Consultation Analysis –

Reducing health harms of foods high in fat, sugar or salt

Charlotte Howell, Josephine Ramm and Caitlyn McGeer
Perpetuity Research and Consultancy International Ltd

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Executive Summary

Introduction

1. From 2nd October 2018 to 9th January 2019, the Scottish Government undertook a public consultation to invite views on its proposed approach for restricting the promotion and marketing of targeted foods that are high in fat, sugar or salt (HFSS) where they are sold to the public.[1]

2. The aim of the consultation was to gain some sense of the balance of opinion among respondents towards the proposals, whilst also attempting to come to a clear realisation about the breadth and detail of arguments put forward both for and against the proposals. It should be noted that respondents to the consultation are a self-selecting group and their views cannot be claimed to be representative of the wider population.

The respondents

3. The consultation received 728 responses, including one duplicate and one blank response. Of the 726 responses analysed, 632 were from individuals (87%) and 94 were from organisations (13%) – comprising 55 (59%) from non-industry organisations (public sector, third sector and other) and 39 (41%) from industry organisations (manufacturers, industry representative bodies, retailers and Out of Home sector).

Overview of findings

4. In general, there was support for the aim to reduce the public health harms associated with the excessive consumption of calories, fat, sugar and salt and diet-related conditions. However, views were mixed as to whether the restrictions proposed were the most appropriate way to achieve this.

5. Across the consultation, distinct viewpoints emerged by respondent type. Many respondents from non-industry organisations felt the proposed approach was necessary in light of the scale of the public health challenge, purchasing patterns and the shortcomings of other approaches. However, some thought the approach did not go far enough: that it should encompass more types of HFSS foods, more types of promotions and not permit exemptions. It was suggested that the approach should be undertaken in combination with other approaches to educate and encourage healthier eating and lifestyles and should not widen health inequalities particularly in regard to those on a low income.

6. Many respondents from industry either disagreed with the approach or did not indicate a specific view but raised concerns and suggested alternative approaches. In effect, support for the specific proposals, where they were restrictive, was low and, where they were not restrictive or allowed exemptions, was

[1] Scottish Government (2018) *Reducing Health Harms of Foods High in Fat, Sugar or Salt: Consultation Paper* https://www.gov.scot/publications/reducing-health-harms-foods-high-fat-sugar-salt/

higher. Key concerns from industry organisation respondents included: (i) the potential negative impact on businesses generally and specifically on smaller and specialist businesses that may be disproportionately disadvantaged; (ii) concern about conflict with and the undermining of a number of existing approaches and requirements (such as reformulation), and (iii) a view that other approaches to better inform customers of the contents of HFSS foods and nudge them towards healthier choices might be more effective than the proposed restrictions.

7. Individual respondents were fairly split in their view. Support for the approach was more common overall, generally acknowledging the problem of obesity in Scotland and that the proposed restrictions would reduce the likelihood of people buying and consuming excessive amounts of unhealthy foods. However some disagreement was also present across the questions. The most common reason individuals disagreed was due to a view that restrictions of this nature imposed by the Scottish Government affect democratic freedom of choice for the public and it was felt it was inappropriate for a Government to act in this way.

Headline findings for each question group

Whether to introduce mandatory measures to restrict promotion and marketing of discretionary foods (Question 1)

8. Most respondents from non-industry organisations (over four-fifths) and over half of the individuals agreed with the introduction of mandatory measures. Those in agreement generally acknowledged (i) the problem of obesity in Scotland, (ii) the link between promotions and sales, (iii) the idea that the proposed approach would reduce the likelihood of individuals buying and consuming excessive amounts of unhealthy foods, and (iv) the limitation of other approaches such as relying on voluntary approaches by industry or improving education levels among the population.

9. Nearly half of the respondents from industry organisations and over a third of individuals disagreed with the introduction of mandatory measures. Concerns included: (i) a potential negative impact on businesses, (ii) a lack of evidence regarding the effectiveness of legislation to restrict food and drink promotions, (iii) that alternatives may be more appropriate such as promoting healthier options or educating the population on healthy lifestyles, and (iv) a belief – particularly among individuals that citizens should have unrestricted control/choice of the purchases that they make and that the proposed restrictions would deny this.

Identifying categories of food and drink to target (Questions 2-4)

10. Views were wide-ranging on which food categories to target. A fifth of organisations and a quarter of individuals agreed with targeting ‘discretionary’ foods predominantly on the basis that the proposals focused on foods that lack nutritional benefits and are therefore most relevant to target. More than a quarter of organisations and nearly a third of individuals felt that there are ‘additional categories that should be targeted’. Reasons included: (i) while a focus on discretionary foods was good, it was not sufficient given the scale of the public health issues, and (ii) the categorising of foods as discretionary or non-discretionary

was arbitrary and could provide potential loopholes. Over a tenth of organisations and nearly a third of individuals indicated that ‘no foods should be targeted’ predominantly due to disagreement with the proposal to introduce mandatory measures altogether.

11. Non-industry organisations were generally in favour (three-fifths) of ice-cream and dairy desserts being included among the foods targeted. Industry respondents tended not to express a specific view (over two-fifths), but where they did they were generally against their inclusion (a third). More individuals were against (nearly half) than in favour (over two-fifths). Reasons for support (across respondent types) included: (i) these foods are HFSS, and (ii) these foods are discretionary in the sense that they are not essential to a healthy diet. Reasons against targeting these foods included: (i) they have some nutritional value, and (ii) they are more likely to be eaten as part of a meal rather than as a snack.

12. Non-industry organisations were generally more supportive of the overall approach to defining categories (two-thirds) than industry, who tended not to express a specific view (close to half), but where they did they would generally indicate disagreement (over a quarter). Individuals more commonly indicated disagreement (close to half) than agreement (nearly a third). Respondents that agreed tended to simply state that they agreed or that the approach was sensible or reasonable. Concerns, generally from industry, included: (i) it was difficult to categorise products in the way outlined and the approach was too complex, (ii) there was a need for an expert technical group to identify which foods are subject to regulation, and (iii) there were potential alternative methods for categorisation – such as defining specific levels of fat, sugar and salt to determine inclusion/exclusion. Three-quarters of individuals who disagreed did so based on their position against mandatory measures.

Forms of promotion and marketing to be restricted (Questions 5-6)

13. In respect of the proposals to restrict multi-buys and unlimited amounts for a fixed charge, respondents from non-industry organisations generally agreed (over two-thirds). Industry organisations tended to not express a specific view (over two-fifths), but where they did, more commonly agreed (close to a third) than disagreed (just over a fifth). Individuals were very closely split between agreement (close to half) and disagreement (over two-fifths).

14. In respect of the proposals to <u>not</u> restrict temporary price promotion and <u>not</u> restrict multi-packs, non-industry respondents were more split between agreement (over a quarter for temporary price promotions and a third for multi-packs) and disagreement (over a third). Non-industry views diverged on whether to have a ‘blanket approach’ and avoid exemptions being used as a ‘loophole’ or to allow appropriate exemptions. Close to half of the industry respondents agreed, but similar numbers (over two-fifths) did not give a tick box response. Individuals typically agreed (over half) with the proposals.

15. Reasons for indicating these four promotion types should be restricted included: (i) that these promotions are designed to encourage purchase beyond

what is needed, and (ii) that they encourage overconsumption as once bought they are more likely to be consumed in addition to what is needed. Reasons for indicating that these promotion types should not be restricted included: (i) they may be shared among a number of people, (ii) do not necessarily result in overconsumption, (iii) enable people to buy in bulk which aids budgeting, and (iv) offer savings that are needed for those on a low income.

16. When asked for views on the approach to restricting other forms of promotion and marketing, respondents from non-industry organisations generally indicated agreement with the approach (close to three-quarters), while industry tended to either indicate disagreement (half) or not offer a specific view (close to a third) on the approach. Individuals were more likely to indicate agreement with the approach (over two-fifths) than they were to indicate disagreement (over a third). Respondents in favour generally stated that they agreed or thought the approach was sensible or reasonable. Among those who indicated disagreement, reasons included: (i) the approach would not be effective as people would still not know how to make healthier choices, how to cook healthy foods and how to live a healthier lifestyle, (ii) the proposed restrictions may disproportionately affect smaller businesses, which are more likely to use in-store promotion than other forms of marketing, and (iii) that small stores would struggle to implement changes in the approach due to the limitations of existing space/layout.

Places the restrictions would apply (Questions 7-8)

17. Respondents from non-industry (over two-thirds), industry (over two-fifths) and individuals (over half) generally agreed that, if regulations were to be introduced, restrictions should apply to any place where targeted foods are sold to the public, except where this is not in the course of business. Agreement centered on the view that to be effective, the restrictions should apply equally, with some industry respondents voicing that there should be a ‘level playing field’. Among those against, concerns were raised about small independent and specialist shops that may struggle to comply with requirements.

18. Where respondents were asked to comment on whether and to what extent restrictions should be applied online, most respondents from non-industry (more than four-fifths) and industry (more than three-quarters) indicated a view that, if implemented, restrictions should be mirrored online. However, individual respondents were very evenly split between agreement and disagreement (each at over two-fifths) with online restrictions. Reasons for agreement with applying restrictions online focused on the need for consistency between the physical and online environment. Disagreement was predominantly based on overall disagreement with introducing mandatory measures, and to a lesser extent concern was expressed about how online restrictions could be enforced.

Exemptions to restrictions (Questions 9-11)

19. The consultation invited comment on a number of possible exemptions to restrictions: (i) positioning restrictions (in relation to display at end of aisle, checkouts etc.) when there is no reasonable alternative to displaying foods elsewhere, (ii) close to expiry food exemptions (in order to prevent food waste), and

(iii) whether any other exemptions to restrictions should be considered. Non-industry organisations were relatively split regarding the suggested exemptions to restrictions; while the logic for the exemptions was acknowledged by some, others felt exemptions would create loopholes that may undermine the policy. Industry were generally in agreement with exemptions,[2] highlighting their relevance: (i) to take account of the practicalities of store operations, and (ii) if restrictions on close to expiry food were put in place, they would undermine other schemes to reduce food and drink waste. Individuals were split in their views on exemptions although overall more agreed than disagreed.

20. Suggestions for other exemptions included: small businesses, seasonal stock, items for special dietary needs, local products, items beneficial for controlling medical issues and specialist shops.

Enforcement and implementation (Question 12)

21. Respondents from non-industry organisations generally indicated agreement (over four-fifths) with the proposals for enforcement of restrictions, typically acknowledging that the local authority already has appropriate knowledge, legal status and relationships with businesses to enable enforcement. Industry generally did not give an overall indication (more than two-fifths) or indicated agreement (over a third). Overall more individual respondents indicated disagreement (two-fifths) than agreement (close to a third). Respondents indicating disagreement expressed a number of views that included: (i) belief that other organisations would be better suited to enforce restrictions, (ii) local authorities are already overstretched, and (iii) general disagreement on the basis of their overall stance against mandatory restrictions.

22. Overall, on the subject of enforcement, respondents expressed a number of views that included: (i) concern about the potential burden that enforcement would place on local authority teams and suggestions that separate funding would be required for this function, (ii) concern that sufficient lead-in time would be needed to implement the changes, and (iii) concern about the use of penalties as described.

Legislative framework (Question 13)

23. Most non-industry organisation respondents (over four-fifths) and close to half of individuals indicated agreement with the flexible approach to legislation, most of which did not further clarify their reasoning. Close to half of the industry organisations indicated disagreement with the approach or gave no overall indication (over a third). Among industry organisations concern was expressed that: (i) allowing revisions to the approach via secondary legislation would lack the democratic scrutiny that primary legislation is subject to, and (ii) that it would be unfair to businesses to have to keep making changes as requirements are changed.

[2] Close to three-fifths agreed with the exemption to positioning restrictions where there is no reasonable alternative; and close to two-fifths agreed with the close to expiry exemptions.

24. In general, there were a few respondents (individuals and organisations) who felt that the proposals for legislation were relatively vague and that they would need more detail on what the legislation would look like to be able to comment fully.

Impact and support (Questions 14-16)

25. Respondents from industry organisations generally noted that the introduction of the proposed measures would have a significant impact on the way the industry operates, and that they are coming at an exceptionally challenging time for the industry. A number of concerns were raised including: (i) negative impact on turnover and possible redundancies, (ii) impeding the introduction of new products to the market, (iii) costs attributable to a lack of a joined up approach across the UK for example holding dual stock, (iv) costs attributable to making the changes needed to comply with restrictions, (v) competitive disadvantage for smaller businesses that rely on the types of promotions included in the proposed restrictions, (vi) competitive disadvantage for Scottish businesses, and (vii) reduced incentive to reformulate products.

26. In respect of the support needed by organisations to implement the restrictions effectively, organisations highlighted a number of considerations including: (i) the importance of ensuring that industry and the public understand the need to implement change, (ii) guidance being needed (and a training and awareness programme being beneficial), (iii) small independent businesses are likely to find implementing changes more challenging and therefore resources should focus on them, and (iv) in addition to the dissemination of resources to Scottish manufacturers and retailers, resources would need to be disseminated to food and drink manufacturers across the UK who supply to Scotland.

27. In relation to how the restrictions would impact the people of Scotland with respect to the determinants of health inequalities, there was recognition among individuals and non-industry organisations of potential positive impacts on health. However, many respondents, across all respondent types, reported potential negative impacts. While various concerns were raised[3], the restrictions were generally perceived to have the greatest potential impact on people who were already socio-economically disadvantaged. This was on the basis that the impact of the restrictions would be that discretionary foods become more expensive, and since those on a low income are more likely to rely on these promotions as a cheap way of meeting their calorie needs, their food costs would increase. Suggestions to mitigate this centered on education in relation to healthy low-cost eating, and reducing the costs of healthier foods.

[3] Including concerns about the impact of the proposals on: the elderly; ethnic minorities; those with disabilities; those with special dietary requirements; those with medical conditions that are managed via the consumption of discretionary foods; and those who consume discretionary foods at celebration times or in relation to religious beliefs.

1. Introduction and background

1.1. The Scottish Government published *A Healthier Future: Scotland's Diet and Healthy Weight Delivery Plan* (the Delivery Plan) in July 2018[4] following consultation.

1.2. The Delivery Plan set an ambition to halve child obesity in Scotland by 2030 and to significantly reduce health inequalities. It set out a range of actions to improve the nation's diet-related health outcomes, working towards achieving five key outcomes:

i. Children have the best start in life – they eat well and have a healthy weight
ii. The food environment supports healthier choices
iii. People have access to effective weight management services
iv. Leaders across all sectors promote healthy weight and diet
v. Diet-related health inequalities are reduced.

1.3. In October 2018, the Scottish Government consulted on plans to restrict the promotion and marketing of targeted foods high in fat, sugar or salt (HFSS) where those foods are sold to the public. This consultation closed in January 2019 and its analysis is the subject of this report.

Policy Context

1.4. The *Scottish Health Survey*[5] provides information on the health and factors relating to health of people living in Scotland. In 2017, it found that

- 65% of adults (aged 16 and over) are considered overweight of which almost half are obese (29% of adults);
- 26% of children (aged 2 to 15) are at risk of being overweight of which almost half are at risk of obesity (13% of children);
- 24% of adults and 15% of children[6] eat the recommended 5-a-day portions of fruit and vegetables; and
- Children in Scotland consume higher fat and/or sugary food/drink more often than adults.

1.5. The Foods Standards Scotland Situation Report, *The Scottish Diet: It needs to change (2018 update)*[7], highlighted that too much of the Scottish diet is made up of discretionary foods:

- 20% of all calories and fat consumed comes from discretionary foods;
- 50% of the sugar consumed comes from discretionary foods; and
- 21% of sugar intake comes from sugary drinks.

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[4] Scottish Government (2018) A Healthier Future – Scotland's *Diet and Healthy Weight Delivery Plan* https://www.gov.scot/publications/healthier-future-scotlands-diet-healthy-weight-delivery-plan/
[5] Scottish Government (2018) *The Scottish Health Survey 2017 edition | volume 1 | main report* https://www.gov.scot/publications/scottish-health-survey-2017-volume-1-main-report/
[6] 2-15 year olds
[7] Foods Standards Scotland (2018 update) *Situation Report: The Scottish Diet: It needs to Change* https://www.foodstandards.gov.scot/downloads/Final_Report.pdf

1.6. Poor diet and being overweight have profound impacts on health. Obesity is the second largest preventable cause of cancer, linked to over 2,100 cases of cancer per year in Scotland.[8] Being overweight and obese is the most significant risk factor for developing Type 2 diabetes[9], which can result in an increased risk of other types of diseases, notably cardiovascular disease and hypertension.[10] Diet-related diseases pose a substantial burden to the NHS, with the annual cost estimated to be between £363 million to £600 million. Factoring in labour-market related costs (e.g. loss of productivity), the total annual cost to the Scottish economy is estimated much higher at between £0.9 billion and £4.6 billion.[11] As well as reducing life expectancy (anywhere from 2-10 years depending on body mass index[12]), overweight and obesity are considered to hinder the population's ability to live happy and fulfilling lives.[13]

The Consultation

1.7. The consultation paper set out proposals for restricting the promotion and marketing of targeted HFSS foods where those foods are sold to the public. The primary aim of the policy is to reduce the public health harms associated with the excessive consumption of calories, fat, sugar and salt. The consultation paper set out the rationale for this approach, including that evidence suggests promotions and marketing encourage purchases that would otherwise not have occurred.

1.8. The consultation paper proposed to restrict 'discretionary' foods, defined as food and drink categories typically high in fat, sugar or salt, but providing little or no nutritional benefit necessary for a healthy diet. The proposals relate to the in-store promotion and marketing of discretionary foods where sold to the public, including retail and the Out of Home (OoH) [14] sector. The consultation paper asked whether restrictions should also apply online.

1.9. The consultation opened on 2nd October 2018 and closed on 9th January 2019. The consultation contained 17 questions – 10 were open questions and 7 were multiple choice (closed) questions. For all questions, space was provided for respondents to provide an explanation for their answer. The questions covered a number of themes:

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[8] Katrina F Brown et al (2018) *The fraction of cancer attributable to modifiable risk factors in England, Wales, Scotland, Northern Ireland, and the United Kingdom in 2015* http://www.nature.com/articles/s41416-018-0029-6

[9] Hauner H (2010) *Obesity and diabetes*. in Holt R.I.G., Cockram C.S., Flyvbjerg A et al (ed.) Textbook of diabetes. 4th edition.

[10] Guh et al (2009) *The incidence of co-morbidities related to obesity and overweight: A systematic review and meta-analysis* https://bmcpublichealth.biomedcentral.com/articles/10.1186/1471-2458-9-88

[11] A Castle (2015) *Obesity in Scotland*. SPICe Briefing, 15/01. 7 Jan 2015. http://www.parliament.scot/ ResearchBrie ngsAndFactsheets/S4/SB_15-01_Obesity_in_Scotland.pdf

[12] NHS Health Scotland (2017) *Public attitudes to reducing levels of overweight and obesity in Scotland* http://www.healthscotland.scot/media/1705/public-attitudes-to-reducing-obesity-in-scotland.pdf

[13] Scottish Government (2017) *Diet and Healthy Weight Delivery Plan* https://www.gov.scot/publications/healthier-future-scotlands-diet-healthy-weight-delivery-plan/

[14] This refers to places that serve food and drink outside of the home such as restaurants, cafes, pubs, coffee shops and takeaways.

- Whether mandatory measures should be introduced to restrict the promotion and marketing of HFSS foods (Question 1)
- Identifying categories of food and drink that would be targeted (Questions 2, 3 and 4)
- Forms of promotion and marketing that would be restricted (Questions 5 and 6)
- Places the restrictions would apply (Questions 7 and 8)
- Exemptions to the restrictions (Questions 9, 10 and 11)
- Enforcement and implementation (Question 12)
- Legislative framework (Question 13)
- Impact and support (Questions 14, 15 and 16)
- Any other comments (Question 17).

1.10. Annex 1 contains a full list of the consultation questions.

Aims of this report

1.11. The overall aim of this report was to gain some sense of the balance of opinion among respondents towards the proposals, whilst also attempting to come to a clear realisation about the breadth and detail of arguments put forward both for and against the proposals.[15]

1.12. The structure of the report follows the structure of the consultation paper, considering the response to each question in turn. Section 2 provides an overview of the respondents to the consultation.[16] Sections 3-10 summarise the views submitted by respondents in answer to the consultation questions. Finally, Annexes 1-6 provide further detail on the consultation questions, the responses, the respondents and issues with interpretation of the consultation questions.

Approaches to analysis

Quantitative analysis

1.13. Frequency analysis was undertaken for all multiple choice (closed) questions. The figures are included within the findings and presented with additional detail in Annex 2.[17] Further analysis was also undertaken to compare how respondents' tick box response to the first question (whether or not to restrict mandatory measures) related to their responses to other tick box questions.[18] These figures can be found in Annex 2 and a brief summary of the findings in Annex 6.

1.14. Prior to the main analysis, responses were reviewed for blanks, duplicates, campaign responses, missing answers and any problems with responses such as misinterpretation of the questions. The purpose of this was both to avoid the

[15] However please see para 1.20 below with regard to the generalisability of the findings.
[16] Including individuals, organisations and organisation type.
[17] It should be noted that in some instances the percentage total will not add up to 100% due to rounding error.
[18] i.e. whether those with a pro-restriction stance tended to agree or disagree with the specific proposals put forward and whether those with an anti-restriction stance tended to disagree with all proposals or whether they saw merit in some aspects.

findings being skewed and to ensure the views of respondents were represented as accurately as possible.[19]

1.15. The full justification for cleaning the data and a full list of issues with the questions, and the solutions applied is provided in Annex 3. As part of the process to ensure that the views of respondents were represented as accurately as possible, it should be noted that the frequencies and percentages in the tables for each question in the main report (sections 3-10) include answers that were corrected. To be clear, corrections took place where there were clear discrepancies between the tick box answer and the comments that were provided alongside it. This includes instances where the respondent had clearly inferred a view in their comments that did not match the tick box answer they had selected (e.g. where a respondent had found elements of the wording for the closed questions difficult to understand, and provided a tick box answer which did not match their clearly expressed written view below). In these cases, the data cleaning process corrected the tick box response to be in line with the comment, and incorporated these responses into the tables in the main report. The tables also include an additional category referred to as 'conflicting answers' or 'possible conflicting answers'. These reflect the number of responses where there was doubt about the certainty of the tick box response on the basis that it did not match the point of view expressed in the comments but was not sufficiently clear to enable correction. Further information on these responses is provided in Annex 3 and a more detailed breakdown of these responses is provided for each question in the tables in Annex 2.

1.16. The overall impact of cleaning the data was reviewed. The impact varied from question to question - sometimes increasing the number of responses in favour of proposals; sometimes increasing the number of responses against proposals. However, **data cleaning did not result in an overall shift in stance among respondents (i.e. the overall proportion for and against restrictions), nor did it alter the trends in the data (i.e. the relative popularity of each answer option within a question remained the same**).

Qualitative analysis

1.17. The responses given to the open questions and the comment sections of the closed questions were analysed to identify the main themes emerging, the range of views expressed for each question and how views varied by respondent type. In

[19] (1) One blank response and one duplicate response were removed. (2) There were no campaign responses. (3) There were low numbers where it was evident that respondents had 'conferred' and submitted similar response wording. These responses were kept on the basis that they were submitted to represent different organisations and it was deemed reasonable for different organisations with similar interests to submit consistent responses. (4) For missing answers to closed questions, the written comments provided were used to interpret the answer to the closed question where possible. (5) It was apparent that at times a small number of respondents found elements of the wording for the closed questions difficult to understand, as their written explanation did not match the answer option selected. In these cases, the written comments provided by the respondent were used to interpret their intended response and corrections were made.

general the responses submitted by organisations were more detailed and lengthy than those submitted by individuals.[20] [21]

1.18. Due to the varying numbers of responses to each question and each answer option, descriptors are used to represent the proportion of respondents that hold a particular reason for each answer option. Table 1.1 displays the descriptors used.

Table 1.1 Descriptors

Descriptor	Value
Most	Over 75%
Many	51 - 74%
Half	50%
Some	25 - 49%
Few	Under 25%

1.19. For example, 40% may have disagreed with a given question. Among those that expressed a reason for disagreement, if over 75% shared the same reason for disagreement this would be referred to as 'most' followed by an explanation of the reason e.g. 'of those that disagreed, most thought it was not needed'.

Comment on the generalisability of the consultation findings

1.20. It should be noted that the purpose of consultation is to understand the range of views expressed and the reasons these views are held. However, caution is needed when interpreting the responses. Anyone could submit their views, and individuals and organisations who have a keen interest in the topic and the capacity to respond were more likely to participate than those who do not. This self-selection means that the balance of views of consultation participants cannot be generalised to the wider population. It is **not** a reliable measure of public opinion.

Interpretation of the findings

1.21. While efforts have been made to explain and summarise the questions posed within the consultation paper, it should be noted that the full rationale and evidence base for the proposals is not presented within this report. It is therefore advised that the full consultation paper is read in advance of this document to aid interpretation of the findings presented here. It should also be noted that generally those agreeing

[20] While the views of respondents are discussed, the accuracy/evidence on which they are based has not been assessed (as this is beyond the scope of the analysis).

[21] At times responses were complex and it was not always clear which aspect of the proposals for a given question was being referred to. Additionally, as some questions are inter-related, at times the same point was covered across a number of questions. To facilitate the interpretation of the findings, efforts were made to minimise duplication by integrating duplicated views within the question that most closely relates to that issue.

with the proposals within the consultation paper were less likely to explain their reasoning and gave less detail than those who disagreed with proposals.[22]

[22] Consequently, the amount of information presented regarding disagreement with the proposals is generally greater. This should not be interpreted as disagreement being more prevalent than agreement – the frequency of responses presented for each question should also be kept in mind when interpreting the findings.

2. About the respondents and responses

Number of responses received

2.1. The consultation received 728 responses. This included one duplicate response (a respondent submitted an original response and then a second, fuller response) and one blank response. After these were removed, the analysis was based on 726 responses.

Submission of responses

Online

2.2. Respondents could submit an online response by completing the response form hosted on the Scottish Government's consultation hub, Citizen Space. In total 692 respondents used this facility to submit their response.

Email or post

2.3. Respondents could also submit their responses directly to the Scottish Government's Diet and Healthy Weight Team by email or post. 36 respondents (all organisations) submitted their response by this route. It should be noted that unlike responses received via Citizen Space, those submitted by email or post were not compelled to select a tick box answer option (where relevant). In addition, 6 organisations that had submitted an online response also sent a duplicate copy by email.[23]

About the respondents

2.4. Responses were submitted by 632 individuals (87%) and 94 organisations (13%).

Organisation respondents

2.5. A list of the organisations that responded to the consultation is provided in Annex 4. For the purposes of the analysis, the organisations were grouped in to two categories – non-industry (n=55; 59%) and industry (n=39; 41%). The composition of these categories is shown in Table 2.1.

[23] The main reason respondents did so was to enable them to provide citations for references included in their online response.

Table 2.1 Organisation types

	n	% of total
Non-industry Organisations (n=55, 59%)		
Public Sector	31	33%
Third Sector	10	11%
Other[24]	14	15%
Industry Organisations (n=39, 41%)		
Manufacturer	17	18%
Industry representative body	14	15%
Retailer	7	7%
Out of Home provider[25]	1	1%
Total	**94**	**100%**

2.6. It should be noted that generally industry respondents were less likely than non-industry organisations to specify an overall viewpoint (i.e. give a tick box answer). Where this was the case, however, some gave a qualitative response that expressed concerns or suggested alternative approaches. While the wording used was not sufficient to imply disagreement in regards to the tick box answer, in effect their responses were closer to disagreement with restrictions than agreement. In this respect, it is possible that the frequency of disagreement with restrictions/ approaches reported is an underestimate.

2.7. While the Scottish Government invited a variety of Out of Home stakeholders to comment on the consultation, only one organisation response was submitted on behalf of an Out of Home provider. Since the views of one organisation cannot be stated to be representative of the views of the Out of Home sector and to avoid unfair focus on the views of one respondent, the response were combined in to the retailer category.

Individual respondents

2.8. It was not always clear what interest or knowledge was held by individual respondents. The comments submitted within a number of responses indicated the individual respondent worked in public health or weight management, had personal experience of issues related to overweight/obesity or medical conditions impacted by HFSS food consumption (such as type 2 diabetes). It was also apparent that a

[24] This category included a variety of organisations such as professional bodies, a consumer organisation and a regulator.
[25] For example: restaurant, fast food outlet, coffee shop

number of individuals took a stance against the proposals on the principle that they did not believe it was appropriate for the Scottish Government to make restrictions in relation to what the population chooses to eat.

2.9. Among the latter, it should be noted that responses generally did not address the specific proposals relating to each question and instead repeated the view that there should be no restrictions. The written responses by a small number of these respondents at times implied misunderstanding of the proposals as references were made to the foods themselves being restricted/banned/altered as opposed to the restrictions relating to the promotion and marketing of the foods. Throughout the report, clarification is provided on where disagreement is general in nature (i.e. due to overall disagreement with mandatory measures) and where it is specific (i.e. relating to the specific approach/issue being considered within the proposals). Further, these responses are not considered within analysis of any question where the response submitted did not provide a direct answer to the question posed.[26]

Responses to individual questions

2.10. It should be noted that not all respondents answered all the questions in the consultation questionnaire and that at times the responses to a given question related to other questions or to a related topic not directly covered by the consultation. Not all respondents that provided a multiple choice response went on to explain their answer. Where a respondent did not tick an answer option but provided a written explanation highlighting concerns or considerations their point of view has been incorporated into the report at the most appropriate place.

2.11. Details on the number of respondents who answered each question are provided in Annex 5, but should be interpreted as indicative as opposed to providing a precise response rate. Overall, responses to the multiple choice questions were higher than the open questions.

2.12. Responses to the final question – providing the opportunity to outline any other comments – varied greatly and, where appropriate, have been integrated in to the findings for the other questions.

[26] Questions 11, 14, 15 and 16 invited input/suggestions and, therefore, only direct/informative responses were considered.

3. Whether to introduce mandatory measures to restrict promotion and marketing (Q 1)

3.1. The first section of the consultation paper aimed to gauge baseline opinion on whether mandatory measures should be introduced to restrict the promotion and marketing of HFSS foods.

3.2. The consultation paper proposed that such mandatory restriction measures would reduce the volume and frequency of their purchase and, by association, reduce the public health harm of their consumption. Respondents were asked the degree to which they agree or disagree with the introduction of mandatory measures.

Question 1: *To what degree do you agree or disagree that mandatory measures should be introduced to restrict the promotion and marketing of foods high in fat, sugar or salt to reduce health harms associated with their excessive consumption?*

Overview

3.3. Close to three fifths of organisation respondents (58%) and nearly as many individual respondents (56%) were in favour of the introduction of mandatory restrictions. A fifth of organisation respondents (21%) and over a third of individual respondents (37%) were against. A further 15% of organisation respondents did not provide a tick box answer. Notably the proposals typically evoked ‘strong’ feelings in the sense that a greater proportion ‘strongly agreed’ than ‘agreed’ and similarly a greater proportion ‘strongly disagreed’ than ‘disagreed’. The full breakdown of responses is displayed in Table 3.1.

Table 3.1 Responses to question 1

Answer	Organisations		Individuals	
	n	%	n	%
Strongly agree	43	46%	245	39%
Agree	11	12%	106	17%
Neither agree or disagree	6	6%	46	7%
Disagree	6	6%	68	11%
Strongly disagree	14	15%	163	26%
Not answered	14	15%	3	1%
Conflicting answer[27]	0	0%	1	0%
Total	**94**	**100%**	**632**	**100%**

In this and all subsequent tables within the report 'n' is the number of respondents and % is of all respondents to the consultation.

Organisation respondents overview

3.4. Breaking down the findings further from the responses in the table above, it was possible to see different views in the responses from different types of organisation. Most non-industry organisation respondents (86%) agreed with the introduction of mandatory measures. Nearly half (48%) of the industry organisation respondents disagreed and a further quarter (26%) did not provide a tick box answer. A full breakdown of these responses is provided in Annex 2, Table A2.1.

Views in favour of mandatory restrictions

3.5. Agreement with the proposed mandatory restrictions typically acknowledged the problem of obesity in Scotland and that, given the link between promotions and sales, the proposed approach would reduce the likelihood of individuals buying and consuming excessive amounts of unhealthy foods.

3.6. Many of the public and third sector organisations that agreed with mandatory restrictions noted that this action was needed to protect people from harm. Reasons for agreement with the mandatory restrictions (each expressed by few) included:

- Voluntary codes and guidance have had limited success and have not been adopted consistently across the sector;
- Relying on education and targeting individual behaviour change was ineffective and risked widening health inequality;

[27] The respondent selected 'Strongly disagree' but based on their written comments they may have meant 'agree' or 'strongly agree'. However the wording of their comments was not sufficiently clear to enable correction of their tick box answer.

- Change was needed for groups disproportionately affected by an unhealthy food environment – for example, those on a low income, young people or vulnerable groups;
- A universal approach (rather than interventions aimed at increasing knowledge or skills) was required and had the potential to reduce health inequalities; and
- HFSS products should be viewed as carrying the same level of risk as tobacco and alcohol.

3.7. In addition, some public and third sector respondents talked about the need for the regulations to sit within a broader context of health promotion changes. For example, media campaigns about healthy choices and making healthier food options more accessible.

3.8. Few of the individual respondents that agreed with the introduction of mandatory measures noted issues to be considered in relation to the introduction of restrictions such as:

- The potential impact on the choice of individuals;
- As promotions are not the only reason for unhealthy purchases, mandatory measures should be undertaken alongside other measures to form part of a wider solution;
- Some HFSS foods are healthy and a certain amount of fat and salt are needed within a healthy diet;
- The approach could lead to an increase in the level of substitutes/chemicals being used in products;
- An approach should not disadvantage certain individuals and businesses;
- The impact of the approach should not amount to foods being 'banned'; and
- Unhealthy foods would remain cheaper than healthy foods and therefore impact may be limited.

Views against mandatory restrictions

3.9. A number of reasons for disagreement with mandatory restrictions were given. Among individual respondents, the reason expressed most commonly (by some) was the belief that individuals should have unrestricted control/choice of the purchases that they make and that the proposed restrictions would deny this; and similarly, that the approach was specifically unfair to those who do not over-consume HFSS products as it would limit their ability to take advantage of price promotions.

3.10. Other reasons for disagreement which were each expressed by few individual respondents included:

- That making restrictions of this nature were not within the remit of the Scottish Government;
- That in order to tackle the problem, action should instead be taken to educate and inform the public and promote healthier lifestyles;

- That the approach would not be effective due to reasons such as the relative expense of healthy foods, other reasons for purchasing HFSS foods (such as comfort eating) and other causes of overweight/obesity;
- The potential negative impact on businesses, and specifically Scottish businesses, as a result of restrictions in relation to the ways that they will have to market foods; and
- The potential that mandatory restrictions may increase food costs for those on a low income by removing the opportunity to take advantage of price promotions.

3.11. Close to half of the industry organisation respondents that held concerns about mandatory restrictions felt that there was a lack of evidence of the effectiveness of legislation to restrict food and drink promotions. Other points that challenged the justification for mandatory measures, each made by few, included:

- A belief that, due to the absence of scientific consensus linking health benefits to mandatory restriction policies, there should be a focus on positive incentives to foster healthy eating habits, education to understand a healthy diet and support for consumers to make healthy choices in-store;
- The success and value of voluntary measures and collaborative partnership working, which has resulted in actions such as the removal of confectionery at checkouts and restriction on the sale of energy drinks to under 16 year olds;
- An expression of pride in the efforts made by the sector in recent years, particularly in regards to reformulation efforts to provide healthier alternatives;
- A concern that any response had to be undertaken using a unified approach, this includes unification across geographical borders, in consideration of various different government policies and in collaboration with manufacturers, suppliers, wholesalers and retailers. It was felt that this kind of approach would avoid unnecessary contradiction and confusion, as well as avoid a high business burden.

3.12. Many industry organisation respondents expressed concerns that the proposed measures would negatively impact manufacturers, retailers, and the Scottish economy. Few noted this might result in job losses. Close to half suggested that small Scottish manufacturers and retailers would be the most impacted by the changes, due to their reliance on low-cost marketing techniques that would be restricted by the legislation, while large companies with big advertising and promotional budgets would be able to adapt and adjust their marketing strategy. Consequently, this could reduce small Scottish firms' competitiveness and ability to grow and contribute to the Scottish economy.

3.13. There were also concerns, each expressed by few industry organisation respondents, that the proposals would be: ineffective; restrict choice; increase cost for consumers across the whole food sector (and that this would have a disproportionate impact on lower income households); and remove incentives for manufacturers to reformulate products.

3.14. Alternative approaches that were suggested, each by few industry organisation respondents, included: the promotion of healthier options through price or reward points; considering whether to legislate the proportion of promotions which should apply to healthier food; and education and promotion of a healthy, active and balanced lifestyle.

3.15. Other suggestions regarding the proposals, each expressed by few industry organisation respondents, included that:

- Any steps taken should be proportionate and fair – they must consider how restrictive measures could negatively impact on businesses;
- A graded approach should be adopted to continue to incentivise industry to reformulate products;
- There should be exemptions for lower sugar/fat products or 'best in category';
- Exemptions could be made for products hitting targets in Public Health England's calorie cap on sugar per 100g/100ml; and
- Regulation should not apply retrospectively to equipment, materials or existing contracts (e.g. between brand owners and retailers in regards to use of branded equipment).

Views neither for nor against mandatory restrictions

3.16. Individual respondents that did not state an overall preference varied widely in their reasoning. Although they generally expressed similar concerns to those already highlighted above, few raised other points such as:

- Whether some specific aspects included in the proposals were the correct approach (such as the inclusion of fats);
- Whether it would be preferable to educate and support people to make healthier choices and lead healthier lifestyles; and
- Whether restrictions should instead focus on the reduction of levels of fat, sugar and salt in products.

4. Identifying categories of food and drink to target (Qs 2-4)

4.1. The consultation paper proposed that the above mandatory measures target foods defined as 'discretionary' and sought views on (i) whether restrictions should only target 'discretionary' foods, (ii) whether ice-cream and dairy desserts should be treated as 'discretionary' foods and (iii) the overall approach to defining categories and exclusions of foods/products.

Targeting discretionary foods

4.2. The consultation paper proposed that the mandatory restriction measures for promotion and marketing of HFSS foods should target a number of discretionary food categories. Respondents were asked whether they felt this policy should only target these food categories.

Question 2: *Should this policy only target discretionary foods? [confectionery, sweet biscuits, crisps, savoury snacks, cakes, pastries, puddings and soft drinks with added sugar]*

Overview

4.3. A fifth of organisation respondents (21%) and a quarter of individual respondents (26%) agreed with the proposed definition of foods to be targeted. However, more than a quarter of organisation respondents (29%) and nearly a third of individual respondents (32%) felt that there are additional categories that should be targeted by restrictions.

4.4. Meanwhile, 13% of organisation respondents and nearly a third of individual respondents (32%) indicated that no foods should be targeted. A very small number of respondents (3% of organisations and 3% of individuals) indicated that fewer foods should be targeted. Over a third of organisation respondents (34%) indicated 'other' or did not provide a tick box answer. The full breakdown of responses is provided in Table 4.1 below.

Table 4.1 Responses to question 2 [28]

Answer	Organisations		Individuals	
	n	%	n	%
Yes	20	21%	162	26%
No – there are additional categories that should be targeted	27	29%	206	32%
No–fewer categories should be targeted	3	3%	17	3%
No – no foods should be targeted	12	13%	199	32%
Don't know	1	1%	1	0%
Other	21	23%	7	1%
Not answered	10	11%	2	0%
Conflicting answers[29]	0	0%	38	7%
Total	**94**	**100%**	**632**	**100%**

Organisation respondents overview

4.5. Breaking down the findings further from the responses in the table above, it was possible to see different views in the responses from different types of organisation. More than two-fifths (44%) of the non-industry organisation respondents indicated that additional foods should be targeted, and nearly a third (31%) agreed with the discretionary foods as listed (i.e. a 'yes' response). More than half (52%) of the industry organisation respondents indicated 'other' or did not answer the question. More than a quarter (28%) indicated that no foods should be targeted. A full breakdown of these responses is provided in Annex 2, Table A2.2.

Views in relation to 'Yes' responses

4.6. Agreement among individual and non-industry organisation respondents centered on the feeling that these are the foods that lack nutritional benefits and are therefore the most relevant to target. Some public and third sector respondents saw it as a 'starting point' to which additional categories could be added in future.

[28] In addition to the responses shown in Table 4.1, 9 respondents (8 individuals and 1 organisation) selected the answer option 'other' in addition to one of the main answer options. Table 4.1 shows their main answer option, but not the additional 'other' answer selected. Of these 9 respondents, 5 provided an explanation. Those explanations have been included within 'other considerations' (para 4.13) below.
[29] See para 4.15.

Views in relation to 'No – there are additional categories that should be targeted' responses

4.7. Many individuals responding to this answer option listed the foods that they thought should be included without explaining why, although few explained that they thought the foods were unhealthy and therefore action needs to be taken in relation to promotion and marketing of the foods.

4.8. Some public and third sector respondents felt that more foods that are HFSS should be considered and that, while a focus on discretionary foods was good, it was not sufficient given the scale of the public health issue. Few held concern that categorising foods as discretionary or non-discretionary was arbitrary and could provide a potential loophole. It was, therefore, suggested that there should be flexible legislation to allow additional foods to be added.

4.9. It should be cautioned that it was not always clear whether respondents believed that the items they referred to should be included in their entirety (e.g. all ready meals) or only those that are HFSS (e.g. only HFSS ready meals). A number of respondents specifically noted that these types of food should be included if they met the description of being HFSS but other respondents did not. Since a number of respondents interpreted this question in a broader sense of identifying any foods for inclusion rather than in the narrower sense of defining 'categories', responses should be interpreted with caution. The foods most frequently proposed for inclusion (each by few individual respondents and few organisation respondents[30]) included (ranked in order of frequency with the most frequent first):

- Ready meals;
- Processed foods;
- Fast food;
- Cereals;
- Ice cream;
- Yoghurt;
- Anything high in fat, sugar or salt;
- Ice cream and dairy desserts (i.e. distinct from ice-cream alone);
- Takeaways;
- Cereal bars;
- Milkshakes;
- Meat (processed meat, red meat);
- Artificial sweeteners; and
- Dairy.

Views in relation to 'No – fewer categories should be targeted' responses

4.10. Only 20 respondents selected this response (17 individuals and 3 organisations) and, overall, there was little similarity among responses. Both industry organisation respondents that selected this answer option noted that

[30] The list comprises of products listed by both individuals and organisations, however, not all organisations that indicated that 'additional foods should be included' went on to list specific foods – few described the approach to categorising foods that they felt should be taken without listing specific foods.

‘discretionary’ foods that had low levels of added sugar should be excluded from restrictions. Among the individual respondents that provided an explanation, few suggested that only those discretionary foods that were highly processed/containing artificial ingredients should be included.

Views in relation to ‘No – no foods should be targeted’ responses

4.11. Many of those that indicated that no foods should be targeted did so because they disagreed with the proposal to implement mandatory measures to restrict the marketing and promotion of HFSS foods.

4.12. Some industry organisation respondents suggested that should restrictions go ahead, rather than targeting specific categories, it would be preferable to set the levels of fat, sugar and salt considered to be too high. Any foods reaching that threshold, should be included. In the case of soft drinks, few suggested that legislation should be aligned with the Soft Drinks Industry Levy threshold.

Other considerations

4.13. There was concern among some organisation respondents about the introduction of a new method of categorisation that applied to Scotland only and suggestion that consistency across the UK was needed to avoid complication and confusion for manufacturers, retailers and customers. Some of which (mostly public and third sector and other organisations but also one manufacturer and one industry representative body) suggested that categorisation should be based on the levels of fat, sugar or salt within the products. The Ofcom Nutrient Profiling Model (NPM)[31] was suggested as a way to better define unhealthy foods, unify the approach with that of the rest of the UK and better complement existing reformulation efforts and approaches.

4.14. Few industry organisation respondents requested clarity on definitions of included foods and felt unable to comment fully until this was available. Few felt that consumers needed to be educated on how to understand a balanced diet and that ‘demonising’ individual products or macro-nutrients was not beneficial. They felt a better approach was to have access to the full marketing and promotional toolkit and work in partnership to ‘nudge’ consumers to healthier choices.

Conflicting Views

4.15. A software error on the Citizen Space platform allowed respondents to choose more than one response to the question. For the most part, multiple responses were resolved (see Annex 3 for further details). However, 38 respondents (all individuals) selected more than one answer option where it was not possible to determine from their explanation to the question whether a specific answer option best fit their view. Many of these restated disagreement with the

[31] The Nutrient Profile Model was “developed by the Food Standards Agency in 2004-2005 to provide Ofcom, the broadcast regulator, with a tool to differentiate foods on the basis of their nutritional composition in the context of television advertising foods to children. The model uses a simple scoring system where points are allocated on the basis of the nutrient content of 100g of a food or drink.” See Department of Health (2011) *Nutrient Profiling Technical Guidance,* Online, Available from: https://www.gov.uk/government/publications/the-nutrient-profiling-model (accessed 30/04/19)

introduction of mandatory restrictions in relation to the promotion and marketing of these foods. Few repeated suggestions regarding alternative approaches to the measures such as educating people to make their own choices, lowering the cost of healthy food and encouraging healthier lifestyles.

Treatment of ice-cream and dairy desserts

4.16. The consultation paper discusses whether ice-cream and dairy desserts should be considered as discretionary foods. This category was noted to include a greater proportion of non-discretionary foods than the other discretionary food categories, as some will contribute positively to the diet because they contain beneficial nutrients such as calcium. It was noted that, while it may be possible to define this category to exclude non-discretionary foods, this might be onerous for businesses to implement, which could undermine the overall effectiveness of the policy. Respondents were asked whether the policy should treat ice-cream and dairy desserts as discretionary foods.

Question 3: *Should this policy treat ice-cream and dairy desserts as discretionary foods?*

Overview

4.17. Two-fifths (40%) of organisation respondents agreed with the inclusion of ice-cream and dairy desserts as discretionary foods. A quarter (25%) disagreed, and another quarter (25%) did not provide a tick box answer. Meanwhile, among individuals there was a fairly even split in the number of respondents agreeing and disagreeing. Overall, more individual respondents disagreed (47%) than agreed (43%). Table 4.2 displays the results.

Table 4.2 Responses to question 3

Answer	Organisations		Individuals	
	n	%	n	%
Yes	38	40%	270	43%
No	24	25%	295	47%
Don't know	9	10%	54	9%
Not answered	23	25%	10	2%
Conflicting answers[32]	0	0%	3	0%
Total	**94**	**100%**	**632**	**100%**

[32] The comments submitted by these respondents conflicted with the original tick box answer option that they selected, but were not sufficiently clear to enable correction. Please see Annex 2, Table A2.3 for a more detailed breakdown of the conflicting answers.

Organisation respondents overview

4.18. Breaking down the findings further from the responses in the table above, it was possible to see different views in the responses from different types of organisation. More than three-fifths (62%) of the non-industry organisation respondents agreed with the inclusion of ice-cream and dairy desserts. More than two-fifths (44%) of the industry organisation respondents did not provide a tick box answer and a third (33%) disagreed. A full breakdown of these responses is provided in Annex 2, Table A2.3.

Views in favour of treating ice-cream and dairy desserts as discretionary food

4.19. Many of the individual respondents and many of the public and third sector respondents that considered ice-cream and dairy desserts should be treated as discretionary foods indicated that these foods are HFSS. It was suggested that for the proposed approach to be credible these foods should be treated the same as the discretionary categories already identified. It was also noted that these foods are discretionary in the sense that they are not essential to a healthy diet. More generally few individuals noted that these foods are ‘unhealthy’.

4.20. Few individual respondents and few non-industry organisation respondents specifically noted that only those ice-creams and dairy desserts identified as being HFSS should be included as discretionary foods. Few respondents (from various organisation types) suggested that the NPM could be used when considering dairy product inclusion by helping to define those that are less healthy.

Views against treating ice-cream and dairy desserts as discretionary food

4.21. Close to half of the individuals and few of the organisations that considered ice-cream and dairy desserts should not be treated as discretionary food held this view on the basis of their disagreement with the broader proposal to implement mandatory measures and, therefore, disagreement with any food being targeted as discretionary.

4.22. Few individuals respondents and some organisation respondents (of all types) noted that these foods should not be included as they have some nutritional value and are more likely to be eaten as part of a meal rather than as a snack.

4.23. Other reasons for disagreement included:

- Few individual respondents and one manufacturer respondent indicated that these foods do not need to be included on the basis that they are consumed occasionally and, therefore, are not a main contributor to the problem of obesity; and
- Few individual respondents and few non-industry organisation respondents indicated that there is wide variation in the levels of fat, sugar and salt in these foods and it is too difficult to separate the types of ice-cream and dairy desserts that are healthy from those that are unhealthy.

Other considerations

4.24. The main points raised by individual respondents who gave a ‘don’t know’ response or did not tick an option but provided an explanation, each expressed by

few, included: that there was so much variation in these types of food that it may not be appropriate to treat them all as discretionary; that they were unsure whether the nutritional value of these foods would outweigh their levels of fat, sugar or salt; and that they were unsure whether these foods were consumed in sufficient quantities to be deemed significant in contributing to overweight/obesity.

4.25. Few organisation respondents (from various sectors) requested more clarity on the definition of 'dairy desserts'. There was concern, for example, that yoghurts could be included which may impact on population level calcium intake.

Approach to defining categories and exclusions

4.26. The consultation paper proposed an approach to defining the foods that would be subject to restrictions on a 'by category' basis, which would require clear definitions for each category, drawing on expert technical advice. It was stated that the approach would take into account that nutritional information may only be available for pre-packaged foods, as well as evidence on both the frequency of consumption and the contribution discretionary foods make to population-level calorie and nutrient intakes.

4.27. It was proposed that any exceptions would also be clearly defined and an example was given that the 'confectionery' category would not include sugar-free sweets on the basis that they are not high in fat, sugar or salt. Respondents' views were sought on this approach.

Question 4: *Please comment on our approach to defining categories and exclusions of particular foods/products from those definitions (paragraphs 9-11)?*

Overview

4.28. In total 533 respondents (78 organisations; 455 individuals) gave a specific response to this question (i.e. excluding blanks, 'no comment' and 'don't know' answers). There was no particular type of respondents that chose not to answer.[33]

4.29. Although this was an open question (i.e. not a tick box question), written explanations were analysed to try to quantify what proportion indicated overall agreement and disagreement with the approach. It is important to note that a number of respondents gave no overall indication, but instead made a specific point or points in relation to the content of the approach. Therefore, their overall stance (if indeed they had one) for this question is not known. The figures below, therefore, provide only a rough indication and should be interpreted with caution.

4.30. Half of the organisation respondents gave a written explanation that indicated agreement with the approach to defining categories and exclusions, close to a third did not give an overall indication and nearly a fifth indicated disagreement. Meanwhile close to half of the individual respondents indicated disagreement with

[33] Proportion of responses by respondent type closely mirrors the overall response rate to the consultation. In total 455 individuals (85%) and 78 organisations (15%). Within the organisations (59%) were from non-industry and 32 (41%) from industry.

the approach[34], nearly a third indicated agreement and nearly a quarter did not give an overall indication.

4.31. Breaking down the organisation respondents described above, two-thirds of the non-industry organisation respondents gave a written explanation that indicated agreement with the approach and close to a third gave no overall indication. Close to half of the industry organisation respondents gave no overall indication and over a quarter disagreed.

Agreement with the approach to defining categories and exclusions

4.32. Most individual respondents and some organisation respondents that agreed with the approach described in the consultation document simply stated that they agreed or thought the approach was sensible or reasonable.

4.33. Few respondents (few individuals, some other organisations, few public sector, few manufacturers and few industry representative bodies) noted the need for expert advice to determine inclusion and exclusion of foods/products. A few respondents (few public sector and one other organisation) specifically cautioned that this advice should be unbiased.

4.34. Few individual and few public sector respondents specifically flagged that clear categories and guidance is needed to ensure the approach is appropriate.

4.35. Few individual respondents and few non-industry organisation respondents reiterated the suggestion to include certain foods. Artificial sweeteners were most frequently cited (but by few individuals and few other organisations).

Disagreement with the approach to defining categories and exclusions

4.36. Nearly three-quarters of the individual respondents that disagreed with the approach indicated that this was on the basis that they disagreed with the overall proposal of introducing mandatory restrictions and, therefore, by default disagreed with an approach to categorising foods to be targeted by mandatory measures.

4.37. Other reasons for disagreement were somewhat varied with little similarity. Few individual respondents and one manufacturer respondent indicated that it was difficult to categorise products in the way outlined and that the approach was too complex. Some industry representative body respondents noted an expert technical group was needed to identify which foods are subject to regulation; few thought a UK-wide approach was needed to define discretionary foods; and few noted the foods to be included needed to be explicitly clear so that non-technical staff within industry could implement changes. Similarly, few felt that the categories were too wide and could consequently target some foods with nutritional benefit.

4.38. There was also concern among few individual respondents that products would be altered to avoid falling under the proposed restrictions. The concern was

[34] It should be noted that this includes both those that disagree with mandatory restrictions of this nature as well as those that favoured restrictions but felt the categorisation was limited.

that this might increase the levels of artificial ingredients used in products, which in turn could have a negative impact on health. Few individual respondents also indicated that the approach was either too wide – trying to encompass too many foods – or too narrow – missing some foods that are HFSS.

Other considerations

4.39. Respondents that gave no overall indication of their agreement or disagreement with the approach to defining categories and exclusions tended to flag one or more specific points in relation to the approach. Most frequently (but by few individual respondents, few industry organisation respondents and one public sector respondent), the responses emphasised the importance of engaging expert advice in order to further define the foods to be targeted and those to be excluded. Developing clear guidelines to provide clarity to all was also emphasised (by few manufacturer respondents and few public sector respondents). The importance of seeking further feedback prior to implementation was flagged by few industry organisation respondents. The need for all foods to have clear nutritional information was also highlighted by few individual respondents, with reference made to a traffic light system that is easy to understand.

4.40. Few of the respondents (few individuals, a manufacturer and a public sector organisation) that gave no overall indication suggested that foods should be defined for inclusion based on methods other than 'by category' such as by their levels of fat, sugar and salt or their overall nutritional value. In contrast, there was also suggestion from a public sector respondent that the NPM is over ten years old and does not reflect current dietary recommendations and, therefore, the bespoke method put forward by the consultation paper was more appropriate.

4.41. Other considerations flagged by some manufacturer respondents included that the approach should be consistent with other guidelines or restrictions – e.g. Soft Drinks Industry Levy or Public Health England's single serve calorie cap. One small manufacturer suggested that consideration be given to how to target the largest category brands contributing the highest share of the public health problem.

4.42. Few organisation respondents (few non-industry, one retailer and one manufacturer) expressed concern about exclusions for sugar-free products based on health concerns and a perceived continuation of promotion of low nutrient food as a consequence and the reinforcement of traditional discretionary food consumption behaviours.

4.43. Some retailer respondents felt that the approach has the potential for confusion among customers and staff regarding which products are in scope and why. Few felt that messages needed to be consistent across the UK to be effective in directing healthy choices.

4.44. In respect of the acknowledgement made in the consultation paper that nutritional information may only be available for pre-packaged food, few individual respondents and few non-industry organisation respondents felt that although

difficult it was necessary to consider how nutritional information could be obtained for non pre-packaged foods so they could also be included within restrictions.

5. Forms of promotion and marketing to be restricted (Qs 5-6)

5.1. The consultation paper proposed that the restrictions would include and exclude certain forms of promotion and marketing and sought views on (i) price promotions that would be subject to restrictions, and (ii) other forms of promotion and marketing that would be subject to restrictions.

Price promotions that would be subject to restrictions

5.2. The consultation paper proposed restrictions on price promotions on the basis that evidence suggests these promotions increase sales, which is not offset by purchasing one brand over another or reducing the purchase of other foods. The paper proposed, in particular, restrictions on multi-buys (e.g. products sold together to obtain a discount or products given for free as a result of a purchase) and the sale of unlimited amounts for a fixed charge (e.g. unlimited refills for £X). It outlined that the Scottish Government was not proposing to restrict temporary price reductions (e.g. £X off) and multi-packs (i.e. multiple items sold as a single item). Respondents were asked whether they agreed that this policy should: (i) restrict multi-buys and the sales of unlimited amounts for a fixed charge and (ii) not restrict temporary price reductions and multi-packs.

Question 5: *In relation to the foods being targeted, should this policy seek to:*
Restrict multi-buys;
Restrict sales of unlimited amounts for a fixed charge;
Not restrict temporary price reductions;
Not restrict multi-packs?

Overview

Restricting multi-buys

5.3. Over half of the organisation respondents agreed with the proposal to restrict multi-buys (53%). Disagreement was relatively low - over a tenth (14%). However, close to a third (30%) did not provide a tick box answer. Close to half of the individual respondents agreed with the proposal to restrict multi-buys (49%). However, more than two-fifths disagreed (44%). The results are displayed in Table 5.1.

Table 5.1 Responses to question 5 – restrict multi-buys

Answer	Organisations		Individuals	
	n	%	n	%
Yes	50	53%	308	49%
No	13	14%	278	44%
Don't know	3	3%	32	5%
Not answered	28	30%	12	2%
Conflicting/possible conflicting answers[35]	0	0%	2	0%
Total	**94**	**100%**	**632**	**100%**

Organisation respondents overview

5.4. Breaking down the findings further from the responses in the table above, it was possible to see different views in the responses from different types of organisation. Over two-thirds of the non-industry organisation respondents agreed with restricting multi-buys (69%). Notably more than a fifth (22%) did not provide a tick box answer. Over two-fifths of the industry organisation respondents did not give a tick box response (41%). Close to a third agreed (31%), while more than a quarter (28%) disagreed. The full breakdown of responses is provided in Annex 2, Table A2.4.

Restricting unlimited amounts for a fixed charge

5.5. Over half of the organisation respondents agreed with the proposal to restrict sales of unlimited amounts for a fixed charge (53%). Disagreement was relatively low - just under a tenth (9%). However, close to a third (31%) did not provide a tick box answer. Close to half of the individual respondents agreed with the proposal to restrict sales of unlimited amounts for a fixed charge (47%). However, more than two-fifths disagreed (42%). The results are displayed in Table 5.2.

[35] This is made up of two groups – 1) conflicting answers - the comments submitted by these respondents conflicted with the original tick box answer option that they selected, but were not sufficiently clear to enable correction; 2) possible conflicting answers - no comment was submitted but the tick box answer option selected conflicts with the viewpoint expressed in responses to other questions. Please see Annex 2, Table A2.4 for a more detailed breakdown of conflicting and possible conflicting answers.

Table 5.2 Responses to question 5 – restrict unlimited amounts for a fixed charge

Answer	Organisations		Individuals	
	n	%	n	%
Yes	50	53%	299	47%
No	9	9%	268	42%
Don't know	6	6%	50	8%
Not answered	29	31%	14	2%
Possible conflicting answer[36]	0	0%	1	0%
Total	**94**	**100%**	**632**	**100%**

Organisation respondents overview

5.6. Breaking down the findings further from the responses in the table above, it was possible to see different views in the responses from different types of organisation. Over two-thirds of the non-industry organisation respondents agreed with restricting unlimited amounts for a fixed charge (69%). Notably more than a fifth (22%) did not provide a tick box answer. Over two-fifths of the industry organisation respondents did not give a tick box response (44%). Close to a third agreed (31%), while just over a fifth (21%) disagreed. The full breakdown of responses is provided in Annex 2, Table A2.5.

Not restricting temporary price reductions

5.7. Over a third of organisation respondents agreed with the proposal to not restrict temporary price reductions (35%). A quarter disagreed, believing that these should be restricted (26%). Notably a third did not provide a tick box answer (32%). More than half of the individual respondents agreed with the proposal to not restrict temporary price reductions (57%). A quarter disagreed, believing that these should be restricted (24%).

5.8. It should be noted that among individual respondents there were relatively high levels of conflicting answer 'no' responses in relation to the proposal to not restrict temporary price reductions – i.e. their written explanation did not match the answer option selected. While their written explanation was not sufficiently clear to confidently correct their answer, typically anti-restriction type sentiments were noted and therefore it is most likely that their actual view would have been agreement with not restricting this form of promotion. Is it likely, therefore, that the level of 'yes'

[36] This respondent did not submit a comment but the tick box answer option selected conflicts with the viewpoint expressed in responses to other questions. Please see Annex 2, Table A2.5 for a more detailed breakdown.

responses (and therefore support for the policy outlined in the consultation paper) is an underestimate. The results are displayed in Table 5.3.

Table 5.3 Responses to question 5 – not restrict temporary price reductions

Answer	Organisations		Individuals	
	n	%	n	%
Yes	33	35%	365	57%
No	24	26%	153	24%
Don't know	7	7%	40	6%
Not answered	30	32%	47	7%
Conflicting/possible conflicting answers[37]	0	0%	27	4%
Total	**94**	**100%**	**632**	**100%**

Organisation respondents overview

5.9. Breaking down the findings further from the responses in the table above, it was possible to see different views in the responses from different types of organisation. Just over a quarter (27%) of the non-industry organisation respondents thought that temporary price promotions should not be restricted. Just over a third disagreed with the proposals i.e. felt that they should be restricted (36%). A quarter did not provide a tick box answer (24%). Close to half of the industry organisation respondents agreed with not restricting temporary price promotions (46%), but very similar numbers (44%) did not give a tick box response. The full breakdown of responses is provided in Annex 2, Table A2.6.

Not restricting multi-packs

5.10. Over a third of organisation respondents agreed with the proposal to not restrict multi-packs (38%). A quarter disagreed, believing that these should be restricted (25%). Notably a third did not provide a tick box answer (33%). More than half of the individual respondents agreed with the proposal to not restrict multi-packs (55%). A quarter disagreed, believing that these should be restricted (25%).

5.11. It should be noted that among individual respondents there were relatively high levels of conflicting answer 'no' responses in relation to the proposal to not restrict multi-packs – i.e. their written explanation did not match the answer option selected. While their written explanation was not sufficiently clear to confidently

[37] This is made up of two groups – 1) conflicting answers - the comments submitted by these respondents conflicted with the original tick box answer option that they selected, but were not sufficiently clear to enable correction; 2) possible conflicting answers - no comment was submitted but the tick box answer option selected conflicts with the viewpoint expressed in responses to other questions. Please see Annex 2, Table A2.6 for a more detailed breakdown of conflicting and possible conflicting answers.

correct their answer, typically anti-restriction type sentiments were noted and therefore it is most likely that their actual view would have been agreement with not restricting this form of promotion. Is it likely, therefore, that the level of 'yes' responses (and therefore support for the policy outlined in the consultation paper) is an underestimate. The results are displayed in Table 5.4.

Table 5.4 Responses to question 5 – not restrict multi-packs

Answer	Organisations		Individuals	
	n	%	n	%
Yes	35	38%	351	55%
No	23	25%	160	25%
Don't know	5	5%	46	7%
Not answered	31	33%	50	8%
Conflicting/possible conflicting answers[38]	0	0%	25	4%
Total	**94**	**100%**	**632**	**100%**

Organisation respondents overview

5.12. Breaking down the findings further from the responses in the table above, it was possible to see different views in the responses from different types of organisation. A third (33%) of the non-industry organisation respondents thought that multi-packs should not be restricted. Just over a third disagreed with the proposals i.e. felt that these promotions should be restricted (35%). A quarter did not provide a tick box answer (25%). Over two-fifths of the industry organisation respondents agreed with not restricting multi-packs (44%), but very similar numbers (44%) did not give a tick box response. The full breakdown of responses is provided in Annex 2, Table A2.7.

'Other' answer option

5.13. Within the question, an option to select 'other' was also provided. Fifty-eight respondents (49 individuals and 9 organisations) offered a comment at this point and a further eight respondents (all organisations) that ticked none of the answer options were interpreted from their comments as 'other' responses. Since 'other' responses were largely answered interchangeably with 'please explain your answer', these have been analysed alongside the rest of the explanations provided in response to the question.

[38] This is made up of two groups – 1) conflicting answers - the comments submitted by these respondents conflicted with the original tick box answer option that they selected, but were not sufficiently clear to enable correction; 2) possible conflicting answers - no comment was submitted but the tick box answer option selected conflicts with the viewpoint expressed in responses to other questions. Please see Annex 2, Table A2.7 for a more detailed breakdown of conflicting and possible conflicting answers.

Response patterns

5.14. Since respondents were asked to explain their answer to a multi-part question in one place, it was not always clear which answer options they were seeking to explain and, at times, they only commented on certain aspects (e.g. only multi-buys or only multi-packs). Consideration of views, therefore, focuses on the most common pattern of responses and any aspects of note in relation to the specific types of promotions covered.

Agreement with the proposals

5.15. While individually for each aspect of the question agreement was higher than disagreement, total agreement with the proposals (i.e. 'yes' to restricting multi-buys and sales of unlimited amounts for a fixed charge, and 'yes' to not restricting temporary price reductions and multi-packs) was more common among organisation respondents (18% of all organisation respondents - including some public sector, some other organisations, few manufacturers, a retailer, and a third sector organisation) than among individual respondents (9% of all individual respondents). Where an explanation was provided, this typically indicated agreement with the rationale laid out in the consultation paper. One other organisation respondent noted the need to subsequently review the implications of not including temporary price restrictions and multi-packs.

Pro-restriction stance

5.16. The view in favour of restricting all four types of promotions (i.e. 'yes' to restricting multi-buys and sales of unlimited amounts for a fixed charge and 'no' to not restricting temporary price reductions and multi-packs) was slightly more common among organisation respondents (19% of all organisation respondents - including some public sector, some third sector, few other organisations, a manufacturer and a retailer) than among individual respondents (16% of all individual respondents). Many of those expressing this view suggested that all of these promotions should be included as they may all be ways of encouraging the consumption of unhealthy foods and specifically may all be methods used by retailers to influence consumption. References to the need for a consistent and a blanket approach were made. Few noted that, if some types of promotion such as temporary price reductions and multi-packs were exempt, these could become loopholes that retailers would then seek to use.

Logic for restricting types of promotions

5.17. Where there was agreement with restricting a promotion type (regardless of which of the four promotion types was being referred to and regardless of how many of the four types the respondent agreed with restricting), the rationale for restricting the promotions was typically the same. The main reasons expressed were[39]: that these types of promotions are designed to encourage people to purchase more than they intend or need to as they give the impression of being good value for money; and that they encourage overconsumption as once bought

[39] Numbers varied across the four types of promotion. Of those who agreed with restricting and offered an explanation in relation to the type of promotion, either some or few respondents expressed these reasons for agreement.

they are more likely to be consumed in addition to what is needed. Unlimited amounts for a fixed charge were singled out as particularly likely to encourage immediate overconsumption as these may often be consumed at the time (e.g. free soft drink refills) and cannot be saved for a later date.

5.18. Few suggested that these types of promotions specifically target those on a low income who are most receptive to the idea of getting a good deal or making savings. Therefore, they are disproportionately likely to suffer the health impacts of overconsumption.

Anti-restriction stance

5.19. Disagreement with all four types of promotions (i.e. 'no' to restricting multi-buys and sales of unlimited amounts for a fixed charge, and 'yes' to not restricting temporary price reductions and multi-packs) was relatively low among organisation respondents (9% of all organisation respondents - few manufacturers and some industry representative bodies) but the most common pattern of answers observed among individual respondents (35% of all individuals). Half of those that were against restricting these four types of promotions indicated this was due to being against the introduction of mandatory restrictions and by default felt these forms of promotion should not be restricted.

5.20. The rest of the respondents in this group (i.e. those against restricting the four types of promotions) gave more specific reasons for their view, each expressed by few of the respondent type indicated:

- Individual respondents noted that removing these promotions would increase the costs of these foods for consumers. There was specific concern that those on a low income may be dependent on these low cost foods and that removing promotions would make them more expensive but would not make other foods more affordable. As a consequence, there was concern that those on a low income would be disproportionately disadvantaged and more likely to struggle financially;
- Individual respondents noted that removing these promotions was unfair to those who eat sensibly, as it was felt that their opportunity to take advantage of savings would be removed due to the inability of some people to control their eating habits;
- Individual respondents thought the proposed restrictions would be ineffective either because individuals would continue to buy unhealthy foods or because they believed retailers would find ways to work around them;
- Manufacturer and industry representative body respondents felt these restrictions should not apply because they would disproportionately disadvantage small businesses that rely on these types of promotional mechanism and do not have the same ability as larger businesses to find other ways to provide low prices. They also flagged the implications for packaging, specifically that it would be costly to design packaging purely for the Scottish market, which would be required to avoid making value claims;
- Retailer respondents described how multi-buys are used during festive periods to purchase presents. Restriction of these would increase costs for consumers; and

- Manufacturer respondents noted that the restrictions would also prevent the marketing of healthier or reformulated products (such as lower sugar soft drinks) in the discretionary categories, which would reduce the incentive for developing these alternatives.

Logic for not restricting types of promotion

5.21. In terms of the specific promotions listed where there was support for not restricting them (regardless of how many of the four types the respondent disagreed with restricting), with the exception of unlimited amounts for a fixed charge, the main reasons expressed for not restricting them were[40] that these:

- May be shared among a number of people;
- Do not necessarily result in overconsumption;
- Enable people to buy in bulk which aids budgeting; and
- Offer savings that are needed for those on a low income.

5.22. One reason for allowing multi-packs (expressed by few individual respondents, few public sector respondents and one manufacturer respondent), which differed from the other types of promotion, was that these were thought to be unlikely to encourage overconsumption, as they help to demonstrate single portion sizes.

5.23. Although temporary price reductions were noted to be outside of scope for the proposals, there was concern among some manufacturer respondents and few industry representative body respondents about restrictions on promotion of value meaning that the price reductions could not be communicated to consumers. They suggested that this would reduce the information available to consumers running counter to recent efforts to make value clearer; and inhibit brand competition since, if consumers cannot easily identify that a discount is being offered, they are unlikely to switch brands; and as a consequence price reductions would be rendered pointless and would consequently lead to an increase in prices for the Scottish public.

Other points

5.24. Regardless of overall viewpoint (i.e. expressed both among those for or against restricting the types of promotions) and among individuals and organisations, a view emerged (but expressed by few in total) that there is a need to make healthy foods cheaper and/or provide offers on healthy food. It was thought that the relative expense (or perceived expense) of making healthier choices would continue to pose a barrier to healthy eating.

Approach to restricting other forms of promotion and marketing

5.25. The consultation paper noted consideration was being given to restricting other forms of promotion or marketing (beyond those described in question 5 above) where discretionary foods are sold to the public. Examples were provided

[40] Numbers varied across the four types of promotion. Of those who disagreed with restricting and offered an explanation in relation to the type of promotion, generally few respondents expressed these reasons for agreement.

such as restrictions on: where discretionary foods could be placed, promotion of value (e.g. drawing attention to price reductions), displays/signage, upselling, use of coupons, purchase rewards, free samples, branded chillers and floor display units, sale/leasing display spaces for discretionary foods, manufacturers and distributors providing promotional or marketing material and making arrangements for the display of foods subject to the restrictions.

5.26. It was noted that restrictions were not planned to include: packaging (except in relation to promotion of value), position on shelf, number of aisles/locations and size/volume of foods.

5.27. Respondents were asked to comment on the proposed restrictions.

Question 6: *Please comment on the approach we are proposing to take to restricting forms of promotion and marketing outlined in section 5 [of the consulation paper]*

Overview

5.28. In total 651 respondents (78 organisations; 573 individuals) gave a specific response to this question (i.e. excluding blanks and 'no comment' responses).

5.29. Although this was an open question (i.e. not a tick box question), written explanations were analysed to try to quantify what proportion indicated overall agreement and disagreement with the approach. It is important to note that a number of respondents gave no overall indication, but instead made a specific point or points in relation to the content of the approach. Therefore, their overall stance (if indeed they had one) for this question is not known. The figures below therefore provide only a rough indication and should be interpreted with caution.

5.30. Half of the organisation respondents gave a written explanation that indicated agreement with the approach, almost a quarter indicated disagreement and the same proportion did not give an overall indication.

5.31. Just over two-fifths of individual respondents gave a written explanation that indicated agreement with the approach, over a third indicated disagreement and over a fifth did not give an overall indication.

5.32. Breaking down the organisation respondents described above, close to three-quarters of the non-industry organisation respondents indicated agreement with the approach and a fifth gave no overall indication. Half of the industry organisation respondents disagreed with the approach and close to a third gave no overall indication.

Agreement with the approach to restrict other forms of promotion and marketing

5.33. Many of those that agreed with the approach simply stated that they agreed or thought the approach was sensible or reasonable. Few respondents (individuals) cautioned that, although they agreed, they thought the approach did not go 'far

enough'. Despite their overall agreement, some went on to highlight specific issues that they thought should or should not be included. These are considered further below (see para 5.40 onwards).

Disagreement with the approach to restrict other forms of promotion and marketing

5.34. Among individual respondents that indicated disagreement, many noted that they did not agree with mandatory restrictions and therefore did not agree with the approach. Few thought the approach would not be effective as people would still not know how to make healthier choices, how to cook healthy foods and how to live a healthier lifestyle. Few raised concerns that restrictions of this nature 'interfered' with businesses that should be able to market their products as they choose. Few preferred other approaches such as educating people to make healthier choices and dealing with the root causes of poverty.

5.35. Many manufacturer respondents, some industry representative body respondents and few individual respondents referred to the potential impact on business, particularly that the proposed restrictions may disproportionately affect smaller businesses, which are more likely to use in-store promotion such as 'feature space' at end of aisles/power aisles (as opposed to having the budget for other forms of marketing such as national TV commercials). Similarly, Scottish brands and local and craft producers were thought to be at a disadvantage to large global brands that are supported by significant marketing and advertising budgets.

5.36. Industry representative body respondents also reported the following concerns (each expressed by few):

- Small stores would struggle to implement changes in the approach due to space. The concept of store areas is not applicable to many small stores and, therefore, better definitions are required for restricted locations;
- Caution was given that larger convenience stores may have to withdraw community services (e.g. cash points) in order to find compliant space for discretionary items;
- The approach assumes autonomy of marketing decisions – many convenience stores are part of symbol groups and, as such, are not always able to select and control what products they put on promotion;
- Clarity is required, for example, on how restrictions would apply to existing contracts between retailers and brand owners, relating to branded chillers and floor display units, as well as clarification on what is classified as above average size price label;
- There was a sense that the approach targeted marketing techniques that the industry used not to increase sales but to encourage brand loyalty and switching within category; and
- There was also concern that altering loyalty schemes was very complex and costly. It may be prohibitively difficult to amend them only for Scotland.

5.37. Some retailer respondents questioned whether there was sufficient evidence to justify the restrictions proposed. They were concerned as to whether the

approach would be balanced and whether it would place an undue burden on manufacturers and retailers during an already difficult period.

5.38. A notable issue raised across organisation types (but by few in total) was that more information was needed to be able to fully comment on the proposals, as the list was noted to not be exhaustive. Few emphasised that clear definitions would be needed; for example, to define what 'placement at checkouts' means (i.e. how close to the checkout this would apply). Few raised concerns that the approach is complex and potentially difficult to enforce.

5.39. Few manufacturer respondents re-emphasised the point made in relation to question 5: that they felt products with lower fat, sugar and salt profiles should be allowed to be promoted and aligned to already established guidelines and legislation – for example, the sugar tax on soft drinks. They noted that if lower fat, sugar and salt products cannot be promoted, it would limit businesses' ability to nudge people towards healthier products.

Aspects of the approach to include

5.40. Few respondents that answered the question highlighted specific aspects of the approach for inclusion (regardless of whether they stated an overall view). Among these few respondents, the most common suggestions included:

- Many individual respondents thought that placement restrictions particularly in relation to HFSS foods at checkouts should be included. It was felt that placement at the tills was designed to tempt people and was particularly problematic in relation to being visible to children while queuing. As a consequence, parents are subjected to 'pester power'. Few retailer respondents, however, questioned whether these were needed given the voluntary measures already underway – for example, to remove confectionery from the checkout;
- Few individual respondents mentioned upselling at checkouts. It was noted that it is particularly hard to refuse an offer communicated in person and may result in people buying things that they did not intend to. It was also noted that this is almost always unhealthy food; and
- Few individual respondents and few non-industry organisation respondents noted that the size of products should also be addressed. There was concern about the increasing use of 'sharing' bags that may lead to individuals inadvertently overeating. Similarly, few noted that they found it increasingly difficult to buy a single portion or small amount and consequently believed people may struggle to identify what an appropriate amount to eat is.

Aspects of the approach to exclude

5.41. Few respondents that answered the question highlighted specific aspects of the approach for exclusion (regardless of whether they stated an overall view). Among these few respondents the most common suggestions included:

- Coupons, vouchers, free samples and loyalty points were thought by many individual respondents to be useful to those on a low income and unlikely to drive overconsumption;

- Branded coolers – these were thought by some individual respondents to not be particularly influential on purchasing decisions and removing them was thought by few individual respondents and few public sector respondents to be potentially onerous for small businesses; and
- Placement restrictions – as well as being flagged for inclusion (see para 5.40), few individual respondents flagged that businesses should be able to determine where to position their stock in order to sell it and that consumers want easy access to popular items. Few industry organisation respondents suggested exclusions for seasonal products that do not fit in to normal space and due to high turnover should be accessible for health and safety reasons. They also flagged that aisle ends were needed for extra storage during busy periods.

6. Places the restrictions would apply (Qs 7-8)

6.1. The consultation paper proposed applying the restrictions to any place where the targeted foods are sold in the course of business, including to retail and Out of Home sectors and other outlets where sales are made to the public. Views were collected on (i) whether restrictions should apply as above, except where they are not sold in the course of business, and (ii) whether and to what extent restrictions should be applied online.

Inclusion of any place where targeted foods are sold to the public

6.2. In addition to the places for inclusion noted above, the consultation paper proposed to not include the following types of places in the restrictions:

- wholesale outlets where sales are only to trade because any promotion or marketing would not directly encourage purchases by the public; and
- activities such as charity 'bake sales' because they are not conducted in the course of business.

6.3. Respondents were asked if they agreed with this definition of the places to which the restrictions would apply.

Question 7: *Should the restrictions apply to any place where targeted foods are sold to the public, except where they are not sold in the course of business (e.g. charity bake sales)?*

Overview

6.4. Close to three-fifths (58%) of organisation respondents agreed that restrictions should apply to any place where targeted foods are sold to the public, except where they are not sold in the course of business. A fifth (20%) did not provide a tick box answer, and 14% disagreed. Meanwhile, just over half (51%) of individual respondents agreed, and two-fifths (40%) disagreed. The figures are displayed in Table 6.1.

Table 6.1 Responses to question 7

Answer	Organisations		Individuals	
	n	%	n	%
Yes	55	58%	324	51%
No	13	14%	255	40%
Don't know	7	7%	29	5%
Not answered	19	20%	19	3%
Conflicting answers[41]	0	0%	5	1%
Total	**94**	**100%**	**632**	**100%**

Organisation respondents overview

6.5. Breaking down the findings further from the responses in the table above, it was possible to see different views in the responses from different types of organisation. Over two-thirds (69%) of the non-industry organisation respondents and over two-fifths (44%) of the industry organisation respondents agreed with the approach. Disagreement was relatively low (13% of non-industry and 15% of industry organisations). However, more than a third (36%) of industry organisation respondents did not select a tick box answer. The full breakdown by organisation is provided in Annex 2, Table A2.8.

Agreement with the places to apply the restrictions

6.6. Agreement with the proposal for restrictions to apply to any place where targeted foods are sold to the public centered on the belief that to be effective, the restrictions should apply equally. Agreement was present across all respondent types – notably some industry organisation respondents agreed that there should be a 'level playing field'.

6.7. Few respondents (few public sector respondents and few individual respondents) emphasised places that they considered should be included within restrictions. Most commonly:

- Wholesale – reasons for this included: concern about exemptions; concern that the public may be admitted; and concern that purchases by retail from wholesale influences what is subsequently sold to the public;
- Food outlets on public transport and at transport hubs;
- Sports venues;
- Vending machines; and
- Hospitals.

[41] The comments submitted by these respondents conflicted with the original tick box answer option that they selected, but were not sufficiently clear to enable correction. Please see Annex 2, Table A2.8 for a more detailed breakdown of the conflicting answers.

6.8. Few individual respondents specifically acknowledged the merit of excluding charity bake sales, which were felt to be unlikely to be a significant contributor to the problem. Although, one public sector respondent suggested that charity bake sales should be encouraged to shift to a healthier focus.

6.9. Few of the respondents (individuals and one public sector respondent) that agreed with the approach noted concern for small and specialist businesses.

Disagreement with the places to apply the restrictions

6.10. Many of the individual respondents that disagreed with the places to apply the restrictions did so on the basis that they disagree with the overall proposal to implement mandatory measures to restrict the marketing and promotion of HFSS foods.

6.11. Few of the respondents that disagreed with the places to apply the restrictions (few individuals and few industry representative bodies) but also few of the respondents that answered another way i.e. agreed, didn't know or didn't give a tick box answer (few individuals, an industry representative body, two public sector and one third sector respondent) held concerns about small independent and specialist shops. Specifically, these shops should be able to promote their products and that they may struggle to comply with some of the restrictions due to space issues. There was suggestion that there may be a disproportionate impact on smaller niche local suppliers and those in rural areas who may be important for local economies and attract visitors to the area. More flexibility in the approach for small shops was advocated by one third sector respondent, especially in rural areas where space is limited and the business provides important community functions.

6.12. Few individual respondents noted a preference for only targeting the supermarkets (as opposed to other types of food retailers and outlets), although another few respondents (few individuals and a public sector respondent) noted that if only major retailers were targeted the health inequality gap may widen, because people from deprived areas and those on a low income are more likely to be reliant on convenience stores.

Concerns

6.13. Other specific concerns about the places indicated for inclusion and exclusions most commonly highlighted (but by few respondents) were:

- Individual respondents and one manufacturer respondent expressed concern about the impact of restrictions generally on business and the economy;
- Individual respondents suggested the inclusion of charity events on the basis that selling unhealthy foods should make them subject to the same restrictions as other places; and one retailer that held similar concerns suggested that if there is evidence to demonstrate that these events make up a minimal volume of discretionary foods purchases then that evidence should be shared.

- One third sector respondent noted concern about the complexity of this approach and conflict between existing programmes such as the Food Tourism Action Plan; and
- One retailer respondent questioned whether the evidence presented was sufficient to include the Out of Home sector.

6.14. Additionally, few individual respondents and few public sector respondents questioned whether one-off events such as concerts and markets, and other venues such as tuck shops and community/sports centres with vending machines would be included or excluded from restrictions.

Online restrictions

6.15. The consultation paper recognised that not all of the proposed restrictions have a like-for-like online equivalent, but that there may be scope to mirror these online. Respondents were asked to comment on whether and to what extent restrictions should be applied online.

Question 8: *Please comment on whether, and if so to what extent, restrictions should be applied online.*

Overview

6.16. Overall 596 respondents gave a specific response to the question (i.e. excluding blanks, 'no comment' and 'don't know' answers). Although this was an open question (i.e. not a tick box question), written explanations were analysed to try to quantify what proportion indicated overall agreement and disagreement with the approach. It is important to note that a number of respondents gave no overall indication, but instead made a specific point or points in relation to the content of the approach. Therefore their overall stance (if indeed they had one) for this question is not known. That said, the level of respondents giving no overall indication is much lower than for other open questions; some caution however is needed when interpreting the figures below.

6.17. Most organisation respondents (over four-fifths) gave a written explanation that indicated the restrictions were needed online, less than a tenth indicated disagreement and just under a tenth gave no overall indication. Among individual respondents the proportion indicating agreement and disagreement were very similar – just above two-fifths, and over a tenth gave no overall indication but made a specific point in relation to the question.

6.18. Breaking down the organisation respondents described above, agreement with online restrictions was very high (over four-fifths) among non-industry organisation respondents, but also high (over three-quarters) among industry organisation respondents.

Agreement with online restrictions

6.19. Many of those agreeing that restrictions should apply online simply stated the fact without providing further detail on their reasoning. Some (including all

respondent types) indicated that for the policy to be effective it was necessary to have consistency between the physical and online environment; of which many indicated that the restrictions should be the ‘same’ or equivalent. Few cautioned that this might be difficult to enforce but thought it was needed nonetheless.

6.20. Few respondents (few manufacturers and few industry representative bodies) noted that they were against restrictions, but, if they were to be introduced, there should be consistency between online and in-store environments.

6.21. One public sector respondent noted that if restrictions were not applied online, marketing might increasingly target young people whose use of the internet is increasing – for example, to order takeaways.

Disagreement with online restrictions

6.22. Many of the individual respondents that disagreed with online restrictions did so due to disagreeing with the overall proposal of introducing mandatory restrictions.

6.23. Few of the individual respondents that disagreed with online restrictions thought they should not be applied as they would be difficult to enforce, not least due to many websites and companies being based outside Scotland. Few thought that they were simply not needed since online purchases do not involve the same level of impulse and temptation that may affect decision making in-store.

6.24. While few organisation respondents indicated disagreement with online restrictions, the main reason expressed was disagreement with the proposed restrictions in any circumstances. One industry representative body respondent highlighted that the revenue generated from advertising is vital for industry. They considered the targeting of online adverts to be disproportionate on the basis that it would bring additional companies within the scope of the restrictions.

Other points

6.25. Respondents that gave no overall indication of their agreement or disagreement with online restrictions tended to flag one or more specific points. Responses varied widely but the most frequent suggestions and comments offered by individual respondent (but each by few) included:

- Restricting pop ups, banners and other online adverts;
- Restricting multi-buys online; and
- Providing warnings/information when targeted foods are selected.

6.26. Few industry organisation respondents raised the following issues:

- Clarification is needed on how online restrictions could be enforced;
- Clarification is needed on what types of restrictions would be applied online;
- Segregating the online grocery market according to geographic borders would be very difficult and potentially disadvantage Scottish customers and therefore efforts would need to be implemented across the UK.

7. Exemptions to restrictions (Qs 9-11)

7.1. The consultation paper discussed possible exemptions from positioning restrictions and other exemptions. Respondents were asked if they felt (i) positioning restrictions (e.g. in relation to display at end of aisle, checkouts etc.) should be exempted where there is no reasonable alternative to displaying foods elsewhere, (ii) food marked as discounted because it is close to expiry should be exempt from positioning and promotion of value restrictions, and (iii) other exemptions to restrictions should be considered.

Positioning restrictions

7.2. The consultation paper noted that the restrictions would apply to many different outlets of various sizes and layouts, selling a wide range of products. It was noted this could affect the ability of some to comply with positioning restrictions. It noted that in certain cases the display of foods in particular locations may reflect the realities of the physical size or layout of the premises or the limited product range (such as sweets being sold in a confectionary store). The paper also highlighted that consideration may need to be given, for example, to the 'grab and go' areas of larger stores which due to their position and layout may mean they need to be treated as a small retail environment. Respondents were asked if they felt that an exemption should be permitted to the positioning of targeted foods in some circumstances.

Question 9: *Should restrictions to displaying targeted foods at end of aisle, checkouts etc., not apply where there is no reasonable alternative to displaying them elsewhere?*

Overview

7.3. Over two-fifths of organisation respondents (45%) agreed with the suggestion to not apply positioning restrictions where there is no reasonable alternative to displaying them elsewhere. Under a third (30%) disagreed with this exemption and nearly a fifth (19%) did not select a tick box answer.

7.4. Meanwhile two-fifths (40%) of individual respondents agreed with the exemption and a third (34%) disagreed. Compared with other questions, a relatively high proportion of individuals gave a 'don't know' response (14%).

7.5. It should also be noted that 4% of individual respondents gave a conflicting answer 'no' – i.e. their written explanation did not match the answer option selected (they indicated they were against restrictions) – and a further 3% gave a possible conflicting answer 'no' – i.e. their response to not allow this exemption and thereby apply the restrictions, was not in-keeping with their other responses to the survey (which were against restrictions). It is therefore likely that the level of 'yes' responses reported above highlighting agreement with not applying restrictions in these circumstances is an underestimate.

7.6. This issue also arose but to a lesser extent in relation to 'yes' responses: 2% (all individuals) gave a conflicting answer 'yes' – i.e. their written explanation did not match the answer option selected. It is therefore likely that the level of 'no' responses reported above to not allow an exemption in these circumstances is a slight underestimate. The breakdown of responses is provided in Table 7.1.

Table 7.1 Responses to question 9

Answer	Organisations		Individuals	
	n	%	n	%
Yes	42	45%	251	40%
No	28	30%	210	34%
Don't know	6	6%	89	14%
Not answered	18	19%	25	4%
Conflicting/possible conflicting answers[42]	0	0%	57	7%
Total	**94**	**100%**	**632**	**100%**

Organisation respondents overview

7.7. Breaking down the findings further from the responses in the table above, it was possible to see different views in the responses from different types of organisation. Two-fifths (40%) of the non-industry organisation respondents disagreed with the exemption – which was a little higher than the proportion that agreed (36%). Close to three fifths (56%) of the industry organisation respondents agreed with the exemption although just over a quarter (26%) did not provide a tick box answer. A full breakdown is provided in Annex 2, Table A2.9.

Agreement with the 'no reasonable alternative' exemption

7.8. Close to half of those that indicated that they agreed with the exemption believed that no restrictions to promotion and marketing should be implemented. This was expressed predominantly by individual respondents but also by few manufacturer and industry representative body respondents.

7.9. The rest (reflecting all types of respondents) indicated agreement with the specific exemption, and their reasons centered on acknowledgement of the rationale in the consultation paper and that this was a reasonable approach. Many noted that this was appropriate for small shops and few noted that this was

[42] This is made up of two groups – 1) conflicting answers - the comments submitted by these respondents conflicted with the original tick box answer option that they selected, but were not sufficiently clear to enable correction; 2) possible conflicting answers - no comment was submitted but the tick box answer option selected conflicts with the viewpoint expressed in responses to other questions. Please see Annex 2, Table A2.9 for a more detailed breakdown of conflicting and possible conflicting answers.

appropriate for certain shops such as those that only sell discretionary foods. Few respondents (public sector and other organisations) cautioned that a clear definition of ‘no reasonable alternative’ and clear guidelines would be needed to ensure only genuine exemptions were made and to prevent the exemption creating a loophole which may be abused.

7.10. Some retailer respondents emphasised the need to take into account the practicalities of store operations. Few felt that grab-and-go areas should be considered a small retail environment. They also reported that it would be difficult to apply restrictions in relation to aisles as it was often difficult to define what constitutes an aisle. Few retailer respondents cautioned that the restrictions might be difficult to implement even in large stores. One retailer respondent suggested fixed ‘blackout’ periods during peak seasonal times such as Christmas where it would be more difficult to comply with the requirements.

7.11. Few manufacturer respondents noted that a lack of exemption for small stores would mean they were compelled to stop stocking the products, resulting in a disproportionate restriction on their business operations and a restriction on consumer choice.

7.12. One industry representative body respondent suggested that retailers were particularly concerned about restrictions at the checkout that would be particularly disruptive for small retailers who could have to overhaul the whole store to comply. They were also concerned that larger convenience stores, if not exempted, may have to reduce the services they offer to communities because of the need to reorganise space to accommodate discretionary products. This was of particular relevance given proposals to introduce a deposit return scheme and the requirement for a reverse vending machine. This was of particular concern in relation to isolated or deprived areas where convenience stores may offer key community links.

Disagreement with the ‘no reasonable alternative’ exemption

7.13. Most commonly (noted by some) disagreement was due to the belief that the exemption would create a loophole, which could be abused, for example, by stores purposely implementing layouts that would meet the criteria for the exemption. It was thought that this would undermine the policy and ultimately make it hard to implement and enforce. This view was held by some public and third sector respondents as well as some individual respondents. One individual respondent suggested that the volume of small stores was considerable and that this would make the policy ineffective if all were exempt.

7.14. Few retailer respondents felt that the restrictions should be applied equally to avoid distorting the market.

7.15. Few public sector and other organisation respondents specifically noted that grab-and-go sections should be included in restrictions as otherwise this would offer a loophole for larger retailers.

7.16. Other reasons for disagreement with the exemption expressed by few respondents included:

- Individual respondents felt there is always an alternative that can be used;
- One third sector respondent suggested discretionary foods should be displayed 'higher up' – out of view and reach of children;
- Belief that the rules need to be consistent across all businesses and that an exemption reduces consistency (expressed by individual respondents, and public sector, retailer and industry representative body respondents);
- Individual respondents suggested that instead of allowing an exemption, shops should adapt to ensure they comply, for example: find bigger premises; be creative in how they use shelf space; reduce stock of discretionary items; and
- Belief that if an alternative cannot be found, discretionary foods should not be sold (expressed by individuals and one public sector organisation).

Expiry restrictions

7.17. The consultation paper proposed not to apply place or promotion of value restrictions to food marked as discounted because it is close to expiry. Respondents were asked if they felt these circumstances warrant an exemption.

Question 10: *Should food marked as discounted because it is close to expiry be exempt from:*
positioning restrictions (end of aisle, checkouts etc.);
'promotion of value' restrictions?

Overview

Exemption for positioning restrictions

7.18. Less than two-fifths of organisation respondents agreed with the proposal to exempt food marked as discounted because it is close to expiry from positioning restrictions (37%). Less than a third (31%) disagreed. Notably though, a similar proportion of organisation respondents did not select a tick box answer (29%). Nearly half of individual respondents agreed with the proposal to exempt food marked as discounted because it is close to expiry from positioning restrictions (49%). A third disagreed (33%).

7.19. It should also be noted that 5% of individual respondents gave a conflicting answer 'no' – i.e. their written explanation did not match the answer option selected (they indicated they were against restrictions) – and a further 2% gave a possible conflicting answer 'no' – i.e. they gave no explanation to this question but their response to not allow this exemption and thereby apply the restrictions, was not in-keeping with their other responses to the survey (which were against restrictions). It is therefore likely that the level of 'yes' responses reported above (for individuals) in agreement with the exemption is an underestimate.

7.20. This issue also arose but to a lesser extent in relation to 'yes' responses. A very small number (1%) gave a conflicting answer 'yes' – i.e. their written

explanation did not match the answer option selected. It is therefore likely that the level of 'no' responses reported above, to not allow an exemption in this circumstance, is a slight underestimate. The results are displayed in Table 7.2.

Table 7.2 Responses to question 10 - positioning restrictions

Answer	Organisations		Individuals	
	n	%	n	%
Yes	35	37%	312	49%
No	29	31%	212	33%
Don't know	3	3%	33	5%
Not answered	27	29%	27	4%
Conflicting/possible conflicting answers[43]	0	0%	48	8%
Total	**94**	**100%**	**632**	**100%**

Organisation respondents overview

7.21. Breaking down the findings further from the responses in the table above, it was possible to see different views in the responses from different types of organisation. More than two-fifths (42%) of the non-industry organisation respondents disagreed with the exemption to positioning restrictions, i.e. thought the restrictions should still apply for food close to expiry. More than a third (36%) agreed with the exemption. Close to two-fifths (38%) of the industry organisation respondents agreed with the exemption, although more – close to half (46%) did not provide a tick box answer. A full breakdown by organisation is provided in Annex 2, Table A2.10.

Exemption for 'promotion of value' restrictions

7.22. Less than two-fifths of organisation respondents agreed with the proposal to exempt food marked as discounted because it is close to expiry from 'promotion of value' restrictions (39%). Over a quarter (28%) disagreed. Notably though, a similar proportion of organisation respondents did not select a tick box answer (30%). Close to half of individual respondents agreed with the proposal to exempt food marked as discounted because it is close to expiry from 'promotion of value' restrictions (45%). Close to a third disagreed (32%). A tenth (10%) gave a 'don't know' response.

[43] This is made up of two groups – 1) conflicting answers - the comments submitted by these respondents conflicted with the original tick box answer option that they selected, but were not sufficiently clear to enable correction; 2) possible conflicting answers - no comment was submitted but the tick box answer option selected conflicts with the viewpoint expressed in responses to other questions. Please see Annex 2, Table A2.10 for a more detailed breakdown of conflicting and possible conflicting answers.

7.23. It should also be noted that 5% of individual respondents gave a conflicting answer 'no' – i.e. their written explanation did not match the answer option selected (they indicated they were against restrictions) – and a further 2% gave a possible conflicting answer 'no' – i.e. they gave no explanation to this question but their response to not allow this exemption and thereby apply the restrictions, was not in-keeping with their other responses to the survey (which were against restrictions). It is therefore likely that the level of 'yes' responses reported above (for individuals) in agreement with the exemption is an underestimate.

7.24. This issue also arose but to a lesser extent in relation to 'yes' responses. A very small number (1%) gave a conflicting answer 'yes' – i.e. their written explanation did not match the answer option selected. It is therefore likely that the level of 'no' responses reported above, to not allow an exemption in this circumstance, is a slight underestimate. The results are displayed in Table 7.3.

Table 7.3 Responses to question 10 – 'promotion of value' restrictions

Answer	Organisations		Individuals	
	n	%	n	%
Yes	37	39%	287	45%
No	26	28%	201	32%
Don't know	3	3%	65	10%
Not answered	28	30%	33	5%
Conflicting/possible conflicting answers[44]	0	0%	46	8%
Total	**94**	**100%**	**632**	**100%**

Organisation respondents overview

7.25. Breaking down the findings further from the responses in the table above, it was possible to see different views in the responses from different types of organisation. Two fifths (40%) of the non-industry organisation respondents agreed with the exemption for 'promotion of value', while more than a third (36%) disagreed, i.e. thought the restrictions should still apply. Close to two-fifths (38%) of the industry organisation respondents agreed with the exemption, although more – close to half (46%) did not provide a tick box answer. A full breakdown by organisation is provided in Annex 2, Table A2.11.

[44] This is made up of two groups – 1) conflicting answers - the comments submitted by these respondents conflicted with the original tick box answer option that they selected, but were not sufficiently clear to enable correction; 2) possible conflicting answers - no comment was submitted but the tick box answer option selected conflicts with the viewpoint expressed in responses to other questions. Please see Annex 2, Table A2.11 for a more detailed breakdown of conflicting and possible conflicting answers.

Agreement with the 'discounted because it is close to expiry' exemptions

7.26. Some of the individual respondents that agreed with the exemptions did so on the basis that they do not believe mandatory measures should be introduced and therefore that no restrictions should apply.

7.27. However, many of the individual respondents and most of the organisation respondents (across all types) that agreed, indicated agreement with the rationale in the consultation paper that this was necessary to prevent food waste and should therefore override the restriction of promotion and marketing of HFSS foods. Some retailer respondents mentioned specific policies, guidance or schemes that they were signed up to or following, such as the Coultard commitment to reduce food and drink wastage, guidance from Zero Waste Scotland, or FareShare. If restrictions on close to expiry food were put in place, these retailers felt such restrictions would undermine efforts based on those schemes and create contradictory policy.

7.28. One industry representative body respondent highlighted the relevance of the exemption for short shelf-life products such as chilled desserts.

7.29. Few respondents (individuals and various types of organisations) also agreed with the exemptions on the basis that these offers are needed by those on a low income or low budget.

7.30. Few respondents (individuals) felt that the exemption should apply to prevent losses to businesses from not being able to clear old stock.

7.31. Few respondents highlighted the need to define 'close to expiry' (expressed by individuals and one third sector respondent) and to monitor and review usage of the exemption (few public sector respondents).

Disagreement with the 'discounted because it is close to expiry' exemptions

7.32. Among those that disagreed with allowing an exemption in these circumstances, the most frequent reason (expressed by individual respondents and few public sector and third sector respondents) was concern that the exemption may be abused – for example, by expiry dates being purposely shortened to side step restrictions on other types of offers. Few public sector respondents flagged that there may need to be distinction between 'short life' products and longer life products. One other organisation respondent highlighted that retailers specialising in selling food nearer to expiry date would have an unfair advantage.

7.33. Few of the respondents that disagreed (few individuals and few other organisations) raised concern that the foods contain the same levels of fat, sugar and salt regardless of how close they are to expiry and therefore should still be subject to the same restrictions to prevent harm to health. It was also flagged by few respondents (individuals and few public sector respondents) that those on a low income are most likely to take advantage of these offers and therefore to exempt them would continue the probability of those on a low income being persuaded to buy them and therefore having the poorest diet.

7.34. Few respondents (individuals, one manufacturer and one public sector respondent) thought that there should be no exemptions as this reduces consistency and acts to undermine what the policy has set out to achieve.

7.35. Few respondents (individuals, few public sector and other organisation respondents) felt that an exemption was not needed since retailers could simply manage their stock better and buy less of these types of food to avoid ending up with unsold stock.

7.36. Few individual respondents noted that it was already clear when food is on offer due to being close to expiry through the yellow sticker system used by some stores and that these foods could be sold from a specific place in the store (away from end of aisle and checkouts) as is already often the case.

Other exemptions

7.37. Respondents were asked to comment on any other exemptions they felt should be considered.

Question 11: Please list any other exemptions we should consider.

Overview

7.38. Overall 95 respondents gave a specific response to the question (i.e. excluding blanks, 'no comment', 'don't know' and general 'no restrictions' answers). Of these, 63 were individuals and 32 were organisations[45] (of which 17 were industry organisations and 15 were non-industry organisations).

No exemptions view

7.39. Few respondents (individuals and few public sector and third sector respondents) emphasised their belief that no exemptions should be allowed. The reasons echoed those already raised in response to question 10 – i.e. that the foods remain unhealthy and exemptions provide potential loopholes, which may be abused, undermining the effectiveness of the policy.

7.40. One retailer and one industry representative body respondent also flagged that a preferable approach may be to introduce fewer restrictions that do not require exemptions, rather than introduce lots of restrictions requiring exemptions which creates a somewhat complex picture for implementation, compliance and enforcement.

Potential exemptions

7.41. Other exemptions were put forward for consideration but each by few respondents. Most commonly:

- Small businesses – individuals and organisation respondents flagged that small businesses would need exemption from the requirements as they may be disproportionately affected, both in terms of positioning restrictions but

[45] Responses to this question were received from all organisation types except Out of Home providers.

also in terms of being able to compete with larger businesses by offering promotions. One industry representative body respondent suggested exemptions for the very smallest (e.g. under 2000 sq. ft.) from end of aisle and checkout display restrictions, on the basis that this would be in keeping with environmental and waste regulations, where the smallest businesses are exempted; another suggested shops smaller than 280 sq. m. should be exempt from positioning restrictions;

- Seasonal stock – all types of respondents noted that items sold for specific events/holidays being sold at the appropriate time of the year should be exempt as shops need to be able to position extra stock accordingly to meet increased demand. At these times of year, it was thought these products were sought out and may be gifts as well as for personal consumption. Most commonly Easter and Christmas was mentioned, but products for Birthdays and other events such as Halloween and Valentine's Day were also flagged as times when an exemption to restrictions would be appropriate;
- Items for special dietary needs (such as gluten free, vegan etc.) were flagged by individual respondents as requiring exemption;
- Local products – individuals and manufacturer respondents felt that locally made Scottish products should be exempt, to encourage and support Scottish heritage;
- Items with medical benefits i.e. used to control diabetes and epilepsy were highlighted by individual respondents for exemption; and
- Specialist shops were also flagged by individual respondents (and concern about the potential impacts on specialist shops was also raised by few industry organisation respondents in relation to other questions).

7.42. Generally, the respondents did not make clear which restrictions the exemptions listed should apply to – i.e. whether from all restrictions or only e.g. positioning restrictions or promotional offers.

7.43. Few industry organisation respondents highlighted a number of issues in relation to existing initiatives/requirements that they felt should be considered and would require exemption from the restrictions so that they are not undermined. These issues are:

- One manufacturer respondent noted that infant and toddler foods are governed by extensive European legislation in regards to composition and safety and have been designed to meet their specific and evolving nutritional requirements. It was therefore felt that these should be exempt;
- Two manufacturer respondents and one industry representative body respondent noted soft drinks under 5g sugar per 100ml (in line with soft drink industry levy threshold) should be excluded from any restrictions for consistency with guidance, and to allow lower sugar alternatives to be promoted so customers can choose lower sugar versions of products they already consume. They felt it would also encourage manufacturers to innovate and create alternative options;
- As well as more general concerns about banning promotions for specific categories in relation to stifling innovation and competition, three industry representative body respondents and two manufacturer respondents

expressed concerns that promotional restrictions on reformulated items would undermine the work undertake by companies to voluntarily reduce fat, sugar and salt levels. They therefore thought exemptions for nutrient or portion size reduced products should apply; and

- One manufacturer respondent noted the ‘Designated Driver’ promotion of soft drink alternatives during the Christmas period would be at risk if this could not be promoted.

8. Enforcement and Implementation (Q 12)

8.1. The consultation paper stated the Government was considering giving local authorities the role of enforcing the proposed policy, with relevant powers and relevant offences created. The need for a new register for the policy was not anticipated given that under the EU Food Hygiene Legislation food businesses must already register with their local authority. The Government was also considering giving Ministers power to issue guidance to local authorities and publishing an industry guide to support implementation.

Question 12: *Please comment on our proposals for enforcement and implementation outlined in section 8 [of the consultation paper].*

Overview

8.2. In total 592 respondents gave a specific response to the question (i.e. excluding blanks, 'no comment' and 'don't know' answers).

8.3. Although this was an open question (i.e. not a tick box question), written explanations were analysed to try to quantify what proportion indicated overall agreement and disagreement with the proposals for enforcement. It is important to note that a number of respondents gave no overall indication, but instead made a specific point or points in relation to the content of the proposals. Therefore, their overall stance (if indeed they had one) for this question is not known. The figures below therefore provide only a rough indication and should be interpreted with caution.

8.4. Over two-thirds of the organisation respondents gave a written explanation that indicated agreement with the proposals for enforcement. Nearly a quarter gave no overall indication and just under a tenth indicated disagreement.

8.5. Two-fifths of individual respondents indicated disagreement with the proposals for enforcement. Nearly a third indicated agreement, and almost as many gave no overall indication.

8.6. Breaking down the organisation respondents described above, over four-fifths of non-industry organisation respondents indicated agreement with the proposals for enforcement. Responses from industry organisation respondents were much more mixed, with over a third indicating agreement, over a fifth indicating disagreement, but the largest proportion – over two-fifths gave no overall indication.

Agreement with proposals for enforcement and implementation

8.7. Many of those indicating agreement with the proposals (across all respondent types) simply stated the fact without providing further detail on their reasoning. Some noted considerations explored in more detail below (see para 8.11 onwards).

8.8. Some of the organisation respondents that agreed with the approach, suggested enforcement sits best within currently established local authority environmental health teams because of established knowledge, legal status, experience and relationships with businesses, although two public sector respondents suggested enforcement may sit better within Trading Standards functions.

Disagreement with proposals for enforcement and implementation

8.9. More than half of the individual respondents that disagreed with the proposals for enforcement and implementation indicated that this was on the basis that they disagreed with the overall proposal of introducing mandatory restrictions and therefore by default disagree with proposals for enforcement and implementation.

8.10. Few of the individual respondent that disagreed with the proposals did so due to the belief that local authorities are already overstretched and should not have further burdens placed on them when they are struggling with existing priorities. Few felt that enforcement would be more appropriate in the hands of a different agency – mainly by a government department or a national agency. This was on the basis that this would encompass a greater level of expertise and would provide consistency that could not be achieved through local level enforcement. Few individual respondents felt that local authorities were not capable and therefore were an inappropriate choice for enforcement.

Considerations for enforcement and implementation

8.11. Among all respondents to the question, some (across all respondent types) raised concern about the burden that enforcement would place on the local authority teams in an already understaffed and stretched financial environment. Few respondents (few individuals, many non-industry organisations, few industry representative bodies) suggested that the work would require separate ring fenced funding and the training of personnel. It was suggested that the extra work could not be absorbed into existing workloads and that underfunding the work would lead to inconsistent or incorrect enforcement. Few respondent (few individuals, few non-industry and few industry organisations) specifically noted that clear and accessible policy and guidelines, created at a national level, would be required in order to facilitate consistent and fair enforcement actions across Scotland. Few organisation respondents suggested that local authorities and industry must be involved in drafting guidance to ensure that it is understandable and able to be implemented.

8.12. Few industry representative body respondents flagged that sufficient lead-in time would be needed to raise awareness and make the necessary changes. This included public education and communication, staff training, repackaging, rebranding and business remodeling. They also voiced concern that implementation would place significant cost and administration burdens on retailers, but they welcomed the development of a Business and Regulatory Impact Assessment.

8.13. Few manufacturer respondents also noted the significant time and resources that would be needed for implementation. There was concern that small businesses may be more likely to be targeted for enforcement due to the perceived difficulty and cost of dealing with large companies.

8.14. Concern was expressed by few industry organisation respondents about the use of penalties as described and there was a preference for taking an education-led approach and creating an environment where retailers are self-policing in order for the approach to be successful. One industry representative body respondent suggested that there may be a financial incentive for local authorities to issue a fixed penalty notice instead of an education approach. However, support was expressed for fixed penalty notices by few public sector respondents on the basis that their use would make the approach effective, although one such respondent suggested that these should be proportionate to business size.

9. Legislative framework (Q 13)

9.1. The consultation paper discussed the necessity of ensuring the legislation needed to implement the policy is sufficiently flexible, that it is future-proof, and that it develops over time to take into account changes in the underlying evidence base or promotion and marketing practices. The paper proposed that, whatever the overall legislative framework, Ministers would, following consultation, make provision in secondary legislation for the foods and types of promotions and marketing that would fall within and outwith the scope of restrictions and any exemptions. Respondents were asked to comment on the proposed flexible approach.

Question 13: Please comment on the proposed flexible approach outlined in section 9 [of the consultation paper].

Overview

9.2. In total 495 respondents gave a specific response to the question (i.e. excluding blanks, 'no comment' and 'don't know' answers).

9.3. Although this was an open question (i.e. not a tick box question), written explanations were analysed to try to quantify what proportion indicated overall agreement and disagreement with the proposed flexible approach. It is important to note that a number of respondents gave no overall indication, but instead made a specific point or points in relation to the content of the approach. Therefore, their overall stance (if indeed they had one) for this question is not known. The figures below therefore provide only a rough indication and should be interpreted with caution.

9.4. Nearly three-fifths of the organisation respondents gave a written explanation that indicated agreement with the flexible approach, nearly a fifth indicated disagreement and over a fifth gave no overall indication.

9.5. Close to half of the individual respondents gave a written explanation that indicated agreement with the flexible approach, nearly two-fifths indicated disagreement and less than a fifth gave no overall indication.

9.6. Breaking down the organisation respondents described above, over four-fifths of the non-industry organisation respondents indicated agreement with the flexible approach to enforcement. Close to half of the industry organisation respondents indicated disagreement, over a third gave no overall indication and just under a fifth indicated agreement.

Agreement with proposals for legislative framework

9.7. Most of those indicating agreement with the proposals simply stated their support without providing further detail on their reasoning. Those that offered further comment, most frequently (but few) noted that the approach needed to be specific and clear in order to be enforceable and that flexibility should not leave it

open to abuse. These views were held by both individual respondents and by few public sector respondents. One benefit of flexibility noted by one retailer respondent was that it would allow the policy to be trimmed back in future as cooking and eating habits improve. One third sector respondent noted the merit of using secondary legislation which would enable the Scottish Government to align with the wider UK plans to restrict promotions, which would have the advantage of creating coherence, limiting variation and limiting disruption to the industry.

Disagreement with proposals for legislative framework

9.8. Most individual respondents that disagreed with the approach indicated that this was on the basis that they disagreed with the overall proposal of introducing mandatory restrictions and therefore by default disagree with the proposed legislative framework.

9.9. Other reasons for disagreement with the proposals included:

- Few individual respondents and few industry organisation respondents expressed concern that future proofing the legislation by allowing revisions via secondary legislation would lack the democratic scrutiny that primary legislation is subject to and therefore would increase the chances that the approach adopted is not appropriate nor proportionate; and
- Few manufacturer and industry representative body respondents held concerns that the flexible approach would be unfair to businesses who would have to keep making changes as requirements are changed and indeed that it may be difficult for businesses to keep track of changing requirements. They felt that any proposed changes should first be subject to consultation with industry and stakeholders.

9.10. Few individual respondents felt there was a need for a strict (rather than flexible) approach on the basis that this should ensure compliance and prevent abuse.

Considerations for legislation

9.11. Some of the respondents (some individuals, few industry representative bodies and few public sector organisations) that did not express overall agreement or disagreement highlighted that the proposals for legislation were relatively vague and that they would need more detail on what the legislation would look like before they could comment fully.

9.12. Few respondents (few individuals, a public sector respondent and a retailer) highlighted a need to evaluate the policy to understand its impact and identify any required refinements.

10. Impact and support (Qs 14-16)

10.1. One purpose of the consultation was to help inform the development of a Business and Regulatory Impact Assessment and a Health Inequalities Impact Assessment (which includes within it an Equality Impact Assessment). In respect of the Business and Regulatory Impact Assessment, questions 14 and 15 assessed the impact that the policy would have on the sale, distribution and/or manufacturing of discretionary foods as well as what implementation support is needed. For the Health Inequalities Impact Assessment, question 16 sought views on how the proposed restrictions would impact particular groups of people.

Business Impact

Question 14: *If you sell, distribute or manufacture discretionary foods, please comment on how the restrictions in this consultation paper would impact you.*

Overview

10.2. In total there were 56 specific responses to this question (i.e. excluding blanks, 'N/A', 'no comment', 'don't know' and general 'no restrictions' answers).

Non-industry and individual views

10.3. Four of the respondents were from public and third sector organisations noting that they would need to make changes to food outlets, canteens and vending machines.

10.4. Twenty-five responses were from individuals with most flagging various negative impacts. Of these, many suggested there would be a negative impact on business sales and profits and few noted concern for small businesses. These responses should be treated with caution however, as it is not known whether these individuals are drawing on any relevant experience or knowledge.

Industry views

10.5. Of the 39 industry organisations that responded to the consultation, 27 responded to this question - 14 manufacturers, 7 industry representative bodies, 5 retailers and 1 Out of Home provider.

10.6. Most industry organisations that responded noted the introduction of the proposed measures would have a significant impact on the way the industry operates, and few noted that they are coming at an exceptionally challenging time for the industry.

10.7. There was an exception to this, with one large industry organisation describing the impact as 'slight', only impacting on some of their products. It was noted that the type of promotions subject to restriction are a relatively small proportion of their overall marketing approach. The main impact they noted was the limiting of their ability to market certain products to customers and particularly with regard to new products.

Views of industry representative bodies

10.8. The responses from the industry representative bodies included the following points (each made by few):

- The measures proposed would have a significant negative impact on retailers' turnover and therefore their ability to operate, run and maintain viable businesses in Scotland. They noted that wholesalers and organisations that specialise in discretionary products report that as a consequence of the approach significant staff redundancies could be incurred;
- It was suggested that small Scottish manufacturers' ability to introduce new products to the market could be stifled through restriction of low cost marketing tools. It is anticipated that small local manufacturers would be impacted more than large companies with big marketing budgets that could adapt;
- They noted that wholesalers report that it is impossible to accurately assess the impact without greater clarity on definitions. However, an industry representative body estimates the proposals could take up to £305 million out of the Scottish wholesale sector; and
- It was suggested that additional costs would be incurred due to a lack of a joined-up approach across the UK. For example, wholesalers may have to hold dual stock without a unified approach.

Views of manufacturers

10.9. The responses from manufacturers included the following impacts (each made by few):

- Small Scottish manufacturers, brands and local and craft producers felt that they would be put at a competitive disadvantage. Some reported it would impact fundamental business, growth plans and their workforce;
- One small manufacturer described how small brands rely on the affordable marketing methods that will be restricted in Scotland, which disrupts shoppers' usual habits. Without these available, they anticipate that one of their factories involved in the production of discretionary products would likely close, with the loss of ten jobs;
- Restrictions on promotion would result in devaluation of brand;
- Compliance will be costly – simple labelling changes can cost thousands of pounds. It was suggested that compliance would impact on businesses' operations and ability to invest;
- There will be reduced incentive to reformulate products in line with reformulation programmes and there would be risk of stalling the success of these calorie reduction programmes;
- There will be no incentive to bring reformulated soft drinks to the Scottish market; and
- One manufacturer anticipated that if there were not sufficient exemptions for specialist confectionery stores, the business case for a proposed own-brand store in Scotland would be undermined.

Views of retailers

10.10. The responses from retailers included the following impacts:

- One large retailer highlighted how the proposals would prevent them from discounting a meal deal, which according to government guidelines is a 'healthy' lunch. They indicated that the cost of the items separately would be double and demonstrated how a lunch with a higher calorific value could still qualify for the meal deal. As a consequence of the restrictions, customers would have to pay more, and there would be significant confusion for colleagues and customers; and
- Another large retailer noted that they had spent many years promoting the Scottish food and drink sector, but the restrictions would significantly restrict their ability to do so in the future.

Implementation Support for Business

Question 15: *What support do sellers, distributors and manufacturers need to implement the restrictions effectively?*

Overview

10.11. In total there were 245 specific responses to this question (i.e. excluding blanks, 'N/A', 'no comment', 'don't know' and general 'no restrictions' answers). Of these 194 were from individuals and 51 were from organisations[46] (of which 26 were non-industry organisations and 25 were industry organisations).

Views of individuals

10.12. Many of the individuals that responded felt that clear guidance would be needed for industry on what is encompassed within the restrictions, why restrictions are needed, what changes they will need to make, how restrictions will be enforced and what the penalties are. More specific suggestions from few also included providing online resources, a helpline and one to one consultation and support for small businesses not only on how to implement the changes but also on how to maintain sales and profit via alternative methods. Financial support to implement changes or develop alternative products and promotions was also suggested by few.

10.13. Few individual respondents believed that no support should be provided, predominantly on the basis that if the rules are clear, the onus should be on industry to make any necessary changes without any further costs of additional support funded by taxpayers.

Views of organisations

10.14. Many of the organisation respondents that gave a view on the topic thought that the Scottish Government needs to ensure that industry partners and members of the public understand the need to implement change and support plans to do so. One third sector respondent highlighted that it would be important not to lose the

[46] Responses to this question were received from all organisation respondent types except the Out of Home sector.

commitment and goodwill from the Small or Medium Enterprise (SME) sector and this could be achieved by providing support and flexibility. Retailers and manufacturers require clear practical obligations that can be put into place - for example specific details regarding the definition of foods included in restrictions.

10.15. In regards to resources, few public sector respondents felt that sector specific guidance needs to be produced, in collaboration with industry, which is available in different languages and online. Few non-industry organisation respondents noted resources should include examples of good practice, and use visual graphics to demonstrate restrictions. Few organisation respondents noted that as small independent businesses are likely to find implementing changes more challenging, resources should focus on their needs. In addition to dissemination of resources to Scottish manufacturers and retailers, few industry representative body respondents and few manufacturer respondents highlighted that resources would need to be disseminated to food and drink manufacturers across the UK who supply to Scotland.

10.16. Few organisation respondents indicated that a well-resourced training and awareness programme is needed for retailers and manufacturers. They felt that local workshops should be provided and respondents anticipated that accessible, visible on-site support should be available where requested and email and telephone support should be available. In addition to guidance on implementation, training should include components on healthier options and how to market them, and awareness raising of the implications of non-compliance. It was flagged that training will also be required for enforcement officers, and enforcement bodies will require clear and detailed guidance provided well in advance of implementation.

10.17. Few organisation respondents highlighted that further clarity on issues was needed before they would be able to comment, and few, that independent research should be conducted to assess what is required.

10.18. Other support requirements, suggested by few, included:

- Clear guidelines would be needed especially for non-packaged food and food sold by the Out of Home sector; and
- An appropriate length of time to plan and implement changes, which the industry should be consulted on.

Health Inequalities Impact

Question 16: *How would the proposed restrictions impact on the people of Scotland with respect to age, disability, gender reassignment, pregnancy and maternity, ethnicity, religion or belief, sex, sexual orientation or socioeconomic disadvantage? Please consider both potentially positive and negative impacts, supported by evidence, and, if applicable, advise on any mitigating actions we should take.*

Overview

10.19. In total there were 429 specific responses to this question (i.e. excluding blanks, 'N/A', 'no comment', 'don't know' and general 'no restrictions' answers). Of these 373 were from individuals and 56 were from organisations[47] (of which 41 were non-industry organisations and 15 were industry organisations).

No impact view

10.20. Few individual respondents and few public sector respondents felt that the suggested approach targeted all equally and that there was no greater disadvantage to any given group. Few non-industry organisation respondents suggested that separate research/expert input was needed to determine the impacts on the groups listed.

Potential positive impacts

10.21. Some respondents (some individuals and some non-industry organisations) reported potential positive impacts. Nearly half of whom reflected that there would be health benefits for everyone, while few noted specific health benefits to people experiencing socio-economic disadvantages who were considered to be most susceptible to promotions and for whom discretionary foods were thought to make up a larger part of their diet. Few (individuals and one public sector respondent) noted the specific benefits to children who due to the restrictions would be less likely to grow up with weight management issues and consequently less be likely to suffer from obesity related diseases.

Potential negative impacts

10.22. Many respondents to the question (across all respondent types) reported potential negative impacts. By far the greatest concern, flagged by many (across all respondent types) was the likelihood of the restrictions impacting on people who were already socio-economically disadvantaged. Most respondents that held this concern (individuals, some industry organisations, and some non-industry organisations), suggested that since discretionary foods are cheap and the purpose of the policy is to restrict promotion of these items, this would make food shopping more expensive. They thought this would have greatest impact on those on low incomes who may rely on the types of promotions targeted and who are more likely to consume large amounts of these products as a cheap way of meeting their calorie needs. One manufacturer respondent highlighted concern that the restrictions would result in socio-economically disadvantaged groups having a reduced ability to identify value.

10.23. Few individual respondents and few non-industry organisation respondents highlighted that with these restrictions in force, those on low incomes would still lack the knowledge and/or motivation to make healthier choices, and would therefore still buy these foods, but would simply be poorer as a result. Few public sector respondents noted that this would further levels of disadvantage and create a two-tier system where only those who can afford to would have access to full dietary choice.

[47] Responses to this question were received from all organisation types except Out of Home providers.

10.24. Suggestions to mitigate this issue, each expressed by few individual respondents and few non-industry organisation respondents, encompassed:

- Educating people on how to cook healthier meals cheaply;
- Educating people on what foods are healthier;
- Educating people about the reasons for the restrictions and the damage caused by the overconsumption of discretionary foods, to raise awareness of the need to switch to healthier choices;
- Reducing the costs of healthy foods; and
- Providing promotions on healthier alternatives.

10.25. Other groups that respondents thought may potentially suffer negative impacts included:

- Ethnic minority groups – few individuals and public sector respondents suggested that many takeaways are run by ethnic minority groups such as Chinese and Indian takeaways and therefore they may be disproportionately affected by a reduction in sales. There was also suggestion that some ethnic minority foods do not fit as clearly in to the discretionary categories listed and any misunderstanding of the requirements may leave them increasingly likely to suffer penalties for non-compliance;
- Disability – few individual respondents thought that positioning restrictions may affect access to certain foods for those with a physical disability;
- Medical conditions – few individuals and one ‘other’ organisation respondent noted that certain medical conditions are managed via the consumption of products that fall within the discretionary definition and that it is unfair for costs to be increased when they are consumed for medical reasons and not due to poor dietary choices;
- Those with special dietary requirements – few individual respondents suggested that if promotions on specialist foods (such as gluten free, vegan etc.) are restricted, these may be made more expensive, but since there is already limited choice/availability of these foods, consumers cannot buy alternatives and consequently will have to pay more;
- Elderly – few individuals, one third sector and one industry representative body respondent suggested that they may be likely to obtain larger amounts of their calorie intake via consumption of discretionary foods and as a result their food costs would be more expensive under the approach; and
- Religion – few individual respondents noted that the restrictions may affect the purchase of foods required at celebration times or in relation to religious beliefs.

10.26. Mitigating actions were rarely offered for the impacts noted above.

10.27. Few individual and few organisation respondents suggested there was a need to undertake work with relevant groups to determine what the impacts may be, and to consider whether the approach was still appropriate and, if so, find ways to redress the impacts or create appropriate exemptions.

Annex 1: Consultation Questions

Question 1: To what degree do you agree or disagree that mandatory measures should be introduced to restrict the promotion and marketing of foods high in fat, sugar or salt to reduce health harms associated with their excessive consumption?

☐ Strongly agree
☐ Agree
☐ Neither agree or disagree
☐ Disagree
☐ Strongly disagree

Please explain your answer.

Question 2: Should this policy only target discretionary foods? [confectionery, sweet biscuits, crisps, savoury snacks, cakes, pastries, puddings and soft drinks with added sugar]

☐ Yes
☐ No – there are additional categories that should also be targeted, please specify
☐ No – fewer categories should be targeted, please specify what should not be targeted
☐ No – no foods should be targeted
☐ Other – please specify
☐ Don't know

Please explain your answer.

Question 3: Should this policy treat ice-cream and dairy desserts as discretionary foods?

☐ Yes
☐ No
☐ Don't know

Please explain your answer.

Question 4: Please comment on our approach to defining categories and exclusions of particular foods/products from those definitions (paragraphs 9-11)?

Question 5: In relation to the foods being targeted, should this policy seek to:

	Yes	No	Don't Know
Restrict multi-buys	☐	☐	☐
Restrict sales of unlimited amounts for a fixed charge	☐	☐	☐
Not restrict temporary price reductions	☐	☐	☐

Not restrict multi-packs?	☐	☐	☐
Other – please specify	☐	☐	☐

Please explain your answers.

Question 6: Please comment on the approach we are proposing to take to restricting forms of promotion and marketing outlined in section 5.

Question 7: Should the restrictions apply to any place where targeted foods are sold to the public, except where they are not sold in the course of business (e.g. charity bake sales)?

☐ Yes
☐ No
☐ Don't know

Please explain your answer.

Question 8: Please comment on whether, and if so to what extent, restrictions should be applied online.

Please explain your answer.

Question 9: Should restrictions to displaying targeted foods at end of aisle, checkouts etc., not apply where there is no reasonable alternative to displaying them elsewhere?

☐ Yes
☐ No
☐ Don't know

Please explain your answer.

Question 10: Should food marked as discounted because it is close to expiry be exempt from:

	Yes	No	Don't Know
Positioning restrictions (end of aisle, checkouts etc.)	☐	☐	☐
'Promotion of value' restrictions?	☐	☐	☐

Please explain your answer.

Question 11: Please list any other exemptions we should consider. Please explain your answer.

Question 12: Please comment on our proposals for enforcement and implementation outlined in section 8.

Question 13: Please comment on the proposed flexible approach outlined in section 9.

Question 14: If you sell, distribute or manufacture discretionary foods, please comment on how the restrictions in this consultation paper would impact you. Please explain your answer.

Question 15: What support do sellers, distributors and manufacturers need to implement the restrictions effectively? Please explain your answer.

Question 16: How would the proposed restrictions impact on the people of Scotland with respect to age, disability, gender reassignment, pregnancy and maternity, ethnicity, religion or belief, sex, sexual orientation or socioeconomic disadvantage?

Please consider both potentially positive and negative impacts, supported by evidence, and, if applicable, advise on any mitigating actions we should take.

Question 17: Please outline any other comments you wish to make.

Annex 2: Frequency analysis of closed questions

The following abbreviations are used in the tables in this Annex:

Organisations		Organisation sub-totals	
PS	public sector	Non-Ind	Non-industry
TS	third sector		
Oth	other		
IRB	industry representative body	Ind	Industry
M	manufacturer		
R & OoH	retailer and Out of Home provider		

Organisations – by stance on mandatory measures	
F	'for' mandatory measures
A	'against' mandatory measures
N	'neither' for or against mandatory measures, includes 'not answered'

The following terminology is used in the tables in this Annex (also see Annex 3 for more information):

Inferred clearly from comments - this term is used to indicate responses that have been corrected on the basis that the original answer option selected did not match the written comments, but the specific phrasing used in the written comments was sufficiently clear to confidently infer the intended response. This includes where an answer to a tick box question was missing and also where the written explanation suggested the answer option originally chosen was not the respondent's intended response.

Conflicting answers - this term is used to indicate responses where the comments submitted by respondents conflicted with the original tick box answer option that they selected, but were not sufficiently clear to enable correction.

Possible conflicting answers – this term is used to indicate responses where no comment was submitted but the tick box answer option that they selected conflicts with the viewpoint expressed in responses to other questions and therefore may not have been the intended response.

Table A2.1: Question 1 — To what degree do you agree or disagree that mandatory measures should be introduced to restrict the promotion and marketing of foods high in fat, sugar or salt to reduce health harms associated with their excessive consumption?

Response Type		Organisations						Orgs - Subtotals		Total - all orgs	Total - all inds
		PS	TS	Oth	IRB	M	R & OoH	Non Ind	Ind		
Strongly agree	n	20	8	11	1	1	2	39	4	43	245
	%	65%	80%	79%	7%	6%	25%	71%	10%	46%	39%
Agree	n	5	1	1	0	2	0	7	2	9	106
Inferred clearly from comments	n	1	0	0	0	1	0	1	1	2	0
	%	19%	10%	7%	0%	18%	0%	15%	8%	12%	17%
Neither agree or disagree	n	2	1	0	0	3	0	3	3	6	46
	%	7%	10%	0%	0%	18%	0%	5%	8%	6%	7%
Disagree	n	0	0	0	0	2	1	0	3	3	68
Inferred clearly from comments	n	0	0	0	1	2	0	0	3	3	0
	%	0%	0%	0%	7%	24%	13%	0%	15%	6%	11%
Strongly disagree	n	1	0	0	7	5	1	1	13	14	163
	%	3%	0%	0%	50%	29%	13%	2%	33%	15%	26%
Not Answered	n	2	0	2	5	1	4	4	10	14	3
	%	7%	0%	14%	36%	6%	50%	7%	26%	15%	1%
Conflicting answers:											
• Selected 'Strongly disagree' (may have meant 'agree' or 'strongly agree' based on comment	n							0	0	0	1
	%							0%	0%	0%	0%
Total	n	31	10	14	14	17	8	55	39	94	632

Table A2.2: Question 2 — Should this policy only target discretionary foods?

Response Type		Organisations						Orgs - Subtotals		Organisations – by stance on mandatory measures			Total - all orgs	Individuals – by stance on mandatory measures			Total - all inds
		PS	TS	Oth	IRB	M	R & OoH	Non Ind	Ind	F	A	N		F	A	N	
Yes	n	10	2	5	1	2	0	17	3	17	0	3	20	143	5	14	162
	%	32%	20%	36%	7%	12%	0%	31%	8%	32%	0%	15%	21%	41%	2%	29%	26%
No – additional categories should be targeted	n	14	4	6	1	1	1	24	3	27	0	0	27	188	5	12	205
Inferred clearly from comments	n							0	0				0	1	0	0	1
	%	45%	40%	43%	7%	6%	13%	44%	8%	50%	0%	0%	29%	54%	2%	25%	32%
No - fewer categories should be targeted	n	1	0	0	1	1	0	1	2	2	1	0	3	5	8	4	17
	%	3%	0%	0%	7%	6%	0%	2%	5%	4%	5%	0%	3%	1%	3%	8%	3%
No – no foods should be targeted	n	1	0	0	5	3	2	1	10	0	11	0	11	5	179	15	199
Inferred clearly from comments	n	0	0	0	0	1	0	0	1	0	1	0	1				0
	%	3%	0%	0%	36%	24%	25%	2%	28%	0%	60%	0%	13%	1%	77%	31%	32%
Other	n	1	2	1	1	4	0	4	5	3	3	3	9	2	2	2	6
Inferred clearly from comments	n	0	0	0	3	4	5	0	12	1	4	7	12	0	0	1	1
	%	3%	20%	7%	29%	47%	63%	7%	44%	7%	35%	50%	23%	1%	1%	6%	1%

Don’t know	n	1	0	0	0	0	0	1	0	1	0	0	1	1	0	0	1
	%	3%	0%	0%	0%	0%	0%	2%	0%	2%	0%	0%	1%	0%	0%	0%	0%
Not Answered	n	3	2	2	2	1	0	7	3	3	0	7	10	1	1	0	2
	%	10%	20%	14%	14%	6%	0%	13%	8%	6%	0%	35%	11%	0%	0%	0%	0%
Conflicting answers:																	
• Selected more than one answer option, intended response could not be interpreted from comments	n							0	0				0	5	32	1	38
	%							0%	0%				0%	2%	14%	2%	7%
Total	n	31	10	14	14	17	8	55	39	54	20	20	94	351	232	49	632

In addition to the above responses, 9 respondents selected ‘other’ in addition to one of the above answer options (8 - individuals, 1 - organisation ‘other’).

Table A2.3: Question 3 — Should this policy treat ice-cream and dairy desserts as discretionary foods?

Response Type			Organisations						Orgs - Subtotals		Organisations – by stance on mandatory measures			Total - all orgs	Individuals – by stance on mandatory measures			Total - all inds
			PS	TS	Oth	IRB	M	R & OoH	Non Ind	Ind	F	A	N		F	A	N	
Yes		n	19	8	6	1	2	1	33	4	36	1	0	37	237	15	17	269
	Inferred clearly from comments	n	0	0	1	0	0	0	1	0	1	0	0	1	1	0	0	1
		%	61%	80%	50%	7%	12%	13%	62%	10%	69%	5%	0%	40%	68%	7%	35%	43%
No		n	6	0	5	1	6	4	11	11	11	6	5	22	71	199	21	291
	Inferred clearly from comments	n	0	0	0	2	0	0	0	2	0	1	1	2	0	4	0	4
		%	19%	0%	36%	21%	35%	50%	20%	33%	20%	35%	30%	25%	20%	88%	43%	47%
Don't know		n	3	1	0	4	1	0	4	5	2	3	4	9	36	8	10	54
		%	10%	10%	0%	29%	6%	0%	7%	13%	4%	15%	20%	10%	10%	3%	20%	9%
Not answered		n	3	1	2	6	8	3	6	17	4	9	10	23	3	6	1	10
		%	10%	10%	14%	43%	47%	38%	11%	44%	7%	45%	50%	25%	1%	3%	2%	2%
Conflicting answers:																		
• Selected 'Yes' (may have meant 'No' based on comments)		n							0	0				0	1	0	0	1
		%							0%	0%				0%	0%	0%	0%	0%

• Selected 'No' (may have meant 'Yes' based on comments)	n							0	0				0	2	0	0	2
	%							0%	0%				0%	1%	0%	0%	0%
Total	n	31	10	14	14	17	8	55	39	54	20	20	94	351	232	49	632

Table A2.4: Question 5A — In relation to the foods being targeted, should this policy seek to: Restrict multi-buys?

Response Type			Organisations						Orgs - Subtotals		Organisations – by stance on mandatory measures			Total - all orgs	Individuals – by stance on mandatory measures			Total - all inds
			PS	TS	Oth	IRB	M	R & OoH	Non Ind	Ind	F	A	N		F	A	N	
Yes		n	22	4	10	1	6	2	36	9	41	2	2	45	272	14	22	308
	Inferred clearly from comments	n	0	1	1	0	1	2	2	3	3	0	2	5				0
		%	71%	50%	79%	7%	41%	50%	69%	31%	82%	10%	20%	53%	78%	6%	45%	49%
No		n	2	0	0	5	1	2	2	8	0	8	2	10	51	206	20	277
	Inferred clearly from comments	n	0	0	0	1	2	0	0	3	0	3	0	3	0	1	0	1
		%	6%	0%	0%	43%	18%	25%	4%	28%	0%	55%	10%	14%	15%	89%	41%	44%
Don't know		n	2	1	0	0	0	0	3	0	2	0	1	3	23	3	6	32
		%	7%	10%	0%	0%	0%	0%	5%	0%	4%	0%	5%	3%	7%	1%	12%	5%
Not answered		n	5	4	3	7	7	2	12	16	8	7	13	28	5	6	1	12
		%	16%	40%	21%	50%	41%	25%	22%	41%	15%	35%	65%	30%	1%	3%	2%	2%
Conflicting answers:																		
• Selected 'Yes' (may have meant 'No' based on comments)		n							0	0				0	0	1	0	1
		%							0%	0%				0%	0%	0%	0%	0%

Possible conflicting answers:																	
• Selected 'Yes' (may have meant 'No' based on responses to other questions)	n							0	0				0	0	1	0	1
	%							0%	0%				0%	0%	0%	0%	0%
Total	n	31	10	14	14	17	8	55	39	54	20	20	94	351	232	49	632

Table A2.5: Question 5B — In relation to the foods being targeted, should this policy seek to: Restrict sales of unlimited amounts for a fixed charge?

Response Type			Organisations						Orgs - Subtotals		Organisations – by stance on mandatory measures			Total - all orgs	Individuals – by stance on mandatory measures			Total - all inds
			PS	TS	Oth	IRB	M	R & OoH	Non Ind	Ind	F	A	N		F	A	N	
Yes		n	23	4	10	1	6	2	37	9	41	1	4	46	261	16	21	298
	Inferred clearly from comments	n	0	0	1	0	1	2	1	3	2	0	2	4	0	1	0	1
		%	74%	40%	79%	7%	41%	50%	69%	31%	80%	5%	30%	53%	74%	7%	43%	47%
No		n	1	0	0	3	1	1	1	5	0	6	0	6	44	201	22	267
	Inferred clearly from comments	n	0	0	0	1	2	0	0	3	0	3	0	3	0	1	0	1
		%	3%	0%	0%	29%	18%	13%	2%	21%	0%	45%	0%	9%	13%	87%	45%	42%
Don't know		n	3	1	0	1	0	1	4	2	3	2	1	6	39	6	5	50
		%	10%	10%	0%	7%	0%	13%	7%	5%	6%	10%	5%	6%	11%	3%	10%	8%
Not answered		n	4	5	3	8	7	2	12	17	8	8	13	29	7	6	1	14
		%	13%	50%	21%	57%	41%	25%	22%	44%	15%	40%	65%	31%	2%	3%	2%	2%
Possible conflicting answers:																		
• Selected 'Yes' (may have meant 'No' based on responses to other questions)		n							0	0				0	0	1	0	1
		%							0%	0%				0%	0%	0%	0%	0%
Total		n	31	10	14	14	17	8	55	39	54	20	20	94	351	232	49	632

Table A2.6: Question 5C — In relation to the foods being targeted, should this policy seek to: NOT restrict temporary price reductions?

Response Type			Organisations						Orgs - Subtotals		Organisations – by stance on mandatory measures			Total - all orgs	Individuals – by stance on mandatory measures			Total - all inds
			PS	TS	Oth	IRB	M	R & OoH	Non Ind	Ind	F	A	N		F	A	N	
Yes		n	9	1	2	5	4	1	12	10	13	7	2	22	141	184	31	356
	Inferred clearly from comments	n	1	1	1	2	5	1	3	8	4	6	1	11	1	6	2	9
		%	32%	20%	21%	50%	53%	25%	27%	46%	32%	65%	15%	35%	41%	82%	67%	57%
No		n	13	3	4	0	1	3	20	4	21	2	1	24	133	8	11	152
	Inferred clearly from comments	n							0	0				0	1	0	0	1
		%	42%	30%	29%	0%	6%	38%	36%	10%	39%	10%	5%	26%	38%	3%	22%	24%
Don't know		n	2	1	4	0	0	0	7	0	6	0	1	7	36	2	2	40
		%	7%	10%	29%	0%	0%	0%	13%	0%	11%	0%	5%	7%	10%	1%	4%	6%
Not answered		n	6	4	3	7	7	3	13	17	10	5	15	30	36	9	2	47
		%	19%	40%	21%	50%	41%	38%	24%	44%	19%	25%	75%	32%	10%	4%	4%	7%
Conflicting answers:																		
• Selected 'No' (may have meant 'Yes' based on comments)		n							0	0				0	3	16	1	20
		%							0%	0%				0%	1%	7%	2%	3%

Possible conflicting answers:																	
• Selected 'No' (may have meant 'Yes' based on responses to other questions)	n							0	0				0	0	7	0	7
	%							0%	0%				0%	0%	3%	0%	1%
Total	n	31	10	14	14	17	8	55	39	54	20	20	94	351	232	49	632

Table A2.7: Question 5D — In relation to the foods being targeted, should this policy seek to: NOT restrict multi-packs?

Response Type			Organisations						Orgs - Subtotals		Organisations – by stance on mandatory measures			Total - all orgs	Individuals – by stance on mandatory measures			Total - all inds
			PS	TS	Oth	IRB	M	R & OoH	Non Ind	Ind	F	A	N		F	A	N	
Yes		n	11	1	4	5	3	1	16	9	15	7	3	25	126	187	29	342
	Inferred clearly from comments	n	1	0	1	2	5	1	2	8	3	6	1	10	1	7	1	9
		%	39%	10%	36%	50%	47%	25%	33%	44%	33%	65%	20%	38%	36%	84%	61%	55%
No		n	11	3	5	0	2	2	19	4	22	1	0	23	141	8	10	159
	Inferred clearly from comments	n							0	0				0	1	0	0	1
		%	36%	30%	36%	0%	12%	25%	35%	10%	41%	5%	0%	25%	41%	3%	20%	25%
Don’t know		n	2	1	1	0	0	1	4	1	3	1	1	5	38	2	6	46
		%	7%	10%	7%	0%	0%	13%	7%	3%	6%	5%	5%	5%	11%	1%	12%	7%
Not answered		n	6	5	3	7	7	3	14	17	11	5	15	31	41	7	2	50
		%	19%	50%	21%	50%	41%	38%	25%	44%	20%	25%	75%	33%	12%	3%	4%	8%
Conflicting answers:																		
• Selected ‘No’ (may have meant ‘Yes’ based on comments)		n							0	0				0	3	15	1	19
		%							0%	0%				0%	1%	7%	2%	3%

Possible conflicting answers:																	
• Selected 'No' (may have meant 'Yes' based on responses to other questions)	n							0	0				0	0	6	0	6
	%							0%	0%				0%	0%	3%	0%	1%
Total	n	31	10	14	14	17	8	55	39	54	20	20	94	351	232	49	632

Table A2.8: Question 7 — Should the restrictions apply to any place where targeted foods are sold to the public, except where they are not sold in the course of business (e.g. charity bake sales)?

Response Type			Organisations						Orgs - Subtotals		Organisations – by stance on mandatory measures			Total - all orgs	Individuals – by stance on mandatory measures			Total - all inds
			PS	TS	Oth	IRB	M	R & OoH	Non Ind	Ind	F	A	N		F	A	N	
Yes		n	19	6	11	2	7	4	36	13	40	4	5	49	281	22	20	323
	Inferred clearly from comments	n	0	1	1	1	1	2	2	4	2	1	3	6	1	0	0	1
		%	61%	70%	86%	21%	47%	75%	69%	44%	78%	25%	40%	58%	80%	10%	41%	51%
No		n	6	1	0	2	1	1	7	4	6	4	1	11	44	190	20	254
	Inferred clearly from comments	n	0	0	0	1	1	0	0	2	0	2	0	2	1	0	0	1
		%	19%	10%	0%	21%	12%	13%	13%	15%	11%	30%	5%	14%	13%	82%	41%	40%
Don't know		n	3	2	0	1	0	1	5	2	4	2	1	7	11	11	7	29
		%	10%	20%	0%	7%	0%	13%	9%	5%	7%	10%	5%	7%	3%	5%	14%	5%
Not answered		n	3	0	2	7	7	0	5	14	2	7	10	19	8	9	2	19
		%	10%	0%	14%	50%	41%	0%	9%	36%	4%	35%	50%	20%	2%	4%	4%	3%
Conflicting answers																		
• Selected 'No' (may have meant 'Yes' based on comments)		n							0	0				0	5	0	0	5
		%							0%	0%				0%	1%	0%	0%	1%
Total		n	31	10	14	14	17	8	55	39	54	20	20	94	351	232	49	632

Table A2.9: Question 9 — Should restrictions to displaying targeted foods at end of aisle, checkouts etc., not apply where there is no reasonable alternative to displaying them elsewhere?

Response Type		Organisations						Orgs - Subtotals		Organisations – by stance on mandatory measures			Total - all orgs	Individuals – by stance on mandatory measures			Total - all inds
		PS	TS	Oth	IRB	M	R & OoH	Non Ind	Ind	F	A	N		F	A	N	
Yes	n	10	3	5	4	6	4	18	14	20	9	3	32	110	106	16	232
Inferred clearly from comments	n	1	0	1	3	4	1	2	8	2	7	1	10	0	19	0	19
	%	35%	30%	43%	50%	59%	63%	36%	56%	41%	80%	20%	40%	31%	54%	33%	40%
No	n	14	4	3	2	2	1	21	5	24	1	1	26	172	21	13	206
Inferred clearly from comments	n	0	0	1	0	0	1	1	1	1	0	1	2	4	0	0	4
	%	45%	40%	29%	14%	12%	25%	40%	15%	46%	5%	10%	30%	50%	9%	27%	34%
Don't know	n	2	1	2	0	1	0	5	1	3	2	1	6	48	29	12	89
	%	7%	10%	14%	0%	6%	0%	9%	3%	6%	10%	5%	6%	14%	13%	25%	14%
Not answered	n	4	2	2	5	4	1	8	10	4	1	13	18	7	12	6	25
	%	13%	20%	14%	36%	24%	13%	15%	26%	7%	5%	65%	19%	2%	5%	12%	4%
Conflicting answers:																	
• Selected 'Yes' (may have meant 'No' based on comments)	n							0	0				0	8	1	2	11
	%							0%	0%				0%	2%	0%	4%	2%

• Selected 'No' (may have meant 'Yes' based on comments)	n							0	0				0	2	24	0	26
	%							0%	0%				0%	1%	10%	0%	4%
Possible conflicting answers:																	
• Selected 'No' (may have meant 'Yes' based on responses to other questions)	n							0	0				0	0	20	0	20
	%							0%	0%				0%	0%	9%	0%	3%
Total	n	31	10	14	14	17	8	55	39	54	20	20	94	351	232	49	632

Table A2.10: Question 10A — Should food marked as discounted because it is close to expiry be exempt from: Positioning restrictions (end of aisle, checkouts etc.)?

Response Type		Organisations						Orgs - Subtotals		Organisations – by stance on mandatory measures			Total - all orgs	Individuals – by stance on mandatory measures			Total - all inds
		PS	TS	Oth	IRB	M	R & OoH	Non Ind	Ind	F	A	N		F	A	N	
Yes	n	12	3	3	5	6	3	18	14	17	10	5	32	135	149	22	306
Inferred clearly from comments	n	0	1	1	0	1	0	2	1	2	1	0	3	0	6	0	6
	%	39%	40%	29%	36%	41%	38%	36%	38%	35%	55%	25%	37%	39%	67%	45%	49%
No	n	13	3	6	1	2	2	22	5	26	1	0	27	176	20	15	211
Inferred clearly from comments	n	0	0	1	0	1	0	1	1	1	1	0	2	1	0	0	1
	%	42%	30%	50%	7%	18%	25%	42%	15%	50%	10%	0%	31%	50%	9%	31%	33%
Don’t know	n	1	1	1	0	0	0	3	0	2	0	1	3	19	11	3	33
	%	3%	10%	7%	0%	0%	0%	5%	0%	4%	0%	5%	3%	5%	5%	6%	5%
Not answered	n	5	2	2	8	7	3	9	18	6	7	14	27	8	13	6	27
	%	16%	20%	14%	57%	41%	38%	16%	46%	11%	35%	70%	29%	2%	6%	12%	4%
Conflicting answers:																	
• Selected ‘Yes’ (may have meant ‘No’ based on comments)	n							0	0				0	4	0	0	4
	%							0%	0%				0%	1%	0%	0%	1%

• Selected 'No' (may have meant 'Yes' based on comments)	n							0	0				0	8	20	3	31
	%							0%	0%				0%	2%	9%	6%	5%
Possible conflicting answers:																	
• Selected 'No' (may have meant 'Yes' based on responses to other questions)	n							0	0				0	0	13	0	13
	%							0%	0%				0%	0%	6%	0%	2%
Total	n	31	10	14	14	17	8	55	39	54	20	20	94	351	232	49	632

Table A2.11: Question 10B — Should food marked as discounted because it is close to expiry be exempt from: Promotion of value' restrictions?

Response Type			Organisations						Orgs - Subtotals		Organisations – by stance on mandatory measures			Total - all orgs	Individuals – by stance on mandatory measures			Total - all inds
			PS	TS	Oth	IRB	M	R & OoH	Non Ind	Ind	F	A	N		F	A	N	
Yes		n	13	3	4	5	6	3	20	14	20	10	4	34	117	141	22	280
	Inferred clearly from comments	n	0	1	1	0	1	0	2	1	2	1	0	3	0	7	0	7
		%	42%	40%	36%	36%	41%	38%	40%	38%	41%	55%	20%	39%	33%	64%	45%	45%
No		n	11	2	6	1	2	2	19	5	22	1	1	24	172	18	10	200
	Inferred clearly from comments	n	0	0	1	0	1	0	1	1	1	1	0	2	1	0	0	1
		%	35%	20%	50%	7%	18%	25%	36%	15%	43%	10%	5%	28%	49%	8%	20%	32%
Don't know		n	1	2	0	0	0	0	3	0	2	0	1	3	41	15	9	65
		%	3%	20%	0%	0%	0%	0%	5%	0%	4%	0%	5%	3%	12%	7%	18%	10%
Not answered		n	6	2	2	8	7	3	10	18	7	7	14	28	11	16	6	33
		%	19%	20%	14%	57%	41%	38%	18%	46%	13%	35%	70%	30%	3%	7%	12%	5%
Conflicting answers:																		

• Selected 'Yes' (may have meant 'No' based on comments)	n							0	0				0	3	0	0	3
	%							0%	0%				0%	1%	0%	0%	1%
• Selected 'No' (may have meant 'Yes' based on comments)	n							0	0				0	6	22	2	30
	%							0%	0%				0%	2%	10%	4%	5%
Possible conflicting answers:																	
• Selected 'No' (may have meant 'Yes' based on responses to other questions)	n							0	0				0	0	13	0	13
	%							0%	0%				0%	0%	6%	0%	2%
Total	n	31	10	14	14	17	8	55	39	54	20	20	94	351	232	49	632

Annex 3: Data Cleaning

Cleaning the data

Prior to analysis, missing answers to closed questions were reviewed and, where written comments were provided, these were used to interpret the respondent's answer to the closed question. Where the wording was explicit (i.e. matched the wording of an answer option), the appropriate answer was inserted. Where the meaning was implied (i.e. was not explicit but meant the same as an answer option), the response 'inferred – yes' or 'inferred – no' (as appropriate to the answer wording) was inserted.

When analysing the data it was apparent that few respondents found some of the wording for the closed questions difficult to understand and they, therefore, struggled to select a response that best represented their views. In short, their written explanation did not match the answer option selected. Again, their written answers were used to interpret their intended response.

The rationale for amending responses demonstrating misunderstanding of the questions was:

- To ensure that the quantitative results accurately reflect the views of respondents;
- To ensure that where misunderstanding within the quantitative results could not be corrected, it was flagged for consideration;
- To enable the analysis to describe trends more accurately; and
- To ensure the views submitted could be included in the analysis.

Where misunderstanding was clear, the original answer was changed to 'inferred – yes' or 'inferred – no' as appropriate to the answer option. Where the selected answer option did not match the written comments but the written comments were not sufficiently clear to confidently correct the response, their original answer was changed to 'conflicting answer – yes' or 'conflicting answer – no' as appropriate to their original answer option. Where the numbers of conflicting answers for a given question are small, these have not been expressly commented upon within the findings. Where the numbers of conflicting answers for a given question are relatively high, they have been commented on in more detail.

In a small number of cases where there was no written comment but the selected answer option did not match the overall flow of a respondent's answers/opinions, their original answer was changed to 'possible conflicting answer – yes' or 'possible conflicting answer – no' as appropriate to their answer option. The purpose of this was to enable these issues to be flagged when describing the data.

The overall impact of cleaning the data in the manner described above was reviewed. The impact varied from question to question - sometimes increasing the number of responses in favour of proposals; sometimes increasing the number of responses against proposals. However, **data cleaning did not result in an overall shift in stance among respondents (i.e. the overall proportion for and against**

restrictions), nor did it alter the trends in the data (i.e. the relative popularity of each answer option within a question remained the same). The greatest impact was the better reflection of the views of those who are against mandatory restrictions. Due to misinterpretation of the question wording, in some cases their original selection indicated agreement with restrictions, when the written explanation demonstrated disagreement with restrictions.

A record was made of all changes made to the data set ensuring a robust audit trail.

Issues with the questions

This section provides further detail on the issues arising with interpretation of the questions, as well as the solutions applied in order to analyse the responses.

Question 2

Should this policy only target discretionary foods? [confectionery, sweet biscuits, crisps, savoury snacks, cakes, pastries, puddings and soft drinks with added sugar]

Issue: While there were no specific issues with interpretation of the wording of the question, in error, via the survey software, more than one answer option could have been selected by respondents. Some did select more than one answer option and as a consequence the quantitative results of this question were not possible to interpret without cleaning the data.

Solution: Responses were compiled and corrected:

- Where the options for ‘No – fewer’ and ‘No – no foods’ were both selected (but no other answer options were selected) the response was amended to ‘No – no foods’ on the basis that this answer option supersedes the concept of ‘fewer’. Where an explanation was submitted this was reviewed to ensure the change to the answer was compatible with their explanation.
- Where the answers conflicted i.e. the respondent selected ‘yes’ or ‘no – additional’ AND ‘No – fewer’ or ‘no – no foods’ any comments made were reviewed and the answer corrected to the appropriate option. Where there was no comment or the comments were not sufficiently clear to enable correction, the answer was recoded as 'conflicting answers'.
- The open comments were also reviewed where only one answer option was selected. Where the explanation did not match the answer selected, the answer was corrected to indicate the response that reflected their explanation. Where this was explicit, for example the respondent selected ‘no – fewer’ but stated ‘no foods should be targeted’, the answer option was corrected. Where it was less explicit but the meaning was the same, the response was recoded to ‘inferred’ (with the wording reflecting the appropriate answer option).

Questions 5, 7, 9 and 10

Overview: It was apparent that while the wording of the questions and answer options closely mirrored the wording used within the consultation paper, references to the concepts of applying restrictions and exemptions and also changing

language to refer to ‘not’ applying restrictions created some confusion for few respondents. These areas of confusion are explored for each question in more detail below, followed by a description of the solution adopted (which was consistent across these questions).

Question 5: In relation to the foods being targeted, should this policy seek to:
Restrict multi-buys
Restrict sales of unlimited amounts for a fixed charge
Not restrict temporary price reductions
Not restrict multi-packs?

Issue: The wording of the question created confusion among some respondents particularly in relation to the last two items (i.e. to not restrict). For example there were instances where ‘yes’ or ‘no’ was selected for all four items and then an explanation was given such as ‘none of these should be restricted’.

Question 7: Should the restrictions apply to any place where targeted foods are sold to the public, except where they are not sold in the course of business (e.g. charity bake sales)?

Issue: There was a small amount of confusion in terms of how to answer this question when the viewpoint held on the first part (i.e. restrictions applying to any place) was different to the viewpoint held on the second part (i.e. except where they are not sold in the course of business). For example some respondents selected ‘no’ and then stated ‘exempt charity events only’. Some of those who did not agree with any restrictions being implemented also struggled to interpret how best to answer this question.

Question 9: Should restrictions to displaying targeted foods at end of aisle, checkouts etc., not apply where there is no reasonable alternative to displaying them elsewhere?

Issue: There was some confusion in regard to how to answer with respect to an exemption - i.e. for this question selecting ‘yes’ meant the restrictions should not apply and selecting ‘no’ meant the restrictions should apply. This was the opposite of the meaning in previous questions - i.e. typically selecting ‘yes’ meant restrictions should apply and selecting ‘no’ meant the restrictions should not apply. For example, some respondents selected ‘no’ and then commented that no restrictions should apply.

Question 10: Should food marked as discounted because it is close to expiry be exempt from:
Positioning Restrictions (end of aisle, checkouts etc.)
‘Promotion of value’ restrictions?

Issue: The same issue arose as per question 9 with there being some confusion in regard to how to answer with respect to an exemption.

Solution (for Q5, 7, 9 and 10): The written explanations for each question were reviewed for misunderstanding:

- Where misunderstanding was clear, the answer was recoded to ‘inferred - yes’ or ‘inferred - no’ as appropriate to the comment made.
- Where misunderstanding/conflict was sufficiently clear to suggest that the answer was wrong but the explanation was not sufficiently clear to confidently ‘correct’ the answer it was recoded as ‘conflicting answer’ with the exact wording reflecting the original answer e.g. ‘conflicting answer - yes’ or ‘conflicting answer - no’.
- Where there was no explanation submitted for a given question but the answer option selected clearly conflicted with the respondent’s overriding view (to other questions) - for example the respondent was attempting to disagree with everything but has not accounted for the negative phrasing used in some of the wording of the questions – the answer was recoded as ‘possible conflicting answer’ with the exact wording reflecting the original response wording i.e. ‘possible conflicting answer – yes’ or ‘possible conflicting answer – no’.

Question 11

Question 11: Please list any other exemptions we should consider

Issue: Some respondents submitted responses indicating any other ‘restrictions’ instead of any other ‘exemptions’.

Solution: As the responses that indicated restrictions covered types of foods or types of promotions to restrict, the points had already been covered by a previous question and the response was therefore included at the relevant question and excluded from consideration in the write up for question 11.

Annex 4: List of organisational respondents

A total of 94 organisations took part in the consultation. These are listed below by their response to the question “If you are responding on behalf of an organisation, what type of organisation is it?”.

Public Sector (31)

Aberdeen City Council
Angus Community Planning Partnership
Argyll and Bute Health and Social Care Partnership
Convention of Scottish Local Authorities
Glasgow City Council
The Glasgow Food Policy Partnership and the Glasgow Centre for Population Health Midlothian Council
Medical Research Council/Chief Scientist Office Social and Public Health Sciences Unit
NHS Ayrshire & Arran
NHS Borders
NHS Dumfries & Galloway's Department of Public Health with input from Dumfries & Galloway Community Planning Partnership
NHS Grampian
NHS Health Scotland
North Ayrshire Council
North Lanarkshire Council
Public Health Registrars in Scotland
Renfrewshire Council
Scottish Borders Council (Conservative Group)
Scottish Borders Council (officer response)
Scottish Food Enforcement Liaison Committee
Scottish Grocers Federation Healthy Living Programme[48]
Scottish Libertarian Party
Scottish Public Health Nutrition Group
Shetland Islands Council, NHS Shetland
Society of Chief Officers of Environmental Health in Scotland
Society of Chief Officers of Trading Standards in Scotland
South Lanarkshire Council Environmental Services
The State Hospitals Board for Scotland
West Dunbartonshire Health and Social Care Partnership
West Lothian Council
West of Scotland Food Liaison Group

[48] Although this programme sits within an industry representative body, the perspective provided was that of a public health interest and therefore this programme is categorised as public sector for the purposes of the consultation. A separate response from the Scottish Grocers Federation was also submitted which represents industry interests and is categorised under industry representative body.

Manufacturer (17)

A.G. Barr PLC
Border Biscuits Ltd
Cider
Coca-Cola European Partners
Danone UK Ltd
Ella Drinks Ltd
General Mills
Haribo Dunhills (Pontefract) Ltd
innocent drinks
Lucozade Ribena Suntory Ltd.
Mackie's Of Scotland
Middle Way Ltd.
Muller UK & Ireland Group LLP
Nestle UK & Ireland
Paterson Arran Ltd
Pepsico UK
Tilly Confectionery Ltd

Industry representative body (14)

Association of Convenience Stores
British Dental Association
British Soft Drinks Association
British Specialist Nutrition Association (BSNA)
Dairy UK
Food and Drink Federation Scotland
Federation of Small Businesses
Potato Processors Limited
Provision Trade Federation
Scottish Bakers
Scottish Grocers Federation
Scottish Retail Consortium
Scottish Wholesale Association
UKHospitality

Third Sector (10)

Action on Sugar/Action on Salt
Cancer Research UK
Community Food Initiatives North East/ Sustainable Food City Partnership Aberdeen
Diabetes Scotland
Live Borders
Nuffield Council on Bioethics
Obesity Action Scotland
Outside the Box
Scotland's Learning Partnership
The Scottish Cancer Prevention Network

Retailer (7)

Asda Stores Ltd
Boots UK
Lomond Fishmongers
Sainsbury's
S.M. Bayne & Co Ltd
Tesco PLC
WHSmith

Out of home provider (e.g. restaurant, fast food outlet, coffee shop) (1)

McDonald's

Other (14)

Advertising Standards Authority
British Medical Association (BMA) Scotland
British Dietetic Association (BDA). Response on behalf of the BDA Scotland Board.
British Psychological Society
British Society for the Study of Community Dentistry (BASCD)
Children in Scotland
Dundee Healthy Weight Partnership
East Ayrshire Health and Social Care Partnership
Midlothian Community Planning Partnership
Royal College of Paediatrics and Child Health Scotland
Royal College of Physicians of Edinburgh
Scottish Food Guide
UK Society for Behavioural Medicine (UKSBM)
Which?

Annex 5: Response to individual questions

Questions			Number of responses	% of total responses (n=726)
Q1	To what degree do you agree or disagree that mandatory measures should be introduced to restrict the promotion and marketing of foods high in fat, sugar or salt to reduce health harms associated with their excessive consumption?		709	98%
	Please explain your answer.		584	80%
Q2	Should this policy only target discretionary foods? (confectionery, sweet biscuits, crisps, savoury snacks, cakes, pastries, puddings and soft drinks with added sugar)		714	98%
	Please explain your answer.		453	62%
Q3	Should this policy treat ice-cream and dairy desserts as discretionary foods?		693	95%
	Please explain your answer.		446	61%
Q4	Please comment on our approach to defining categories and exclusions of particular foods/products from those definitions (paragraphs 9-11)?		533	73%
Q5	In relation to the foods being targeted, should this policy seek to…	Restrict multi-buys Restrict sales of unlimited amounts for a fixed charge Not restrict temporary price reductions Not restrict multi-packs?	686 683 645 649	94% 94% 89% 89%
	Please explain your answer		509	70%
Q6	Please comment on the approach we are proposing to take to restricting forms of promotion and marketing outlined in section 5.		651	90%
Q7	Should the restrictions apply to any place where targeted foods are sold to the public, except where they are not sold in the course of business (e.g. charity bake sales)?		688	95%
	Please explain your answer		436	60%

Q8	Please comment on whether, and if so to what extent, restrictions should be applied online.		596	82%
Q9	Should restrictions to displaying targeted foods at end of aisle, checkouts etc., not apply where there is no reasonable alternative to displaying them elsewhere?		683	94%
	Please explain your answer.		449	62%
Q10	Should food marked as discounted because it is close to expiry be exempt from..	Positioning restrictions (end of aisle, checkouts etc.) 'Promotion of value' restrictions?	672 665	93% 92%
	Please explain your answer.		444	61%
Q11	Please list any other exemptions we should consider.		95	13%
Q12	Please comment on our proposals for enforcement and implementation outlined in section 8.		592	82%
Q13	Please comment on the proposed flexible approach outlined in section 9.		495	68%
Q14	If you sell, distribute or manufacture discretionary foods, please comment on how the restrictions in this consultation paper would impact you.		56	8%
Q15	What support do sellers, distributors and manufacturers need to implement the restrictions effectively?		245	34%
Q16	How would the proposed restrictions impact on the people of Scotland with respect to age, disability, gender reassignment, pregnancy and maternity, ethnicity, religion or belief, sex, sexual orientation or socioeconomic disadvantage? Please consider both potentially positive and negative impacts, supported by evidence, and, if applicable, advise on any mitigating actions we should take.		429	59%
Q17	Please outline any other comments you wish to make.		478	66%

Annex 6: Relationship between responses

This section provides a summary of how those that agreed and disagreed with mandatory restrictions then responded to other quantitative questions.

Pro-restriction respondents

Overall those agreeing with mandatory restrictions tended to agree with the specific approaches proposed if it was one that proposed a restriction. Responses were much more split, with the overall level of agreement much lower, in regard to the types of promotion not to be included (i.e. temporary price reductions and multi-packs), and in relation to the 'no reasonable alternative' and 'close to expiry' exemptions.

Anti-restriction respondents

Overall those disagreeing with mandatory restrictions tended to disagree with the specific approaches proposed if it was one that proposed a restriction. Agreement with the 'no reasonable alternative' exemption was relatively low – attributable in part to respondents believing organisations should be treated the same and in part due to conflicting answers. More generally anti-restriction respondents tended to agree with exemptions.

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