than restricted products, escape entirely by being sold unpackaged or “loose”.

This creates two risks to a level playing field for businesses. Firstly, the different treatment of prepackaged vs loose products doesn't appear to reflect how people shop and eat, where out-of-home and retail environments are increasingly intertwined and unpackaged goods are found in shops just as prepackaged goods are found in cafes and bakeries. This means the risk of immediate displacement (i.e. switching) is high, which could undermine the policy and harm businesses who produce in-scope products.

The second risk is that the proposals seem likely to disproportionately harm Scottish businesses which are more reliant on our domestic market, which is potentially going to become harder to trade in than other parts of the UK

and, if TPRs are restricted, will likely experience a race to the bottom on everyday prices.

It's important to note that businesses in Scotland face a higher cost base and lower economies of scale compared to large businesses operating internationally. They tend to produce premium, higher priced products, often using significant proportions of natural, locally sourced ingredients. These products are marketed, sold and positioned differently to truly mass market "big brand" HFSS products. It would be disingenuous to suggest there is no point of crossover, or that Scottish made crisps, chocolate, biscuits and ice creams etc. are somehow inherently "healthy", but it is important to consider that obesity, whilst complex, is driven in large part by affordability.

As the World Health Organisation makes clear: "Most low-income people in Europe know what constitutes a healthy diet. Rather than lack of knowledge, the priority is to address affordability, accessibility, availability and practicalities relating to healthy food." Healthy diets are fundamentally about whether people can afford to eat well. Eating well means having the resources to choose and prepare nutritious food and does not require avoiding all products high in fat, salt or sugar. By extension, people who cannot afford to eat well will not tend to purchase premium HFSS products, even at temporarily reduced prices, which are still higher than mass market products sold at prices below levels achievable by most Scottish producers.

We believe in a future in where more people can afford to eat well as part of a good food nation where premium, locally made treats, snacks and desserts are enjoyed and celebrated as part of a healthy diet and where obesity and its associated impacts on society are minimal. We recognise that achieving such a future will require several things to change within Scotland. But we are not convinced that we will arrive there by creating a retail landscape which treats "premium" and "cheap" the same, driving businesses towards greater levels of processing, sometimes away from natural locally sourced ingredients, and which creates increasing hurdles for Scottish businesses.

To be clear, reformulation is a positive step for many products, and deserves government support, but Scottish businesses could be supported further by assessing other characteristics of products to determine whether they contribute to the obesity challenge and should face restrictions. Dairy products are a good example of this, where reformulation is incredibly difficult by NPM standards, yet Food Standards Scotland have identified that dairy desserts contribute essential nutrients to children's diets. This aligns with increasing evidence of the benefits of dairy and reflecting such nuances would improve the policy and increase support among Scottish businesses.

Section 2: Price promotions

4. Is the proposed description of the following sufficiently clear for the purpose of implementation and enforcement:

a. multibuy?

Don't know

Given the complex reality of retailing food and drink products, and our experience from other legislation, it is highly likely that examples will arise that require further decisions to be made and appropriate guidance developed.

b. extra free?

Don't know

As above.

5. Is the proposed timescale of 12 months sufficient to allow price promotions on packaging to be phased out?

Don't know

Discussions with members and other trade bodies suggest this may need to be longer, but it depends on the final nature of the restrictions.

6. What, if any, implications do you expect there would there be for businesses if meal deals are included within scope of this policy? (please include evidence where available)

We would appreciate further clarity on the definition of meal deals.

“Ready to eat” meal deals are presumably a target because people may be encouraged to eat discretionary items as well as the main element of a meal. This type of deal came lower down the list of expected impacts for our members compared to other aspects of the proposals, such as location and price restrictions. We do however note that including meal deals would go further than England’s HFSS policy where meal deals were considered but left out, which we understand was partly due to complexity.

If the proposals are also intended to capture “prepare at home” meal deals, for example where a main dish, side dishes and dessert/drinks are offered for a discounted price, we would be concerned that this would go beyond the necessary proportionality of such a policy. These deals are usually premium products offered at relatively high prices (e.g. £12 for three courses), albeit less than you would pay for individual items. These meal deals, as well as providing a chance for our members to supply ingredients

and products within them, offer customers good value and usually comprise nutritious dishes and ingredients.

7. If meal deals are included within scope of the policy, which would be your preferred option for targeting them?

Don't know

Please explain your answer, including any alternative suggestions for how promotion regulations could help improve meal deals to better support a healthy diet.

It depends how you define “meal deal” and the strength of evidence around proportionality. It is critical to intervene only where evidence exists of meal deals contributing to obesity and its associated impacts.

8. If temporary price reductions (TPRs) are included within scope of the policy, is the proposed broad definition sufficient for implementation and enforcement?

No

We disagree with the inclusion of TPRs because the evidence is lacking, the change would be ineffective, and it would create an unlevel playing field. Further work is also needed to define TPRs in a way that does not lead to unintended consequences if they are included in the policy.

9. What, if any, implications do you expect there would there be for businesses if TPRs are included within scope of this policy? (please include evidence where available)

We have been advised that the impact of TPRs could run into millions of pounds for individual businesses, reducing sales of some products by up to 50% although it is important to note that this reduction in sales does not contribute to the intended policy outcomes.

The reduction for Scottish businesses would arise from increased competition within a new retail landscape of everyday low prices for all in-scope products. We strongly believe that, due to the high levels of competition and pressure to keep prices low, the new prices in such a model will end up very close to or even match the currently *promoted* low prices. This means the policy will not reduce overall demand but instead damage Scottish businesses who have a higher cost base due to labour and other cost pressures, are not able to compete with larger, international businesses who benefit from economies of scale, and who rely on our domestic market to build resilience and profitability to enable further investment into overseas markets and secure growth.

So, restricting TPRs is likely to be ineffective in terms of the policy aims as well as damaging for Scottish businesses. It seems unfair for Scottish businesses to become collateral damage in a battle against unhealthy foods when evidence suggests many people eat lower quality food because they lack the resources and other means to eat well. The World Health Organisation is advocating for subsidies to help people eat well as one of its top recommendations for combating obesity for precisely this reason.

It is also important to note that the Scottish Government's key evidence paper (here: <https://www.gov.scot/publications/economic-modelling-reducing-health-harms-foods-high-fat-sugar-salt-final-report/pages/5/>) is based on "a simulated restriction **on the advertising** of all promotions on discretionary food products."

This paper suggests that removing *the advertising of* price reductions leads to a 613kcal / week reduction in consumption. Given this evidence is based on whether a price reduction is signalled to a potential buyer, it is unclear why these proposals extend to banning the price reductions themselves.

This is a critical and as yet apparently unrecognised distinction. Banning price reductions and banning the advertising of price reductions are very different interventions and could offer a way forward that maintains a level playing field. As the manager of a well-known Scottish brand told us:

"I suggest the ban should be on advertising the promotions away from the fixture itself, this would then stop brands tempting people in from the fruit aisle through TV adverts, trolley posters etc to get a deal. However, for anyone who chooses to visit the ice cream fixture anyway, through their own free will, then they'll be allowed to see what is being made available to them at a more affordable price to normal."

We received input to these proposals from businesses with a total turnover of more than £20 million, some with hundreds of employees. They told us the potential impact of HFSS restrictions was severe, with many suggesting that restricting TPRs would have the biggest impact.

Selected business input:

"TPR's are used to bring new products to the market, test concepts and bring products to wider audience. TPR's bring economies of scale in raw material purchasing, factory efficiencies, and allow continuity of sales volume throughout quieter months."

"In our opinion, the real issue for HFSS products is cheap, unhealthy food and drinks. Sweets and sugary drinks do have a huge impact on individuals health. There needs to be a more focussed approach to HFSS legislation. High end, artisan products have no reason to be included in this. They are

not an everyday product that people eat often and have a significant impact on their health.”

We believe the TPR proposals need to be rethought. They are based on evidence that doesn't match the proposals, they are likely to distort the market, and ultimately, they are not likely to reduce consumption because prices will remain low in these categories, with Scottish producers priced out.

We fully accept that many HFSS products are currently purchased on promotion. This has led some to mistakenly conclude that removing such promotions will reduce purchasing levels in direct proportion. In fact, this would only be the case if overall prices of HFSS products go up, given the high price elasticity of demand for discretionary products. Banning TPRs is very unlikely to raise prices and lower demand in the way the proposals or the evidence base assumes, given how the market operates.

Section 3: Location restrictions

10. Are the proposed descriptions of the following prominent in-store locations sufficiently clear for implementation and enforcement?:

- a. checkout
 Don't know
- b. end of aisle
 Don't know
- c. store entrances
 Don't know
- d. covered external area
 Don't know
- e. free standing displays
 Don't know

We defer to others better able to respond to this question, given it relates to technical aspects of retailing.

11. Do you agree with the proposed approach to applying store entrance criteria to dedicated food areas within stores?

- Don't know

As above

12. Do you agree with the proposed description for relevant floor area?

- Don't know

As above.

13. Please provide any additional comments on the proposals for in-store locations within scope of the policy.

Alignment with England would ensure consistency and help retailers understand the requirements.

Online

14. Are the proposed descriptions of the following online equivalent in-store locations sufficiently clear for implementation and enforcement?:

- a. home page
 Don't know
- b. favourites page

Don't know

c. pages not opened intentionally by the consumer

Don't know

d. checkout pages

Don't know

Whilst they appear clear, we defer to those with more expertise in this area.

15. Are there any other equivalent online locations that should be within scope of the policy?

Don't know

16. Please provide any additional comments on the proposals for online locations within scope of the policy.

To avoid distorting the market between England and Scotland, the proposals should match the restrictions within England.

Section 4: Businesses in scope

17. Are the types of business within the scope of the policy sufficiently described for the purpose of implementation and enforcement?

No

As mentioned earlier in this response, there are still areas that lack clarity such as out-of-home environments, which are likely to sell out-of-scope products, alongside in-scope products, and the risk of displacement is therefore great, and we risk an unlevel playing field. Further clarification would be useful around enforcement mechanisms and exemptions.

18. Is the proposed extension of restrictions to online sales, including through online aggregator sites and apps, sufficiently described for the purpose of implementation and enforcement?

Don't know

We defer to others with more expertise in this area.

19. Are the arrangements for franchises and symbol groups sufficiently described for the purpose of implementation and enforcement?

Don't know

We defer to others with more expertise in this area.

20. Do you foresee any impacts on the ability of businesses to trade either within the UK market or internationally from any of the proposed measures?

Yes

This aspect is critical for us and our members. Reaching new markets requires investment, which is only possible when a business has a strong balance sheet. A strong balance sheet depends on healthy sales and margins. Many Scottish businesses build sales within their home market first, before expanding across the UK and further afield. Restricting Temporary Price Reductions (TPRs) will harm Scottish businesses by reducing their ability to generate necessary sales and margins, making it harder to create the conditions for success in broader markets.

This is troubling especially when you consider that many Scottish businesses produce premium products, which, due to the role that price plays when it comes to consumer demand (and by extension “excess consumption”), are not significantly contributing to the problem being tackled by the proposed measures. Limiting these businesses' ability to use TPRs may inadvertently penalise products that are not the target of the policy, thereby hampering their competitive edge and growth potential in both domestic and international markets.

It will also create cross border implementation challenges for producers within the UK's internal market if pricing and promotion strategies need to be different.

21. Please provide any additional comments on the businesses proposed to be within scope of the policy.

It is vital to retain a level playing field – and it is problematic that this policy will create a landscape where most, if not all businesses that are in-scope will sell some in-scope and some out-of-scope products with the same nutrient profile where the only difference is whether they are pre-packaged.

Section 5: Exemptions from location restrictions

22. Are the proposed exemptions from location restrictions based on business type clear and sufficiently defined to enable implementation and enforcement?

Don't know

Further clarity would be appreciated around exemptions, displacement and impact in relation to Better Regulation principles.

23. Are the exemptions from location restrictions based on individual store relevant floor area clear and sufficiently defined to enable implementation and enforcement?

Don't know

As above.

24. Please provide any additional comments on proposed exemptions from locations restrictions.

The location restriction exemption proposals appear to create a contradiction within the policy whereby it will be unable to benefit those most in need. To be clear, it makes sense for reasons of logistics and proportionality for retail businesses below a certain size (based on number of employees and/or floor space) to be exempt from certain restrictions.

However, at the same time, the people who rely on such businesses for more of their food are more likely to be those affected by the problems the policy is trying to solve. This is not a judgement on smaller grocery stores, which are making significant efforts to source local, seasonal, and healthy options.

Nonetheless, the fact remains that there is a higher prevalence of smaller grocery stores and higher levels of obesity within areas with higher levels of deprivation. If such businesses are exempt (which we accept is necessary), the policy will be less effective, potentially undermining its overall purpose.

Section 6: Enforcement and implementation

25. Do you agree with the proposed use of administrative sanctions for enforcement of the policy?

Don't know

We defer to those with more expertise.

26. Do you agree with the maximum penalties proposed for the offences in relation to enforcement of the policy?

Don't know

We defer to those with more expertise.

27. Is the proposed 12 month period following the introduction of regulations sufficient to prepare for:

a. Implementation?

No

We have been advised by partners and stakeholders that 12 months could be achievable if the restrictions mirror those in England, but that more complexity will require a longer time frame.

b. Enforcement?

Don't know

We cannot be certain about this, but expect it to take some time to identify, train and develop the necessary guidance and processes, which could feasibly be longer than 12 months.

Section 7. Other comments

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

We agree with the policy aims

Obesity is a significant issue in Scotland, imposing considerable health and economic burdens. A large proportion of the population, including many children, are overweight or obese, with more severe impacts observed in areas of higher deprivation. According to Obesity Action Scotland's 2023 report

(https://www.obesityactionsotland.org/media/locdychb/obesity_prevalence_causes_impact_202122_data_f.pdf), the causes of obesity are multifaceted, involving factors such as food consumption, food production, individual psychology, social psychology, physiology, individual activity and physical activity environment. The report references the Foresight system map, which outlines the complexity of obesity's root causes.

The solutions are also potentially complex. The Growing Up in Scotland report of 2018 (here:

<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2018/11/growing-up-scotland-overweight-obesity-age-10/documents/00543330-pdf/00543330-pdf/govscot%3Adocument/00543330.pdf>) highlights that the biggest associations for a child being a high weight aged 10 years compared to age 6 are: having a mother who is obese, an average weekly screen time of 14 hours or more, only occasionally eating breakfast and having a TV in the child's bedroom.

We accept the need for action

Obesogenic environments contribute to unhealthy lifestyles, necessitating comprehensive actions to address these issues. Broad and extensive measures are required to make a significant impact, and the food and drink industry has a crucial role to play in this effort.

We think an effective and fair HFSS policy is possible, with some amendments

Our primary concern lies in the disproportionate impact on Scottish businesses from an inevitable shift to everyday low prices resulting from a ban on Temporary Price Reductions (TPRs). Producers, wholesalers, and retailers will be compelled to reduce margins to offer competitive prices. This, coupled with competition from international companies with lower cost bases, using cheaper, usually non-Scottish ingredients, will likely push Scottish businesses out of the market while keeping overall prices low.

The evidence used to support the proposals shows a weekly reduction in calorie consumption based on not signalling that prices have been lowered.

However, in everyday low-price models, low prices will be advertised freely, and high prices will largely disappear, allowing brand-loyal consumers to always have their preferred products at agreeable prices. This does not seem likely to reduce obesity.

A theoretical example - the impact of TPRs on pizza prices

A leading brand's pizza, typically priced at £6.00, might currently drop to £3.00 during promotions. Consumers who want that brand currently must choose something else when the price is too high for them, potentially something other than pizza. A ban on this type of price reduction would create intense competition and pressure to drive the new permanent price down - perhaps to around £3.00. To maintain this low price all the time, manufacturers will have to cut costs, resulting in lower quality products and fewer jobs. From a policy perspective, this scenario could lead to an *increase* in consumption due to constant low prices, contrary to the intended reduction in calorie intake.

Exploring alternative solutions

Our concern is not with regulation aimed at reducing unhealthy food consumption per se, but with the likelihood that the proposed policy will not achieve the intended goals while simultaneously harming Scottish businesses.

We would like to explore other ways to achieve the desired outcome, which might include looking at price/promotion advertising restrictions to reduce impulse purchases, rather than eliminating price reductions themselves, which are important for several reasons. This approach could help maintain a level playing field and allow businesses to adjust prices as needed for their business purposes.

We welcome ongoing dialogue on this matter and are committed to finding effective solutions that address obesity which do not disproportionately harm Scottish food and drink businesses.