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Scottish Government
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By Email to MinisterPHWHS@gov.scot

23 September 2022

Restricting promotions of food and drink high in fat, sugar or salt: consultation

Dear Minister,

As you may know, Scotland Food & Drink is the leadership body for the food and drink sector in Scotland, working in partnership with other trade bodies and the public sector to responsibly grow the value and reputation of our industry. We are proud to have more than 400 business members contributing to our organisation, working with us to ensure Scotland continues to be internationally recognised as a land of amazing food and drink.

The food and drink industry is committed to playing our part in the collective action we need to take to address some of the deep-seated societal issues such as our obesity challenge. Our national food and drink strategy, Ambition 2030, is currently being refreshed and this is likely to put an even greater focus on the positive contribution the industry can make in response to these challenges.

Whilst we recognise the Government wants to show leadership in bringing forward solutions, we do not believe now is the right time for further regulation on business. The cost crisis facing businesses across the industry is so severe many are literally fighting for their survival. Businesses, particularly small and medium ones, simply do not have the headspace to implement or even consider complex proposals of this nature. We have made this point directly to the Deputy First Minister and have urged him to pause all forthcoming regulation until we have sufficiently recovered from the triple whammy of Brexit, Covid and the current cost crisis.

We hope that you will respond positively to this suggestion.

In the meantime, we have responded to the detailed questions set out in the consultation so that you are aware of our views on the specific proposals. We have provided further background on our position in the annex and consultation response, but the summary of our position is as follows:

1. On scope, we feel any regulations should focus only on discretionary items as previously indicated. There is insufficient evidence to extend to other categories, such as ice-cream.
2. On the nature of promotions, we recognise the rationale that supports the restrictions around 'volume' promotions (e.g. buy 1 get 1 free), and some of the location-based restrictions where the evidence is stronger.
3. We absolutely cannot support restrictions on temporary price reduction promotions (TPRs). As recognised by the UK Government who have not restricted these promotions, evidence is weak, and this is a red line for us because TPRs are such a valued tool among Scotland's producers. This is because they:
 - a. Help businesses drive up sales during certain periods of the year which maintains product viability in challenging retail environments. This increase is not additional volume overall, it is about switching products.
 - b. Give our businesses a point of difference from international competitors.
 - c. Enable the introduction of new products and exposure for Scottish products, which is vitally important as typically Scottish businesses do not have the marketing budget of competitors.
4. We do not support restrictions of promotions at the end of aisles which is where local produce is often showcased – especially at celebratory times of the year that are important in Scotland such as Christmas, Easter, Burns Night and Hogmanay.
5. We do not support restrictions on meal deals for the reasons outlined in our response.
6. For exemptions (e.g. store size), we encourage you to consider the views of our retail stakeholders and partners who have more expertise on this.

We believe more focus should be given to the positive role that businesses play in reducing the determinants of ill health and obesity which includes keeping people in work and generating income in Scotland to invest in education, housing, transport, the built environment etc.

We hope we can continue to work together to create a Scotland we can all be proud of, including our brilliant food and drink producers, who make great food that should be celebrated. We are committed to working in partnership with you to achieve this but would urge you to carefully consider our request to pause this process.

We appreciate your time considering this letter, the annex, and our response to the consultation.

Yours sincerely,

John Davidson

Interim Chief Executive

Annex – Further Context and Information

We know that Scotland faces an obesity challenge and want to play a positive role in overcoming it. We share the Scottish Government’s view that combating obesity requires a wide range of measures across society and it is positive to see many of these built into “A Healthier Future – Scotland’s Diet & Healthy Weight Delivery Plan”, from 2018, which continues to be implemented.

It is important to recognise that the current cost crisis, compounded by Brexit and covid, has created some of the most severe headwinds our industry has ever seen. We need these to ease off before further restricting businesses, many of whom produce foods intended for occasional consumption in a responsible way. We feel they should be championed for their ability to provide jobs, deliver economic growth, and move towards sustainable production methods. We work with these businesses to responsibly promote and grow sales into domestic and international markets. Occasional treats are a legitimate part of a healthy diet and there is something very special about Scotland’s producers who use quality, natural and local ingredients to produce them.

Our concerns are bigger than the timing of these restrictions. As outlined in our response to the Circular Economy consultation, it is essential to work towards a comprehensive strategy for Scotland that brings together all efforts to achieve our environmental, social and economic goals. All elements of society need to be involved to secure Scotland’s future success, and the food and drink industry is here to play our part in a healthy, sustainable and prosperous nation.

There has been some excellent progress in key areas, such as Food for Life Scotland’s work on school food, elements of “A Healthier Future” and the drive towards a fairer society including within the National Strategy for Economic Transformation.

However, the impact of these remains uncertain and some are too recent to have an effect. Until we see meaningful and broad impacts, we risk putting an exaggerated prominence on the potential of promotion restrictions to fix what is an insidious problem, which has far greater consequences for our more deprived communities. Our fear is that restricting promotions of HFSS product could cause unnecessary damage to Scotland’s producers and retailers with little benefit.

Obesity in Scotland is, in essence, a health inequality, requiring truly comprehensive action across a wide range of areas to solve. This has been identified repeatedly within the substantial body of research in this area over the past 15 years, including:

1. The 2007 UK Government’s Foresight Report: *Tackling Obesities: Future Choices*, which remains one of the pre-eminent papers on the subject, made clear that:

“A ‘whole system’ approach is critical. This approach will require a broad portfolio of integrated policy responses including both national and local measures. This strategy requires action by government, both central and local, industry and communities and by families and the societies in which they live.”

2. The report also introduced the highly regarded *Obesity Systems Map* and made two important points:

- a. “Energy balance (or imbalance) is determined by a complex multi-faceted system of determinants (causes) in which no individual influence dominates. The systems map can be divided into seven subsystems to illustrate the inter-play between causative factors: individual biology; individual activity; environmental activity; individual psychology; societal influences; food consumption; food production.”
- b. “There are also synergies with other policy goals such as increasing social inclusion and narrowing health inequalities since obesity’s impact is greatest on the poorest.”

3. Professor Rachel Batterham, Special Adviser on Obesity to the Royal College of Physicians, made a similar point:

“Socio-economic factors such as under-employment or poverty play a key role in driving obesity and poor health, and a whole-government approach is critical in order to reduce health inequalities and obesity rates.”

4. In July 2022, the Welsh Health and Wellbeing Alliance wrote a report called “*Mind The Gap*” which highlighted six determinants of health inequality: work, income, education, housing, transport and environment (i.e. clean, green spaces).

5. Public Health England’s 2017 Guidance “*Health Matters: obesity and the food environment*” focusses on the directly proportionate density of fast-food outlets in relation to deprivation. The call-to-action and toolkit provided by PHE is specifically around the “out of home” sector, and fast-food outlets in particular.

6. In 2019, the then Chief Medical Officer for England, Professor Dame Sally Davies, wrote a special report on childhood obesity called “*Time to Solve Childhood Obesity*”. The “Recommendations for Actions” suggests 49 separate actions across ten areas. These include reformulation incentives; advertising and sponsorship; out of home environment; VAT application; calorie labelling; planning restrictions; information for the public; portion sizing and many more. Not a single recommendation involves restricting the location of certain products in retail environments or stopping their in-store promotion.

7. Dr Revoredo, from SRUC made the point in his paper: *Retailers' Promotions: What Role Do They Play in Household Food Purchases by Degree of Food Access in Scotland?*

“Solving Scotland’s overweight and obesity problems will require a broad fronted approach [including a] much stronger emphasis on food and dietary matters in

child and adult education, as well as stronger engagement with the food industry on product reformulation and what is acceptable regarding out of store promotion, and further improvement in the area of institutional catering.”

8. The Scottish Government itself stated, in its 2018 “*A Healthier Future*” report: “The causes of health inequality are broad and entrenched. If we want everyone in Scotland to eat well and have a healthy weight, we have to tackle the underlying factors as well, with poverty and deprivation remaining the biggest and most important challenges.”

Specifically in relation to the planned intervention, a June 2022 report, by Dr Revoredo (and others), *Restricting the Promotion of Foods High in Fat, Sugar, and Salt in Scotland*, references the *potential* net calorie reduction of “651 kcal per capita per week” but makes two important points about the limitations of the study:

1. “It is unclear how restriction of promotions of discretionary foods bought in supermarkets and other retail outlets would impact on purchases of out of home foods. Further data analysis of out of home purchases would be required to assess these impacts.”
2. “Given that no country or jurisdiction has restricted or banned the promotion of discretionary foods, it is difficult to compare our results with findings from previous studies.”

We think these limitations are incredibly important and need further consideration. Our view is that England is introducing, at great expense and inconvenience to retailers, restrictions on locations of HFSS product. We are in the fortunate position of being able to assess the impact of that intervention.

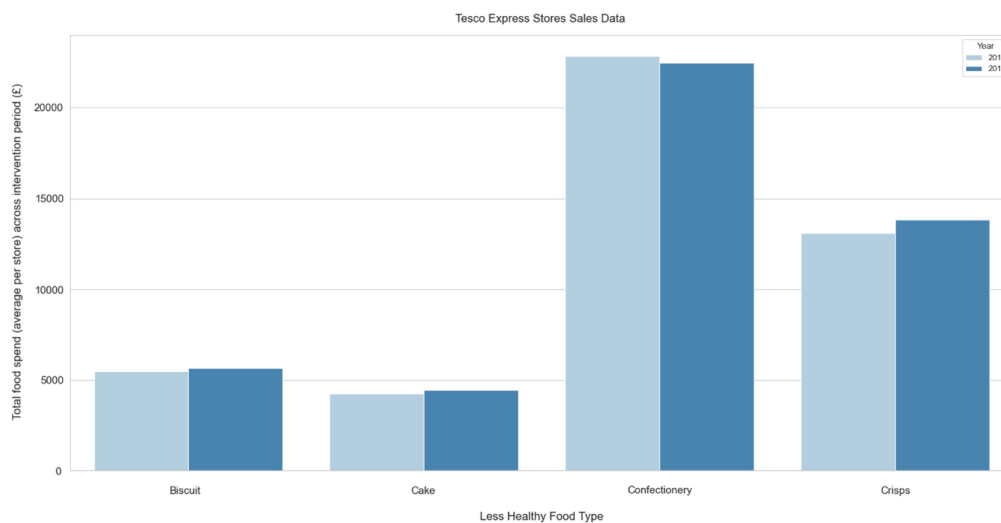
We also think the overall body of evidence raises two key questions:

1. Given that Scotland’s obesity challenge is intrinsically linked to health inequalities, which fundamentally require economic resilience and higher wellbeing within communities and households to address, is it right to introduce a policy that will harm some of Scotland’s food and drink producing businesses’ ability to survive, grow and provide employment, income and investment?
2. Given that promotion restrictions are designed to remove enticements from the supply environment whilst doing little to reduce *demand*, which is caused by a multitude of factors linked to the social and psychological determinants of health (education, housing, environment, transport, work), why are they being given priority over other measures identified in research?

We believe that, unless and until Scotland can claim confidently to have in place a path towards the holistic solution which we all know we need, pulling any single lever too hard will result in unintended consequences for one simple reason: we will not reduce demand by cutting off one line of supply as people will seek high calorie foods elsewhere (e.g. middle of aisles, out of home, non-pre-packed-product).

Low-cost calories will still be widely available no matter the extent of this regulation due to our longstanding priority of low food prices in the UK and the growth of an everyday low-price model in retail, which these regulations may even accelerate.

We can see this directly in the evidence from restricting less healthy products at checkouts. A comprehensive and recent study of the effect of this intervention, *“Impact of Purchasing Behaviour on “Junk Free” Checkouts*, published in August 2022, includes the following chart:



This shows a very small (0.19%) percentage decrease in the before and after sales of confectionery and an almost directly proportionate *increase* in sales of other “less healthy” food types. This shows that supply restrictions did not result in reduced demand overall. We recognise that the proposed restrictions will cover more areas of the store and will likely achieve a higher degree of compliance, but the evidence of previous efforts is worth considering in terms of the real-world impact and peoples’ ability to circumvent restrictions.

We think the focus on restricting promotions of HFSS product has become unduly prominent in public discourse and is the result of a collective misunderstanding about the nature of why certain people overeat. There is strong evidence linking this to psychological factors such as stress and self-esteem. This is not why communities of higher deprivation eat less healthily – it is about access to good food and being able to afford good food. Eating good food is not the inevitable consequence of making it harder to find or afford less healthy foods.

Scotland’s food and drink businesses want to work with government and other stakeholders to collaborate constructively and bring together the various parts of society to explore the strategy, timeframe and interventions needed across all our priority areas to achieve the Scotland we all want to see. We can and will get there, but only if we pull together and recognise the positive role we can all play.