

# **Consultation analysis on the response to proposed regulations to restrict promotions on food and drink high in sugar, salt and fat**

June 2025

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restrict promotions on food and drink high in sugar, salt and fat**

**Final report**

**April 2025**

## Contents

Contents .....	2
<b>Summary .....</b>	<b>4</b>
<b>Introduction .....</b>	<b>9</b>
Background.....	9
Analysis .....	9
The consultation .....	10
<b>Overview of the response.....</b>	<b>10</b>
<b>Analysis .....</b>	<b>14</b>
Section 1: Foods subject to restriction.....	14
Section 2: Price promotions.....	19
Section 3: Location restrictions.....	30
Section 4: Businesses in scope .....	40
Section 5: Exemptions from location considerations .....	48
Section 6: Enforcement and implementation.....	51
<b>Appendices .....</b>	<b>62</b>
Appendix 1 – Tables.....	62
Question 1 .....	63
Question 2 .....	64
Question 4 .....	65
Question 5 .....	66
Question 7 .....	66
Question 8 .....	67
Question 10 .....	68
Question 11 .....	70
Question 12 .....	70
Question 14 .....	71
Question 15 .....	72
Question 17 .....	73
Question 18 .....	73
Question 19 .....	74
Question 20 .....	75
Question 22 .....	75
Question 23 .....	76
Question 25 .....	77

Question 26 .....	77
Question 27 .....	78
Appendix 2 – List of organisations that responded to the consultation .....	79

# Summary

On 27 February 2024, the Scottish Government published a consultation on proposed regulations to restrict the promotion of food and drink high in fat, sugar or salt (HFSS) where they are sold to the public, including retail and out of home settings. The consultation ran for 12 weeks, closing on 21 May 2024.

The aim of the consultation was to seek views on the detail of proposed regulations. The policy proposed targeting HFSS foods and drink including, among other things, confectionery, cakes, crisps, savoury snacks and soft drinks with added sugar. Promotions types proposed within scope included multi-buys, temporary price reductions, meal deals and positioning restrictions, such as at checkouts and front of store.

The consultation received 362 responses. Of these, 37 were from industry respondents (including industry representative bodies, manufacturers, and retailers), 46 were from non-industry respondents (including public and third sector organisations), and 279 were from individuals.

Feedback to the consultation will inform further development of the policy and associated impact assessments.

## **Section 1: Foods subject to restriction (Questions 1-3)**

Industry respondents were broadly satisfied with how the food categories within the scope of the promotion restrictions were presented in the consultation. Most agreed that the categories in scope should be consistent with the category descriptors set out in Schedule 1 of the UK Government regulations for England, and that the food category descriptors set out in Schedule 1 sufficiently describe the food categories within scope of regulations.

For many industry respondents, consistency with the English regulations was important as it would reduce administration/cost burden of adhering to the restrictions.

Nonetheless, many industry respondents noted that they would like further guidance, including detailed definitions at the category and sub-category level, to support implementation and reduce any ambiguity. Additionally, some industry respondents felt non-pre-packed items should be included within the regulations to create a more level playing field between the retail and out-of-home sectors.

Many non-industry respondents agreed with each aspect of the proposals in this section, for the same reasons as industry respondents, while some also mentioned the benefits of cross-border continuity from an enforcement perspective.

Many non-industry respondents felt the food category descriptors could be more explicit in places. They felt, for instance, that terms such as ‘...and similar...’ and ‘dairy desserts’ were ambiguous, and they asked for clarification about the inclusion/exclusion of specific items in various categories. Many non-industry respondents were also keen for the restrictions to be more comprehensive, to include non-pre-packed items within scope of regulations as these form a significant part of consumers’ diets.

Individuals' responses were mixed in relation to this section of the consultation. Although many disagreed with the quantitative questions, those who responded to the qualitative questions tended to feel that the proposed approach was sensible/logical.

## **Section 2: Price promotions (Questions 4-9)**

Industry respondents tended to be less in favour of the proposals around price promotions overall. Positively, almost all agreed that the definitions of multibuy and extra free proposed were clear, and noting this reflected the approach taken by UK Government for England. However, many did not feel the proposed timescale of 12 months to phase out price promotions on packaging was sufficient. They felt the timescale should be extended to either 12-18 or 18-24 months due to the risk of waste for products with a long shelf life and the need for whole system change which can be lengthy.

Many industry respondents were against including meal deals within the regulations for two main reasons: they did not regard meal deals as a purchase leading to overconsumption and expressed concerns about how the changes would be communicated to consumers; and they were concerned it would lead to non-alignment with England which would increase businesses' costs. Many noted that the definition of meal deals would need to be more explicit for them to be able to comment on the full extent of implications for businesses.

Many industry respondents felt the proposed definition for temporary price reductions (TPRs) was unclear, with many unsure about how to distinguish between TPRs and regular price changes as well as the inclusion of end-of-life discounts. More generally, many industry respondents were against the inclusion of TPRs within scope of regulations in any form, for a number of reasons: restricting TPRs would be inconsistent with equivalent regulations for England and would increase costs and complexity for businesses; TPRs are used for a variety of reasons (manage stock, encourage brand switching, promote new products) rather than to increase volume purchase; would result in increased costs for consumers; and would negatively impact competition in the retail environment.

Non-industry respondents were considerably more positive about the proposals around price promotions. The vast majority agreed that the definitions of multibuy and extra free outlined in the proposals were clear, and most considered the timescale of 12 months to phase out price promotions on packaging sufficient as they felt industry should be aware of the forthcoming regulations.

Many non-industry respondents felt it was important that meal deals were included within scope to ensure the policy was as comprehensive as possible, leading to greater public health benefits. Non-industry respondents tended to be in favour of the meal deal options that promoted healthier eating among consumers (Option 1 and 3). A few also suggested that this approach could encourage businesses to reformulate their products.

Many non-industry respondents were supportive of restricting TPRs on the basis that, given their prevalence, it would help to maximise the positive public health impact of the policy. Many also felt the definition of TPRs was sufficiently clear for

implementation and enforcement, with many stating that if a specific time-period was stated within the definition of TPR, this would create loopholes or opportunities for businesses to subvert the restrictions.

Individuals' views were more mixed. Most considered the definition of multibuy and extra free to be clear. Many were against the inclusion of meal deals within regulations, on the basis that they did not consider meal deals to be unhealthy compared to other offers, such as multibuy on discretionary foods. Individual respondents feedback was similar to industry respondents, in that they expressed concern about negative impacts on business and the wider economy. Individual respondents were split on the definition of TPRs, with a roughly equal proportion stating the definition was and was not clear. Many expressed concern that restricting TPRs could have a negative impact on businesses, and some felt it could increase costs for consumers.

### **Section 3: Location promotions (Questions 10-16)**

Most industry respondents felt the in-store locations covered in the restrictions were sufficiently clear for implementation and enforcement with one notable exception: free-standing displays. They felt the definition for free standing displays was too broad or vague, which could lead to issues of interpretation for businesses and also inconsistent enforcement.

Many industry respondents felt the proposed approach to applying store entrance criteria to dedicated food areas within stores could have been clearer. They suggested that the regulations could be split out by store type (e.g., food retailers, non-food retailers) and the location restrictions explained within each store type. They were, however, broadly happy with the proposed description for 'relevant floor area' to determine which businesses would be within scope of the regulations.

In relation to the descriptions of online equivalent in-store locations, industry respondents' views were generally positive, with most considering the different locations sufficiently clear for implementation and enforcement.

Non-industry respondents were positive about most aspects of the locations promotions restrictions covered in the proposals. Most agreed with the proposed approach to applying store entrance criteria to dedicated food areas within stores, and most considered both the in-store and online equivalent locations to be sufficiently clear to allow for implementation and enforcement. However, there were some notable exceptions, most commonly around the definition of checkouts, end of aisle and covered external areas. They either wanted the definition to be more precise or felt examples would be helpful to make the definition clearer. Two thirds of non- industry respondents felt that other online locations should be within scope, such as recommended product pages, as well as areas of online marketing more widely, such as direct marketing emails.

Most individuals felt the definitions for in-store locations were clear and around half felt the online equivalent locations were clear. Most individual respondents did not agree with proposed description of relevant floor area and the proposed approach to applying store entrance criteria to dedicated food areas within stores.

#### **Section 4: Businesses within scope (Questions 17-21)**

Some industry respondents agreed that the types of businesses in scope of the policy were sufficiently described for the purpose of implementation and enforcement. Some of those that disagreed raised concerns about deviation from regulations in England around things like the inclusion of the OOH sector. In relation to trade implications, many industry respondents commented on the additional costs and complexity for businesses that would arise due to divergence in regulations for Scotland and the rest of the UK.

Similarly, some agreed that the proposed extension of restrictions to online sales, including through online aggregator sites and apps, was sufficiently described. However, others expressed concern and were unsure who would be liable if there was a breach in the regulations – the qualifying business or the third-party website/platform/aggregator.

Industry respondents' views on the arrangements for franchises and symbol groups were mixed. Many stressed that symbol group stores were independent businesses that typically do not receive administrative support and should not be treated in the same way as franchises within the regulations.

Non-industry respondents were, by and large, positive about this section of the consultation. Most agreed the types of businesses within scope of the policy, and the extension of restrictions to online sales, were sufficiently described for the purpose of implementation and enforcement. In fact, some felt the restrictions should be extended so they were more comprehensive, including businesses with fewer than 50 staff and businesses that sell non-pre-packed targeted foods.

Most also agreed that the arrangements for franchises and symbol groups sufficiently described for the purpose of implementation and enforcement. They were in favour of their inclusion because this approach would represent a 'level the playing field' as employee count would be based on the whole group, not individual stores.

Individuals' views tended to align with industry. They did not tend to elaborate on their views, although some were concerned that extension of proposals to online restrictions would result in higher costs to businesses that would be passed onto consumers. In relation to trade, many individuals expressed concern that the price of goods would increase to cover the additional costs to businesses of administering the regulations.

#### **Section 5: Exemptions from location considerations (Questions 22-24)**

Just under half of industry respondents felt the proposed exemptions from location restrictions based on business type were clear and sufficiently defined to enable implementation and enforcement. A number of additional exemptions were suggested: airside retail, OOH sector, symbol group stores, and vending and unattended retail. Most agreed the exemptions from location restrictions based on individual store relevant floor area were clear and sufficiently defined to enable implementation and enforcement.

Most non-industry respondents agreed with the exemptions proposals from location restrictions. A few felt the regulations could be clearer that specialist shops are only exempt from location restrictions and are not exempt from price promotion restrictions.

Individuals' views were mixed, with less than half agreeing with the proposed exemptions from location restrictions. Little detail was provided by these individuals as to why they felt this way.

## **Section 6: Enforcement and implementation (Questions 25-27)**

Industry respondents were mostly positive about the proposals in relation to enforcement and implementation. Most agreed with the proposed use of administrative sanctions for enforcement of the policy, considering the approach fair and proportionate. Most also agreed with the maximum penalties proposed for the offences in relation to enforcement of the policy.

However, they were less positive about the time to prepare for implementation and enforcement. Most felt it would take time for retailers to fully understand and implement the requirements of the regulations. A few suggested that the time required would depend on the complexity of the final regulations and the extent to which they align with the regulations already in place for England.

Non-industry respondents were broadly positive as well, although some commented that the maximum penalties may not have a significant deterrent effect, especially for large organisations, due to their low value. They were considerably more positive than industry respondents in terms of the proposed time to prepare for implementation and enforcement. Again, they felt industry has known about the policy for some time, so it is reasonable to expect them to comply promptly. Further, several local authorities commented that they do not currently have sufficient resource to implement and enforce the proposed regulations and they suggest additional resource will be required to take on these responsibilities.

Most individuals who responded to these questions were not supportive of the proposals. They felt the matter was too trivial to be sanctioned and that industry would require longer than 12 months to adequately prepare to implement the proposals.

# Introduction

## Background

The Scottish Government is committed to a wide range of actions to improve public health and help create a food environment which supports healthier choices. This includes a commitment to restrict promotions of food and drink high in fat, sugar or salt (HFSS) at the point of purchase, both in store and online.

The primary aim of the policy is to reduce the public health harms associated with excess consumption of calories, fat, sugar and salt, including the risks of developing type 2 diabetes, various types of cancer and other conditions such as cardiovascular disease. The policy is also expected to contribute to reducing diet-related health inequalities, including those in relation to socioeconomic disadvantage, and support a policy aim to halve childhood obesity by 2030.

To inform the development of regulations, earlier this year, the Scottish Government consulted on the detail of proposed regulations to restrict promotion of HFSS foods where they are sold to the public, including across retail and out-of-home settings. This fulfils a statutory requirement to consult on changes to food law. Feedback to the consultation will also inform further development of the policy and associated impact assessments.

The consultation was published on [Citizen Space](#) on 27 February 2024 and closed on 21 May 2024. This report presents an analysis of the responses to this consultation.

## Analysis

Consultations are open to anyone who wishes to take part. The information collected reflects the views of those respondents but cannot be considered as representative of the wider population.

The consultation responses from Citizen Space were downloaded into an Excel database. Any remaining email responses were added into the database manually.

Initially, the raw data file was cleaned. This involved matching emailed responses to specific questions in the consultation where possible, and removing duplicate responses where the responses and/or contact details were identical. No additional imputation of closed questions, based on open-ended comments, took place.

The cleaned database was then downloaded into Progressive's SNAP analysis software package to analyse the closed questions and create data tables. The Excel data file was used for analysis of the open questions.

A coding framework was developed based on key topics within the consultation document and from a review of a cross-section of responses for each question. Subsequently, text in open responses was coded based on this framework. Where responses were lengthy or complex, these were reviewed individually.

To enable further analysis, organisational respondents were categorised into seven groups, see Table 2 below.

The report ensures that the full range of views are reported, not just the majority views. To give an indication of the weight/prevalence of views expressed, the report uses the following:

- All: 100%
- Most: more than c.60%
- Many: c.30% - c.60%
- Some: c.10% - c.30%
- A few: less than c.10%

## The consultation

The consultation sought views on the detail of proposed regulations to restrict HFSS promotions including:

- targeted foods within the scope of restrictions
- price promotions within the scope of restrictions, including meal deals and temporary price reductions
- the approach to placement restrictions of targeted foods in store and online
- the qualifying businesses within the scope of restrictions, including proposed exemptions
- the proposed approach to enforcement and implementation.

The consultation comprised 29 short quantitative response questions (typically (yes/no/don't know); with almost all of these (22) followed by an opportunity to provide a qualitative explanation of their response, and a further 8 open response questions.

## Overview of the response

In total 362 valid responses were received to the consultation: 348 were received via the Citizen Space and 14 by email. No campaign responses were received. Some organisations did share a model text as the basis for their responses. These texts appear to have been developed by either a single organisation or jointly by a group of organisations for use by like-minded peers.

The tables below summarise the response to the consultation.

**Table 1: Consultation response**

	Number	Percentage
Individuals	279	77%
Organisations	83	23%
<b>Total</b>	<b>362</b>	<b>100%</b>

A wide mix of organisations responded, including, organisations representing food/commercial bodies, food manufacturers, retailers, public sector (typically local authorities and health bodies), and third sector organisations (including charities, representative organisations and lobby groups with an interest in health and poverty). The others included academic institutions, such as universities, and professional associations (typically those representing health service staff) – none of these organisations were in the food industry.

- To support analysis and presentation within this report, respondents have been grouped into three broad categories:
- Individuals
- Industry respondents: industry representative bodies, manufacturers, retailers, and out-of-home
- Non-industry respondents: public sector, third sector, other

Overall, individuals were the most common type of respondent. Among the organisations, the most common types to respond were industry representative bodies and public sector organisations (local authorities and health bodies).

**Table 2: Type of organisations**

<b>Industry</b>	<b>Number</b>	<b>Percentage</b>
Industry Representative Bodies	15	18%
Manufacturer	9	11%
Retailer	9	11%
Out of Home	4	5%
<b>Non-industry</b>	<b>Number</b>	<b>Percentage</b>
Public Sector	18	22%
Third Sector	13	16%
Other*	15	18%
<b>Total</b>	<b>83</b>	<b>100%</b>

\* 'Other' includes educational institutes, professional associations, religious organisations. It does not include any food industry organisations.

**Table 3: Summary categories**

	Number	Percentage
Individuals	279	77%
Industry	37	10%
Non-industry	46	13%
<b>Total</b>	<b>362</b>	<b>100%</b>

Typically, between 300 and 330 respondents answered questions that included a closed element, and from around 100 up to around 280 for questions that were open. In line with consultation practice, respondents were free to determine which questions they answered. Not all respondents answered the quantitative questions took the opportunity to comment if they did. Equally, some who commented did not answer the quantitative questions, thus some caution is required when interpreting the quantitative results as these do not always represent the full sample of respondents. This applies throughout the questions, see Table A in Appendix 1 for a summary of the numbers responding to the questions. The following points should be taken into account.

**Number of responses to closed questions:** Response levels tended to be highest at the start of the questionnaire and decline slightly towards the end of the questionnaire. This may indicate that respondents became fatigued with the questionnaire so dropped out; but is more likely a reflection of the more technical nature of the questions towards the end of the consultation paper which meant the topics were of interest or relevance to fewer respondents. Notably the response to the closed part of question 7 on meal deal options achieved the lowest response (233 compared with 300-330 for the other closed questions). This was in a different format to the other closed questions in the questionnaire and required a detailed/accurate read of the relevant section of the document to respond. This is despite a reasonably high level of interest in the topic (meal deals) from respondents more generally.

**Number of responses to open questions:** The number of responses to each of the comment sections (Q3, Q6, Q9, Q13, Q16, Q21, Q24, Q28) is indicative. The consultation questions were often quite specific, and respondents tended to comment thematically, rather than strictly in line with the question heading. Accordingly, the reporting has been undertaken by broad section, which enables issues and themes covered across groups of questions to be collated together.

**Out-of-scope responses:** The consultation was designed to explore matters relating to implementation and enforcement, however, many of the consultation responses discussed more general policy issues related to HFSS foods, to restricting HFSS foods, and the impact of restricting promotion of HFSS foods. A brief summary of the issues raised is presented under question 28 'other issues'. Conversely, some comments raised in question 28 may also relate to specific aspects of the regulations not covered in previous sections of the report. In this

instance, we have moved this analysis to the relevant question in the main body of the report.

**Responses from individuals:** The vast majority of the responses were very brief and to the point, with most repeating across all questions their objection to the policy to restrict promotions as a whole as they felt that government should not interfere in their personal food choices and their opportunities to purchase cheaper food. Where responses were made to the questions asked, these have been presented in this report.

# Analysis

## Section 1: Foods subject to restriction

The consultation proposed that the food categories within the scope of the promotion restrictions are:

- Soft drinks with added sugar
- Savoury snacks
- Breakfast cereals
- Confectionery
- Ice cream, ice lollies, frozen yogurt, water ices and similar frozen products.
- Cakes and cupcakes
- Sweet biscuits and bars based on one or more of nuts, seeds or cereal.
- Morning goods
- Desserts and puddings
- Sweetened yoghurt and fromage frais
- Pizza, roast potatoes, chips and other similar potato products
- Ready meals

The proposed approach is consistent with the food categories within scope of the [regulations for England](#) and the Welsh Government's proposed approach, set out in the [Welsh Government's 2022 consultation](#).

To define food categories, it was proposed to be consistent with the food category descriptors set out in [Schedule 1 of the UK Government regulations for England](#) as far as possible.

Within targeted food categories, it was proposed that promotions restrictions will only apply to pre-packed food and drink products that are high in fat, sugar or salt (HFSS) as defined by the 2004/05 nutrient profiling model (NPM). This approach is consistent with the equivalent regulations for England.

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

There were 334 responses (268 from individuals, 28 from industry and 38 non-industry respondents).

- All (100%) of these industry respondents and three-quarters (74%) of the non-industry respondents said they agreed, while just a third (33%) of the individuals agreed.
- Around a fifth (21%) of the non-industry respondents and nearly two-thirds (62%) of the individuals disagreed with the proposal – as noted in the introduction, however, for individuals this tended to reflect a disagreement

with the proposals overall rather than a specific concern with this element of the legislation.

### **Industry respondents**

Feedback from industry respondents centred around the benefits of the proposed approach for industry. Many of this group believed category descriptions consistent with the UK Government regulations for England would reduce the administrative/cost burden of adhering to the restrictions; while some felt this approach would generally reduce ambiguity/confusion for industry, as it would avoid the potential for misinterpreting variances in both sets of regulations. A few also reported that consistency here reduces the risk of a two-tiered system whereby businesses operating either partially or fully in Scotland would be disadvantaged, from a product offering/flexibility standpoint, compared with those operating outside Scotland.

“Aligning with England's regulations ensures a level playing field for businesses across the UK. It prevents unfair competition wherein businesses in one region face stricter regulations compared to their counterparts elsewhere.” [Industry Representative Body]

Many industry respondents also reported broad, general agreement with the proposal: they said things like it was ‘correct’, ‘logical’, ‘common sense’ that this aspect of the legislation is consistent across the UK. Some noted the benefits of the proposal for government. They tended to talk about this from a compliance, and therefore enforcement, perspective. They suggested that by making the food category descriptors consistent with UK Government regulations for England, the regulations will be more easily understood in Scotland, and industry will be more likely to comply. This would make Scottish Government/local authorities’ role in enforcing the legislation more straightforward, as fewer sanctions would need to be administered to businesses.

### **Non-industry respondents**

Non-industry respondents’ views were similar to those of industry respondents. Most either broadly agreed with the proposal or reported the benefits of the proposal for industry from a cost/administrative burden of implementation perspective, or for government from an enforcement perspective.

Some also noted the benefits of the proposal for consumers. They reported that consistency with the UK Government regulations for England would reduce ambiguity/confusion for the consumer, and that a UK-wide approach to the regulations would support consistent messaging and information for consumers.

“There is agreement that the Scottish proposals should be consistent with the descriptors set out in Schedule 1 of the UK Government regulations; this will support consistency of understanding and on a practical level, will support information and formulation across the food retail sector across all countries in the

UK. Consistency of descriptors will also support a consistent approach to public health messages/education.” [Public Sector Organisation]

## Individuals

Where individuals provided a response to the specific question asked, they also tended to believe the proposal was sensible/logical and a few could see the benefits of consistent regulations for business and consumers in terms of comprehension and removing ambiguity.

Individuals that disagreed with the proposal had disparate concerns. A few favoured a whole-category approach to foods, rather than using the NPM, as they felt something more comprehensive would be beneficial from a public health perspective. A few others noted what they saw to be fundamental differences in the diet/needs/circumstances of the Scottish population which they felt needed to be reflected in the regulations. These individuals felt that the main contributors to an unhealthy diet in Scotland differs from in England – although no further detail was provided – and that Scotland has a different climate to the rest of the UK, with oats grown more widely, forming a more staple part of the Scottish diet. This was partly why they felt oats should be excluded from the restrictions, the main reason being that they simply felt oats are healthier than other in-scope foods.

“While making regulations consistent with the UK Government's regulations for England does make implementation a lot smoother for all involved, I feel that it also makes sense that there would be some nuance and difference between the two countries in terms of what is the major contributors to unhealthy living for food. With that in mind, I feel that I cannot fully agree to this.” [Individual]

**Question 2 Do the food category descriptors set out in Schedule 1 sufficiently describe the food categories within scope of regulations?**

There were 332 responses to this question (268 from individuals, 27 from industry and 37 from non-industry).

- Most (93%) of the industry respondents, two-thirds (68%) of the non-industry respondents and half of the individual (53%) said they agreed with the descriptions.
- Just 7% of industry respondents, together with around a quarter of non-industry (27%) and a third (31%) of individuals, disagreed.

## Industry respondents

Few industry respondents provided a comment on this question. The majority of those that did agreed that the descriptors sufficiently described the food categories within scope of the regulations, with some explicitly noting they were clear. Most reported they would like further guidance or resources, including detailed definitions at the category and sub-category level, to support businesses should there be any

ambiguity in relation to particular products and whether they are in scope of the regulations. They felt this would be critical for consistent interpretation and implementation of the regulations among businesses. Respondents noted that guidance has been provided by the British Retail Consortium (BRC) and the Food and Drink Federation (FDF) for implementation of the regulations in England, and suggested the Scottish Government refer to these and develop similar guidance in collaboration with industry.

“As we fed back to the UK Government Department of Health, the lack of specific definitions or robust principles to establish what is covered in each category has meant confusion over whether certain products are in scope or not. A different interpretation could give a company a commercial advantage. We also want to avoid a scenario where a supplier and a retailer have a different interpretation.”  
[Industry Representative Body]

A few raised their concerns here, rather than in question 1, about the inclusion of cereals/oats as they felt these foods make a positive contribution to the Scottish diet and are not as overtly unhealthy as some discretionary food items (e.g. crisps, sweets) which have no or limited nutritious benefit. They were concerned that this decision would lead to restricted choice of ‘staple products’ for consumers.

### **Non-industry respondents**

A few non-industry respondents also highlighted the points raised above, especially the need for more information and guidance to support businesses if any ambiguity was to arise. However, they were more likely to be critical of specific aspects of the food category descriptors. Many felt the language used in Schedule 1 could be more explicit. For example, they asked for the phrase ‘...and similar...’ to be clarified, and they asked for a clear description of what ‘dairy desserts’ in Category 9 comprised. They also asked for clarification about the inclusion/exclusion of specific items in various categories, including:

- what types of fruit juices would be covered in Category 1, as no fruit juices are covered by the Soft Drinks Industry Levy;
- what types of porridge oats/oat-based cereals are covered in Category 3, the expectation being that the regulations would/should only apply to non-wholegrain, added-sugar varieties;
- what type of low-alcohol and medicinal soft drinks would/would not be included in Category 1.

Many respondents in this group also strongly suggested additional foods/drinks should be included within scope of regulations. Suggestions included foods containing artificial sweeteners, energy drinks and pre-packed sandwiches and rolls.

### **Individuals**

Of the individuals that provided a response to the question asked, many felt that the food category descriptors were clear and comprehensive.

Where concerns were raised, these were in relation to Category 3 and the need for more clarity about which types of porridge oats/muesli were being referred to. Similar to some within the non-industry group, these individuals picked up on the ambiguity of some of the language, for example the use of “and similar”, and defining “dairy desserts” and “pizza”. There were also a few individuals that simply felt there were too many categories, or the categories were too broad.

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

There were 230 responses to this question (171 individuals, 22 industry respondents, 37 non-industry respondents).

### **Industry respondents**

Many of the industry respondents provided additional comments on the foods in scope. Some felt non-pre-packed items should be included, e.g., takeaways, as they felt the regulations would unfairly impact the retail sector despite non-pre-packed food items forming a significant part of consumers’ diets. Some others felt caution was needed when it came to blanket restrictions in certain food categories/sub-categories. These respondents were concerned that the proposals do not allow for the ability to differentiate between, for instance, different types of confectionary or breakfast cereals, which may differ substantially in their composition, but score similarly in terms of the NPM.

Some reiterated comments from earlier in the section, including the importance of guidance and resources to allow businesses to prepare for implementation properly, whilst others reiterated their general approval/disapproval of these proposals.

“There has been a lot of work undertaken to reformulate products listed... The proposals do not take this into account, nor allow any ability to differentiate across products in each category, which may be very different in their composition.”  
[Industry Representative Body]

Additionally, a few industry respondents felt these restrictions needed to progress alongside broader public health policy measures, such as health education, incentivising healthy choices etc. They felt that without these, there was a risk that consumers would not change their behaviour and simply pay more for food they currently consume.

### **Non-industry respondents**

Non-industry respondents’ views centred around additional foods that should be within the scope of the proposals. In effect, they were keen for the regulations to be more comprehensive. As with industry respondents, comments were most commonly about the inclusion of non-pre-packed foods within the regulations. Some of the non-industry respondents felt failure to include non-pre-packed items

would represent a flaw in the regulations given the volume of 'loose' items purchased by consumers. Some non-industry organisations advocated for the inclusion of things like sandwiches, sushi and (some) salads that would fall within the definition of HFSS; while some were keen for alcohol, condiments/ sauces, and processed meat to be included.

Some non-industry respondents suggested the latest version of the NPM should be used to determine whether a food within a given category is HFSS and therefore within scope of the regulations. They suggested that the latest NPM applies more stringent criteria to foods, which would mean that more foods within each category would be included within the regulations.

Additionally, a few non-industry respondents were concerned that these restrictions would lead to unintended, negative consequences for the public unless healthy, nutritious food is made more affordable. They were concerned that the restrictions would simply make food more expensive, leading those experiencing financial insecurity and poverty into a more desperate situation.

## Individuals

Individuals that provided a response relating to foods in scope tended to raise concerns about the inclusion of particular food categories and/or individual items. Most commonly, they were concerned about raising the cost of foods that are 'staples' for some groups within society (e.g., ready meals for elderly/housebound people, meal deals for people living busy working lives). They were also concerned about what they saw as blanket restrictions on certain foods (cereal groups, pizzas, savoury snacks) when the quality (in terms of additives etc.) of these might vary significantly. However, this is a misunderstanding of the proposals, as blanket restrictions are not proposed.

Aligning with non-industry respondents, some individuals asserted that alongside these regulations, it was vital that healthier foods, such as fruit, vegetables etc. were made more affordable. This, they felt, was a key means of incentivising healthy food choices, as there was a concern that the proposed regulations would not discourage people from buying less healthy foods, but it would just make it more expensive, meaning people would be less able to afford healthy foods.

"Leave out savoury snacks which don't contain sugar. I have low blood pressure and rely on crisps as well as table salt to prevent dizziness. Including ready meals will penalise those who medical reasons are unable to cook e.g. fatigue related conditions and some people with eating disorders. I relied on ready meals for 15 years and it would have cost a lot more without '3 for £X' deals." [Individual]

## Section 2: Price promotions

In the consultation, price promotions refer to special offers where there is a reduction in the usual price of a product. These may be time-limited or conditional on some other requirement, such as purchasing another item(s) or being a member of a loyalty scheme.

In the consultation, it was proposed that the following types of price promotion on targeted foods would be within scope of the restrictions:

- Multibuys/extra-free – this includes i) where the purchase of multiple items is cheaper than the purchase of each individual item separately e.g. 2 for £1, 3 for 2, and ii) where a promotion indicates that an item, or part of an item, is free e.g. buy one get one free, 50% extra free. This approach is consistent with UK Government regulations for England.
- Unlimited refills – a promotion offering a consumer ‘at least one refill of the same/another drink’ for free. This approach is consistent with UK Government regulations for England.
- Meal deals – an offer of a discounted price for multiple items promoted as intended to be consumed together as, or part of, a meal for one person/two or more people. Examples include both lunchtime meal deals and dine-in offers. The consultation sought views on options for targeting meal deals. Meal deals are not within scope of the UK Government regulations for England.
- Temporary price reductions (TPRs) – these are short-term reductions (typically for 2-4 weeks) in the price of food and drink products before reverting back to the full price. TPRs are not within scope of the UK Government regulations for England.

It was proposed that the above restrictions would apply both in-store and online.

Question 4 Is the proposed description of the following sufficiently clear for the purpose of implementation and enforcement: a) multibuy, b) extra free?

There were 327 responses to Question 4. To the multibuy element of this question, 264 responses were from individuals, 26 were from industry respondents, and 37 were from non-industry respondents. To the extra-free element of this question, 263 responses were from individuals, 27 were from industry respondents, and 37 were from non-industry respondents.

- For multi-buy, almost all (96%) of the industry respondents, the vast majority (92%) of the non-industry respondents, and two-thirds (67%) of the individuals said the proposed description was clear.
- Most of these respondents also considered the extra-free sufficiently clear: 96% of industry respondents, 59% of non-industry respondents and 65% of individuals.

### **Industry respondents**

A majority of industry respondents agreed that the proposed definitions of both multibuy and extra free were clear. This was reflected in some of the comments, with some happy that the descriptions reflect the approach taken by UK Government. However, many emphasised the need for clear and fully developed guidance around what types of promotion would be included/excluded within these

definitions. A few of these respondents felt a comprehensive list of all exclusions was needed to help businesses with implementation – for example, they wanted clarity on how certain deal types should be treated, e.g. meal bundles, such as pasta/sauce and stir fry deals and whether these would be classed as meal deals or multibuy (see Question 7 for further details here).

“We believe the definitions of multi-buy and extra-free are clear. However, there are other types and examples of volume promotions not covered here. For example, would the promotion of 5 freezer items for £5 be covered, or indeed a meal bundle? Similarly, would the offer of a free item when x amount is spent be in-scope? What about a free newspaper or other non-food purchase when an in-scope item is purchased? What about extra loyalty card points with the purchase of certain products?” [Industry Representative Body]

A few used this space to state their concern about the price promotions proposals more generally as they stated there is no provision for a Primary Authority scheme, as is the case in England<sup>1</sup>. A few also reiterated the need for robust enforcement guidelines around multibuy and extra free price promotions.

### **Non-industry respondents**

Many non-industry respondents considered the proposed definitions for multi-buy and extra free to be clear and appropriate. However, many others felt extra-free should be defined separately in any regulation documentation as they felt it was not clear whether it should be considered as a type of multibuy offer or not.

Additionally, some non-industry respondents wanted more clarity around the inclusion/exclusion of certain volume price promotions that they didn't think were covered in the consultation document. This included things like upselling, loyalty pricing, king-size/duo bars, free product samples etc. In general, these respondents wanted the regulations to be more comprehensive and wanted this to be made explicit.

“The following priced promotions should also be included within the scope of regulations in-store and online: upselling, shelf-edge displays, and loyalty pricing/other purchase-related loyalty rewards. Such inclusion would recognise the negative impact these promotions have on people's purchasing, consumption, and health.” [Third Sector Organisation]

### **Individuals**

Individuals that provided a response in answer to the question generally expressed broad agreement with the definitions of the two types of price promotions. Similarly to industry and non-industry respondents, a few felt more clarity was needed around the definition of extra-free.

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<sup>1</sup> A Primary Authority is a means for businesses to receive assured and tailored advice (Primary Authority Advice) on meeting environmental health, trading standards or fire safety regulations through a single point of contact.

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

There were 327 responses to Question 5 (265 individuals, 25 industry and 37 non-industry).

- Industry respondents to this question were evenly split, with 40% saying the timescale is sufficient and 40% saying it isn't (with 20% unsure).
- Non-industry respondents tended to say the timescale is adequate (68%), with 8% saying the timescale is insufficient and around a quarter (24%) unsure.
- Individuals tended to say the timescale was not sufficient (63%) with a quarter (24%) saying the timescale was sufficient and 13% unsure.

### Industry respondents

Many industry respondents did not feel the proposed timescale was sufficient and should be extended to anywhere between 12-18 and 18-24 months. These respondents spoke variously about the complexity of the production process in their market (e.g., travel retail), the risk of waste for food products with a long shelf life, and the need for whole-system change (i.e., including design agencies, manufacturers/suppliers) which can be drawn-out. Linked to these comments, some cited other areas of legislation that are impacting businesses (e.g., Bread and Flour Regulations, Extended Producer Responsibility Regulations, Marking of Retail Goods Regulations) and were concerned that this legislation would put additional pressure on industry which would lead to issues of compliance.

“While 12-months might seem a sufficient timeline it is grossly misunderstanding of the commercial process to implementing updates to supply chain and sales processes, not just from a manufacturing perspective but also retailers.”  
[Manufacturer]

A few industry respondents also noted issues that might arise if the regulations in Scotland differ from the rest of the UK if a 12-month period was enforced. They highlighted that Wales has suggested a period of 12-18 months. They were concerned that businesses operating only in Scotland might be negatively impacted if the period was more stringent. This, they felt, is particularly salient as the restrictions proposed in other aspects of the regulations (e.g., on meal deals, store locations etc.) are more stringent in Scotland, which will also impact businesses' ability to comply, due to more restrictions taking businesses longer to implement. A few advocated for a cross-policy implementation plan which considers proposed measures across various policy areas which are affecting store layouts such as alcohol marketing restrictions, the deposit return scheme etc.

## Non-industry respondents

Most non-industry respondents considered the proposed timescale to phase out packaging to be reasonable. Some of these respondents cited reasons as to why this was a reasonable timescale. They felt industry should be aware of the forthcoming regulations as the regulations have been discussed since 2018 in Scotland as well as in the rest of the UK; a longer timescale would negatively impact public health; and the risk of lobbying to dilute regulations is greater if policy lead-in times are extended.

“We believe that 12 months is a reasonable timeline for stakeholders to adapt their packaging. A longer timescale would be excessive, especially given the long period industry will already have had between the announcement of initial proposals and the passage of legislation. It would also further delay the implementation of restrictions that will contribute to the Minister’s vision of a Scotland where everyone eats well and has a healthy weight.” [Third Sector Organisation]

Some non-industry respondents were concerned about waste for long-life foods, or felt alignment with other administrations (e.g., Welsh Government) was needed.

## Individuals

While responses to the closed question suggested the time scale was not sufficient qualitative responses were varied. Some felt the timescale was reasonable and some expressed that the timescale should be extended. Unique to individuals was that a minority felt the timescale was too generous. They suggested this type of packaging could be phased out in a shorter time. Some also suggested businesses should ‘take a hit’ on anything with a long shelf life.

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

In total, 264 respondents provided a comment to this question (205 individuals, 24 industry respondents, 35 non-industry respondents).

## Industry respondents

Many industry respondents gave detailed feedback here, with a range of views. Most commonly, industry respondents suggested the definition of a meal deal needed to be more explicit and detailed as this would better help them understand the implications for their business. Specifically, some wanted a more exhaustive list of the types of deals that would be considered ‘in-scope’ (e.g., whether it would include breakfast deals, seasonal deals, birthday party bundles) – particularly as exemptions exist for food outwith the in-scope categories and food prepared in store. A few others were unsure whether the regulations would include ‘prepare at home’ as well as ‘ready to eat’ meal deals, suggesting these should not be considered as equivalent offerings – as ‘prepare at home’ meal deals are often more balanced from a nutritional standpoint. Relatedly, a few others felt meal deal

restrictions would be difficult to communicate to consumers, who may see healthy and unhealthy meal deals continue to exist on the market (dependent principally on whether the food is pre-packed or prepared on site).

Many industry respondents also spoke about what they saw as the negative implications of non-alignment with England. They felt this would greatly increase costs and operational burden for businesses and could cause difficulties near the border of England and Scotland where orders for large chains/supermarkets could be fulfilled by retailers either side of the border. They also felt it would create an unlevel playing field for Scottish retailers compared with their non-Scottish counterparts, and retailers compared with out-of-home businesses (the latter would likely be exempt from these restrictions if HFSS foods are prepared in store).

Some industry respondents had broader comments reflecting a general opposition to the meal deal proposals, with the following noted by a few industry respondents each:

- restricting meal deals would not lead to improved public health outcomes as they are a 'planned purchase' and do not promote overconsumption like other price promotions;
- meal deals are an affordable and convenient meal option at a time of economic pressure;
- people are likely to purchase additional HFSS items to top up their meal deal leading to extra calorie intake; and
- consumers might go to non-retail out-of-home outlets for their meal deals in future, as these establishments would be exempt from the regulations.

Some others went further, suggesting a ban on meal deals would reduce channels through which retailers can promote healthier products to consumers, although this may be a misinterpretation of the proposals.

Finally, some industry respondents were concerned about the impact of the proposals on business sales, and the ongoing viability of some businesses as a result, for example, manufacturers of specific products such as premium dessert options.

“Meal deal type offers do not function to encourage higher volume purchasing of products. Meal deals and ‘dine in’ offers are designed for a single meal occasion for one or multiple persons, they are not stock piled for consumption. Our understanding of the policy intention is that the Scottish government are seeking to reduce promotions where consumers are encouraged to buy additional HFSS products, not to put HFSS products at a competitive disadvantage to other food categories.” [Industry Representative Body]

A couple of industry respondents also suggested that, due to the popularity of meal deals among consumers, a communications campaign would be needed to explain to the public why these restrictions have been put in place, if meal deals restrictions were implemented.

## Non-industry respondents

Most non-industry respondents were keen to highlight the positive implications of this proposal. They were enthusiastic about the prospect of a higher number of healthy foods being purchased by consumers through the meal deal model. Many also felt it was important that meal deals were included in the regulations to ensure the regulations were as comprehensive as possible, leading to the greatest health benefits for the population. Relatedly, a few suggested this move might encourage manufacturers to reformulate their products to be healthier which would be positive for public health. In effect, this decision would provide opportunities for businesses to reimagine their products.

However, a few non-industry respondents were concerned about the impact of the proposed meal deal restrictions on business sales/profits, and the administrative impact of non-alignment with England.

## Individuals

Individuals' feedback was similar to businesses in that they were concerned about businesses losing money, losing customers, going out of business, and the broader negative impact of this aspect of the policy on the economy. However, some felt that the regulations might, in fact, lead to an increase in profits because 1) businesses would be forced to increase their prices, and 2) consumers would continue to purchase HFSS products outwith the meal deal offer.

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

Option 1 - Meal deals cannot contain HFSS targeted foods.

Option 2 - Meal deals can contain up to one HFSS targeted food.

Option 3 - Meals deals cannot contain targeted HFSS discretionary foods.

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

There were 233 responses to Question 7 (184 individuals, 16 industry and 33 non-industry).

- Of those that selected one of the options, Option 2 (meal deals can contain up to one HFSS targeted food) was the preferred option for both the industry respondents (selected by 75%) and individuals (selected by 70%). Less than one in 10 (6%) of non-industry respondents selected this option.
- Non-industry respondents were fairly split between Option 1 (meal deals cannot contain HFSS targeted foods), selected by 52%, and Option 3 (meal deals cannot contain targeted HFSS discretionary foods), selected by 42%. Neither of these options were popular with industry respondents: 6% selected Option 3 and 13% selected Option 1 (one and two respondents respectively).

It is worth reiterating that there was a lower response rate to this question among individuals and industry respondents in particular. This means the quantitative responses do not necessarily represent the views of the group in question. The qualitative responses provide more detail below.

### **Industry respondents**

Although the quantitative responses above suggest that industry respondents preferred Option 2, the qualitative feedback was that most industry respondents do not support any options and are against the inclusion of meal deals. Those that selected Option 2 felt this option was preferable as it would give both retailers and consumers the greatest flexibility in terms of product offering/choice, as retailers will be able to offer at least one 'treat' snack option to consumers. In effect, some saw this as the "*least worst*" option of those presented.

Despite these positive assertions, many were concerned about the impact of Option 2 on businesses from an implementation perspective, for instance, the technical IT system changes required to ensure only meal deals that meet the restrictions are accepted. Some others were concerned about the impact in terms of communicating the changes to consumers, as they felt the partial restriction on HFSS foods in meal deals might cause confusion among consumers. A few were concerned that if the communication of the restrictions were not executed well/clearly, this could lead to confrontation between customers and customer assistants.

"We would note that any changes in this area will require consumer communications. The more complexity which is built into the restrictions the greater challenge in helping customers understand the reasons and details of the new rules. These will need to be led by the Scottish Government to make it clear why certain businesses can now no longer offer these promotions. That's vital as we know informing customers of public policy issues is often a flashpoint which regrettably often leads to shopworker abuse" [Industry Representative Body]

A few industry respondents provided comments against Option 1. This group were concerned about effects this approach would have on consumer behaviour: they believed consumers would either make additional HFSS items purchases as they see this as part of their usual lunchtime meal; or they would move to purchasing non-pre-packed items as part of a meal deal to circumvent the regulations.

A few provided comments against Option 3. They were concerned about the need to define what a discretionary food is. They felt this would bring additional operational complexity (e.g., new IT systems to identify products within scope).

### **Non-industry respondents**

Many non-industry respondents supported Option 1 because they felt this approach would encourage healthier eating among consumers, with some suggesting it would make healthier eating more affordable as healthy options would be purchased regularly if consumers continued to buy meal deals. A few also supported this approach because they felt it would be simpler to implement/enforce

as, in effect, this option represents a blanket ban on targeted HFSS foods in meal deals.

Some were in favour of Option 3 as they had a desire to balance flexibility for retailers and consumers in terms of what they could offer and purchase respectively. This approach, they felt, would still encourage healthier eating than at present.

Some were against Option 2 because they believed this option would undermine the objectives of the regulations, as consumers would still be able to purchase HFSS foods within the meal deal mechanism. They also recognised the challenges that retailers might face in terms of implementing the regulations, which included 'complex changes to checkout/payment systems' to ensure only meal deals that meet the restrictions are accepted.

## Individuals

Many individuals were against inclusion of meal deals within the regulations. They tended to feel meal deals were not unhealthy (compared with things like high-volume multibuy offers on discretionary foods, and non-pre-packed HFSS foods bought as part of a takeaway). Those that were in favour of Option 2 tended to focus on the benefits for consumers, such as it would be less restrictive and give consumers the ability to 'treat themselves' on an occasional basis when they purchase a meal deal.

Question 8: If temporary price reductions (TPRs) are included within scope of the policy, is the proposed broad definition at paragraph 85 sufficient for implementation and enforcement?

There were 317 responses to Question 8 (256 individuals, 26 industry and 35 non-industry).

- Industry respondents generally considered the definition was not sufficient (65% vs 23% who thought it was).
- Most (77%) non-industry respondents said they thought the definition was sufficient, with just 3% saying it wasn't.
- Individuals were more evenly split: 45% saying it wasn't and 34% saying it was.

## Industry respondents

As highlighted in the response to the closed question, many industry respondents felt the definition of TPRs was unclear. This group focused on a few key points:

- 1) The challenges associated with discerning the difference between TPRs and regular price changes that reflect things like changing market forces (i.e., supply and demand of a particular product).
- 2) Clarity around the inclusion of end-of-shelf-life discounts (i.e., yellow stickers) within TPRs.

Many industry respondents felt the reasons for using TPRs are not to increase the volume of HFSS foods purchased by customers but to manage stock in a competitive retail environment. This is key their reasoning for being against the inclusion of TPRs in the regulations.

Additionally, a minority of industry respondents felt more detail was needed to understand what a 'time limited period' referred to, and what the 'usual' price of a product would be defined as.

More generally, many were against the inclusion of TPRs in the regulations in any form. This was for a few key reasons, namely industry respondents felt the approach to TPRs:

- 1) Did not reflect the full range of reasons why TPRs might be in place (e.g., clearances; seasonal goods/promotions; a means of encouraging customers to switch from one product to another; a means of promoting a new/reformulated product).
- 2) Would negatively impact household food bills for those already struggling with the cost-of-living crisis; and
- 3) Would negatively impact competition in the retail environment (as retailers would not be able to offer a point of difference to their customers).

"We have concerns with the proposed definition for temporary price reductions. The wording is very vague and would in practice capture a large number of changes which are not within the identified scope of the policy. For example, as things stand, it would be difficult to mark down end-of-range and end-of-life products, as the definition is not clear. We understand that it is not the government's intention to ban end of range/life product reductions, but this must be clearly clarified." [Retailer]

### **Non-industry respondents**

Many non-industry responses felt the definition was clear, but few provided detailed reasons as to why they thought this. One key point that many did note, however, was their support for not defining a specific time-period within the regulations. They believed that doing so would create loopholes or opportunities for businesses to subvert the restrictions. Conversely, a few non-industry respondents did think the definition could be clearer in relation to what the 'time-limited period' clause of the definition meant. No further detail was provided by these respondents, other than to say more information/guidance might be needed to support industry on this matter.

"[We] support not including a definition or outline of a specific time-period within the regulations i.e. the time period that would be classified as 'temporary' for the purposes of the promotion, as doing so would create loopholes or opportunities for businesses to subvert the restrictions by setting the timescale for these promotions outwith the time-period defined in the regulations." [Third Sector Organisation]

Many non-industry respondents shared a general support for inclusion of TPRs in the regulations. They felt inclusion of this type of price promotion would maximise the positive impact of the regulations from a public health perspective – particularly

as they are, according to some of these respondents, the most-used form of price promotion in Scotland. Some explicitly noted the importance of applying the regulations in this area throughout the year as TPRs are particularly common during seasonal periods (Christmas, Easter, summer holidays etc.).

## Individuals

Only a few individuals commented on whether they felt the definition of TPRs was clear. Only one individual offered more detailed feedback on the definition, saying it was important that a time-period wasn't defined in the regulations as it would potentially create loopholes or opportunities for businesses to subvert the restrictions.

Many were just generally against their inclusion in the policy. This is because they felt regulations in this area would have a severely negative impact on household food costs, and so felt regulations in this area were not appropriate at this time.

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

In total, 228 respondents provided a comment here (165 individuals, 28 industry respondents, 35 non-industry respondents).

## Industry respondents

Industry respondents made a range of comments about the implications of including TPRs within scope of the regulations. Many noted issues relating to inconsistent regulations across the UK which would be particularly problematic for cross-border retailers. This group felt this would have the potential to cause confusion for these businesses and would add cost and complexity to business operations as separate approaches to business forecasting etc. would need to be applied in Scotland. They believed this added cost and complexity would be most keenly felt by SMEs as they would not be able to offer reduced 'everyday prices' like larger retailers would be able to as 'the bottom line' differs substantially between these types of retailers.

Some felt that these increased costs would lead to prices rising for consumers. Both in terms of increased operational costs for retailers and insofar as a key means of offering value to customers would be lost.

There was also a belief among this group that restricting TPRs would hinder new product lines as these are one of the key channels through which products enter the market and can compete with existing product lines. A few of this group noted that restricting TPRs might disincentivise formulation of healthier products.

"Anecdotally retailers prioritise shelf space to the biggest sellers. This would distort the market in favour of dominant brands and established products and will limit the availability of new innovative products to consumers, including those from smaller

Scottish businesses. – reducing sales for small Scottish producers.” [Industry Representative Body]

“Perversely, the proposals would disincentivise reformulation and health innovation, as it is very difficult to encourage customers to try alternatives from their existing favourite products without promotion, especially when proving that a healthier option tastes as good as the original recipe.” [Retailer]

Some industry respondents used this question as an opportunity to reiterate points made earlier in Question 8.

### **Non-industry respondents**

Non-industry respondents noted significantly fewer implications for businesses, but a few did reiterate the significant proportion of price promotions (such as TPRs) used by retailers on HFSS foods. Most commonly, they noted the impact regulations in this area might have on food waste as TPRs are often used to sell off stock before it reaches its ‘used by’ or ‘best before’ date; and the negative impact the regulations might have on retailer profits, for example, because they would be less likely to buy seasonal products in bulk from suppliers.

### **Individuals**

Many individuals felt the inclusion of TPRs in the regulations would have a negative impact on retailer profits, as consumers would be less likely to buy items while they were shopping if they were not on TPR. They felt this might ultimately result in store closures and employee redundancies. This was the most common impact expressed by individuals.

Additionally, reflecting the views of industry, some also suggested that retailers’ prices would rise which would also have a negative impact on individuals, particularly those on low incomes. They felt there was a risk restricting TPRs would increase the price of a typical shopping basket for consumers.

A few also mentioned the impact of TPR restrictions on food waste, as these types of promotion are sometimes used to shift excess stock.

## **Section 3: Location restrictions**

In the consultation, it was proposed to restrict the location of targeted foods in prominent places in both physical premises and equivalent online locations, where they are sold to the public.

Targeted foods could not be placed:

In-store at:

- checkout areas, including self-service

- end of aisle
- front of store, including store entrances and covered outside areas connected to the main shopping area; and
- free-standing (island/bin) displays.

Online:

- on a home page
- whilst a customer is searching for or browsing products (other than targeted foods)
- on a favourite products page
- on pages not opened intentionally by the consumer; and
- on a checkout page.

Question 10 Are the proposed descriptions of the following prominent in-store locations sufficiently clear for implementation and enforcement?: a. Checkout, b. End of aisle, c. Store entrances, d. Covered external area, e. Free standing displays

There were between 308 and 315 responses to each of the parts of Question 10 (from between 250 and 255 individuals, 23 and 24 industry respondents, and 34 and 36 non-industry respondents). Generally, respondents in all three categories considered the descriptions to be sufficiently clear.

- Industry respondents were especially likely to consider the descriptions for checkouts (83%) and covered external areas (87%) to be clear. Notably just one fifth (21%) considered the description of free-standing displays to be clear, while two-thirds (67%) said it was not clear.
- At least three-fifths (>60%) of non-industry respondents said each of the location descriptions were clear, this rose to four-fifths for those relating to end of aisle (81%) and free-standing displays (85%).
- Views from individuals were broadly constant across all the locations: around three-fifths (c.60%) said they felt the descriptions were clear and three in ten (c.30%) said they were not.

### **Industry respondents**

Most industry respondents were satisfied with the definitions of four of the five in-store locations covered in the consultation paper – checkout, end of aisle, store entrance, covered external area. Very few comments were made about these.

In relation to the fifth, free standing displays, many felt the definition was unclear, by which they meant too broad or vague, and could lead to interpretive issues for businesses. This group felt location restrictions are easier to implement (i.e., for retailers) and enforce (i.e., for enforcement agencies) if they relate to space in a store, rather than a type of display.

A couple of respondents also highlighted that, due to the proposal for Scotland to have no single enforcing authority, there was a risk that different local authorities would interpret the regulations differently. This point related to the interpretation of all the in-store locations covered in the regulations, although it was felt the free-standing displays were most at risk of inconsistent interpretation as they related to a type of display rather than a space in the store.

Additionally, many industry respondents rejected the inclusion of free-standing displays within the regulations as it would mean inconsistency with the regulations in England, causing an additional administrative burden for cross-border retailers.

“The Scottish Government’s decision to create an all-encompassing definition of a free-standing display unit will lead to even greater confusion among retailers and will need to be addressed in the guidance, for example would an island/bin display unit display include: stacked products, a single pallet displaying goods or tiered displayed units (square or round). The Scottish Government will also need to clearly define when/how to separate aisles from island/bin display units.” [Industry Representative Body]

A series of other comments were made, reflecting broader views on the concept of in-store location restrictions. Linked to the above points about free-standing displays, a few industry respondents reported the likely challenges of implementing/adhering to the restrictions on free-standing units and store entrance in non-supermarket environments (e.g., convenience stores, garden centres, secure airside travel retail stores). They felt the size or layout of these stores (i.e., predominantly small, with few aisles; walkthrough layouts, with no single entrance/exit) would make complying with these aspects of the regulations challenging.

### **Non-industry respondents**

Comments from non-industry respondents mostly agreed that the definitions of in-store locations were sufficiently clear for implementation/enforcement.

However, many noted at least one aspect of the definitions that was unclear. Most commonly, feedback was around the definition of checkouts, end of aisle, and covered external areas.

End of aisle - Some non-industry respondents wanted a precise definition of an aisle to be provided to avoid potential misinterpretation of the regulations. Additionally, a few respondents felt it would be helpful to explicitly state in the regulations whether ‘end of aisle’ – meaning the area within the main aisle adjacent to the end – would be included within this aspect of the regulations because products in this location are still visible to consumers when they are walking past an aisle.

“Not all outlets selling food will contain traditional style aisles as found in supermarkets, for example a garden centre may display food on shelving around a corner of the store with a couple of small free standing shelving units in front of this

which are sited next to a main thoroughfare. These units would not necessarily be away from other products to increase their visibility, so how would these be classed and what requirements would apply? If targeted products were displayed on hooks attached to the end of these free standing display shelves would this be classed in the same way as 'end of aisle'?" [Public Sector Organisation]

Checkouts - Some non-industry respondents felt the information presented in Paragraph 98 of the consultation document was contradictory, as targeted HFSS foods would be able to be placed within 2 metres of a checkout/checkout queue if it was within a product aisle. They felt this undermines the regulations as loopholes can be found if businesses can prove their products are within an aisle. They therefore advocated for the 2-metre restriction to be in place regardless of whether HFSS foods are located within an aisle.

Covered external areas - Some felt examples of a 'covered external area' should be provided, and others felt the description of these areas being 'connected to a store's main shopping area' risks creating loophole opportunities for businesses. For instance, they questioned whether a temporary roof/canopy would count as a 'covered external area'.

"This definition [of covered external area] appears largely sufficient, however, it does not appear to take into consideration areas such as drive throughs, where consumers do not pass through the main shopping area. Clarification on this is required." [Other Organisation]

## Individuals

A few individuals made a relevant comment in relation to this question. Most commonly, they either disagreed with the underlying principles of this aspect of the regulations (e.g., they felt it was a retailer's decision where to place products in their stores) or they agreed with industry respondents that this aspect of the regulations would disproportionately negatively impact smaller businesses as for example, most of the shop would be within 2 metres of the checkout.

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

There were 315 responses to Question 11 (261 individuals, 20 industry and 34 non-industry).

- Just under half (45%) of industry respondents agreed with the proposed approach, while a third (35%) said they didn't know and a fifth (20%) did not agree.
- Most (85%) non-industry respondents said they agreed with the approach, while around one in ten (12%) didn't know.
- Most (67%) individuals did not agree, while around a fifth (21%) agreed and around one in ten (11%) didn't know.

## Industry respondents

Some industry respondents reported confusion with the regulations proposed here. This group suggested that the regulations could be split out by store type (e.g., food retailers, non-food retailers) and the location restrictions explained within each store type. They also had questions about what it would mean for retailers that sell very few food products if all location restrictions apply to them.

“In practice many non-food retailers will have a small number of in-scope products. How is a non-food retailer meant to display food if free standing units are banned? How does the store entrance definition apply to a small food offering in a bigger store? We also are confused at whether in-store cafes or indeed in-store canteens are in-scope for these restrictions as it presumably depends on whether the 2000 sq. ft criteria includes the seating area (it should for consistency with England’s HFSS and Sunday Trading provisions).” [Industry Representative Body]

Additionally, a few travel retail industry respondents highlighted industry-specific challenges that would make this hard to comply with, as airside stores do not have a defined ‘entrance’ like a typical high-street/supermarket retail environment.

## Non-industry respondents

The most common reason non-industry respondents agreed with the proposals around store entrances for non-food-based stores was a belief that this approach aligns with policy objectives to reduce consumer exposure to HFSS foods – as entrance/exits are high footfall areas of a store. Additionally, a few agreed as they felt the regulations should be applied as consistently as possible, irrespective of store type, as this would be most impactful from a public health improvement perspective.

## Individuals

The few individuals who disagreed with the proposal here felt there would be negative consequences of these regulations on small/rural stores and on disabled/older people. For small/rural stores, a few felt the limited floorspace available would be compromised further; and for disabled/older people, a few were concerned about how less mobile people would navigate large stores to find foods they want to purchase.

### Question 12: Do you agree with the proposed description for relevant floor area?

There were 313 responses to Question 12 (259 individuals, 19 industry and 35 non-industry).

- Around two-thirds (63%) of these industry respondents agreed with the proposed description, while a quarter (26%) said they didn’t agree and a tenth (11%) didn’t know.

- Most (86%) non-industry respondents also said they agreed with the description, while around one in ten (9%) didn't know.
- Conversely, most (58%) individuals did not agree with the description, while around a quarter (27%) agreed and 15% didn't know.

### **Industry respondents**

Industry respondents that agreed with the proposed description of relevant floor area tended to be positive that the proposed description was consistent with England (from a business operation perspective). They felt the description provided the right level of detail to help businesses understand what constitutes a 'relevant floor area'.

However, some of these respondents felt that full guidance would be needed to support compliance among businesses. Others suggested additional guidance/specification might be needed to ensure the regulations are suitable for different business types, such as businesses in the travel retail and out-of-home environments.

The few industry respondents that disagreed, mostly did not give a particular piece of feedback. One mentioned the description differs from the established definition of 'small shops', which is <3,000 sq. ft., and they felt this would present challenges for small businesses not accustomed to these definitions.

### **Non-industry respondents**

Despite a high proportion of non-industry respondents agreeing with the proposals for this aspect of the regulations, many raised challenges associated with the description of relevant floor area.

The most common points raised were:

- Greater clarity is needed if a concession area within a store met the criteria to be within the regulations (i.e., it is a business that sells HFSS foods and meets the store size criteria).
- There needs to be a robust enforcement process to ensure compliance with this aspect of the proposals as the exclusions make working out relevant floor area complicated.

### **Individuals**

Few individuals provided a relevant comment here, but those that did either broadly agreed with the proposals around relevant floor area or felt greater clarity was needed. Those that felt greater clarity was needed suggested clarification may be required about positioning HFSS foods in areas of the store that are excluded from the calculations e.g., seating areas where food is intended for immediate consumption, and areas used for consultation with customers.

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

In total, 124 respondents provided a comment here (79 individuals, 19 industry respondents, 26 non-industry respondents).

### **Industry respondents**

Industry respondents had a few key areas of additional feedback here. Most commonly, they used this space as an opportunity to reiterate that for business operations, consistency with regulations in the rest of the UK was paramount. This was specifically in relation to the decision to include free-standing units within the restrictions in Scotland which is not being pursued by the UK Government.

Additionally, some offered views on store size and location restrictions. Some industry respondents suggested that stores between 2000 and 3000 sq. ft. would struggle to comply with the proposed location restrictions, and that compliance would be costly. As a result, they felt smaller businesses would be particularly negatively affected by the proposals, as the costs would be more keenly felt by them. In addition, it was suggested that such businesses might be forced to reduce the range of products they sell to customers to comply with the different in-store locations within scope of the policy. Further feedback on businesses in scope is set out in section 4.

### **Non-industry respondents**

Some non-industry respondents reiterated that they were supportive of the regulations, with particular reference to the inclusion of free-standing displays. Some highlighted research/evidence that targeting high-traffic store locations (store entrances, checkouts etc.) would promote healthier consumer choices as consumers would be less exposed to HFSS products.

Some non-industry respondents suggested that other additional in-store locations should be included within scope of the regulations to maximise the impact. This included in-aisle displays, branded chillers/fridges, floor stickers, shelf edges etc. It was felt that limiting the in-store locations where the regulations apply would mean that businesses would simply move their HFSS foods stock to other prominent locations and would use other means to attract customers to in-aisle HFSS foods.

### **Individuals**

Few relevant comments were provided by individuals, but some were critical of the proposals because they felt it wouldn't make much difference to people's shopping habits. They felt consumers would simply go further into the store to find the HFSS foods they want to purchase. A few felt the restrictions should go further, for instance, restricting placement of HFSS foods so they are not at eye level within stores.

Question 14 Are the proposed descriptions of the following online equivalent instore locations sufficiently clear for implementation and enforcement? a. Home page, b. Favourites page, c. Pages not opened intentionally by the consumer, d. Checkout pages

There were between 305-308 responses to the different elements of Question 14 (248-251 individuals, 22 industry and 35-36 non-industry). Generally, the respondents from all three categories considered the descriptions sufficiently clear, although as indicated below, the responses from individuals were more varied.

- Most (82%-86%) of these industry respondents considered the descriptions for online locations clear. Around one tenth (14%) said they didn't know.
- Almost all (91%-94%) of non-industry respondents said the online location descriptions were clear. The exception to this was for favourites pages – just two-thirds (67%) said the description was sufficiently clear.
- Around half (51%-55%) of individuals agreed that the online location descriptions were clear, while around a third (32%-35%) said they were not.

### **Industry respondents**

Relatively few industry respondents provided a comment here, likely reflecting the high proportion that felt the descriptions of the online locations were clear. Most commonly, industry respondents were pleased that the proposed descriptions aligned with the regulations for England as this would reduce administrative burden and potential for ambiguity/confusion among cross-border retailers. A few reflected that some retailers are already operating in this way in Scotland i.e., as they needed to adapt their online environment for customers in England, they have applied these changes universally.

### **Non-industry respondents**

Comments from non-industry respondents reiterated general support for regulations in this area, with many singling out support for the description of home pages in particular. Reference was made to the fact that HFSS foods will be restricted on this page irrespective of whether the consumer enters the online marketplace via the home page.

However, non-industry respondents were also critical of two features of the descriptions. For some, the definition of favourites product pages was circular, as these pages are comprised solely of previously purchased foods and foods identified as a favourite product. As such, HFSS foods would be included on favourite products pages. Some of this group felt this approach undermined the purpose of the proposed restrictions in this area.

Additionally, non-industry respondents felt checkout pages needed to encompass shopping basket pages as well.

“The description of checkout pages should also include shopping baskets. Businesses often use baskets as a final opportunity to advertise HFSS products.

Around 60% of additions to online shopping baskets were 'disrupted' as a result of site searches or engagements with retailers' promotions." [Third Sector Organisation]

## Individuals

Few individuals provided a relevant response here, but where they did, concerns were raised around implementation and enforcement of these online location restrictions. A few felt it would be harder to police than in-store locations. A few others believed that as restrictions in other areas of the regulations (e.g., meal deals) were different from the rest of the UK, it would be hard to police online purchases of products that aren't restricted in other areas of the UK, as customers might buy goods from outwith Scotland to circumvent the restrictions.

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

There were 303 responses to Question 15 (246 individuals, 21 industry and 36 non-industry).

- None of the industry respondents said there were other online locations that should be included.
- Two-thirds (67%) of the non-industry respondents and one in twenty individuals (5%) thought other online locations should be included (a total of 36 respondents).

## Industry respondents

Most industry respondents that provided a response here used the opportunity to reiterate a general desire for consistent regulations between Scotland and the rest of the UK; they felt no other online locations should be considered. Some cautioned against expanding the regulations in this area as they suggested it would be impractical/costly to have two separate (Scotland and rest of UK) website platforms for their customers. One felt that it would be important to review the efficacy of the existing proposals before deciding whether to extend them.

## Non-industry respondents

Non-industry respondents frequently suggested other online locations that should be within scope of the policy. Their feedback centred on two key ideas:

- Inclusion of other areas of the online retail environment – e.g., recommended products pages, best sellers, previous customers also bought pages.
- Inclusion of areas of online marketing more widely – e.g., marketing customers might see when they're browsing other websites, when they receive direct marketing emails, confirmation of order emails etc. A few also

felt the regulations should apply to non-retailer led content, such as that shown on social media/by influencers.

“We believe that social media should be included within the scope of the regulations. Promotions of HFSS products are pervasive, in part due to social media influencing. We know that this can boost the uptake of promotions even further and influence certain groups such as children and young people. Research has found that HFSS products, such as high caffeine energy drinks, are marketed exclusively on social media platforms.” [Third Sector Organisation]

A few also reflected in broader comments that it is perhaps more essential that regulations are applied to the online retail environment as online shopping continues to form a significant part of many people’s shopping experiences.

## Individuals

Individuals that provided a relevant comment here typically aligned with the views of non-industry respondents. They queried whether online advertising on other websites (outwith the retailer’s own website) and social media had been considered within the regulations. A few mentioned including other pages on retailer’s websites within the regulations.

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

In total, 117 respondents provided a comment (72 individuals, 18 industry respondents, 27 non-industry respondents).

## Industry respondents

Industry respondents tended to use this question to reiterate their desire for regulatory consistency between Scotland and the rest of the UK. A couple did, however, believe some of the regulations around searching for products online could be more intuitive for the consumer.

“We believe there is an opportunity to improve the proposals in paragraph 110 regarding browsing for products. While these are consistent with those in place in England, Members’ experience is they are very challenging to manage. For example, if a consumer were to search for ‘popcorn’ the search results would be able to bring up both savoury and sweet popcorn because the search term... matches in whole or in part the name under which the targeted food is marketed. However, if the consumer were to browse via the site’s internal taxonomy they would find that savoury popcorn and sweet popcorn could not be displayed alongside each other because savoury popcorn is explicitly captured as a ‘savoury snack’ (Category 2) whereas sweet popcorn is generally counted as ‘confectionary’ (Category 4).” [Industry Representative Body]

## Non-industry respondents

Non-industry respondents tended to use this question to show their general support for the proposals in this area. Some felt if the proposals weren't extended to the online shopping environment, there would be a risk of displacement whereby consumers move online to purchase cheaper HFSS products. A few did, however, highlight potential issues around enforcement of these restrictions and felt online specialists would be needed to ensure the restrictions were being adhered to correctly. Some also felt guidance would be needed to help enforcement agencies gather evidence of breaches of the regulations in the online setting.

## Individuals

Few individuals provided a relevant response here, but where they did, the views generally expressed frustration that the regulations were going to apply to the online retail environment.

## Section 4: Businesses in scope

In the consultation, it was proposed that price and location restrictions (both instore and online) would apply to **qualifying businesses**. This would include retail, out of home, wholesale outlets where there are also sales made to the public, and other businesses such as clothes shops, tourist shops and pharmacies.

It was proposed that a qualifying business would be a) a business which offers pre-packed targeted foods (and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge) for sale to the public in the course of business and b) a business with 50 or more employees.

The restrictions would not apply to wholesale outlets (where sales are only to trade); where sales are not in the course of business, for example food provided through charitable activities, for example bake sales; care homes; and schools.

Manufacturers would not be considered a qualifying business unless selling pre-packed targeted foods directly to consumers.

Qualifying businesses that sell targeted foods to the public through a website or other online platform, such as an aggregator or delivery app, will be required to comply with price and location restrictions relating to those online sales of targeted foods.

The consultation notes that some businesses operate on a **franchise** basis or as a part of **symbol groups** (a form of franchise for convenience stores). The consultation proposed that for both franchises and symbol groups, the size of the business would be classified by the total employees of the business overall and not the employees of the individual franchise or symbol group store.

**Concessions** are defined as separate businesses which operate in a designated area within the premises of a qualifying business if they operate their own payment facilities. Concessions that meet the criteria to be considered a qualifying business in its own right, it would be required to comply with promotion restrictions. The

proposed approach is consistent with that in England (with the exception of out of home, which is not within scope in England except in relation to free refills).

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

There were 312 responses to the closed question element of Question 17 (251 individuals, 25 industry and 36 non-industry).

- Around one-third (36%) of these industry respondents said they agreed with the proposed description, while nearly half (48%) said they didn't agree and 16% didn't know.
- Two-thirds (69%) of non-industry respondents agreed, while 14% said they didn't, and a similar proportion (17%) didn't know.
- Views of individuals were mixed: around two-fifths (42%) agreed, around a third (36%) did not and a fifth (22%) didn't know.

### Industry respondents

Most industry respondents that agreed with the proposals did not comment further. Industry respondents generally welcomed the definition of businesses in scope insofar as they were in alignment with England. However, it was suggested that the regulations do diverge in a number of areas, and clarification is needed around business types in scope. Some of the respondents raised specific concerns.

**Vending machines** – a few respondents (including respondents who agreed with the proposals) raised queries about vending machines? including how the number of employees would be calculated; whether the vending machine would be considered in scope if located in a non-food retailer or a workplace; and clarification if vending machines will no longer be able to sell HFSS snacks. It was suggested that vending machines are unlikely to offer meal deals, multibuys, or TPRs and was suggested that the effort required to bring them within scope would outweigh any benefits.

**Airports** – all the respondents operating within this space commented that airport retail outlets do not conform to traditional high street layouts, for example, there may not be walls between or around units, goods are not displayed on aisles etc. One also noted that accessing these premises to determine compliance could present difficulties, given they are located within restricted areas.

**OOH sector** – a few respondents, including representatives from manufacturing and industry representative bodies, commented that inclusion of the OOH sector would create customer confusion and a compliance burden for businesses. These respondents agreed with the proposals in the main. It was also suggested that it falls outside the scope of the policy, as OOH purchases do not constitute core elements of people's diets but are irregular 'treats'.

Some industry respondents were also concerned that defining qualifying businesses as those with 50 or more staff, is arbitrary and potentially anti-competitive. One respondent commented that two similar nearby stores could be operating under completely separate restrictions creating a competitive disadvantage for the retailers and staff. It was also suggested it would be difficult for enforcement agencies to determine the full staffing complement of such stores.

## **Non-industry respondents**

Non-industry respondents were generally satisfied with the proposed definition or gave qualified support to the definition. Suggestions were made to extend the coverage of the regulations to include the following additional types of business:

**Businesses with fewer than 50 staff** - many commented that the regulations should be extended to businesses with fewer than 50 staff. It was suggested this would create a level playing field, although a few felt smaller businesses may need support to implement restrictions. Many cited health reasons for extending the scope: they commented that the out-of-home sector mostly comprises small businesses, so including them would maximise the impact of the policy; and they argued that these smaller businesses are more common in deprived areas where food choice and health outcomes are generally poorer. One respondent commented that zero-hours workers should be included as employees for the definition of qualifying businesses.

**Businesses that sell non-pre-packed targeted foods** – in particular, some noted that the majority of food purchased in the out-of-home sector is non-pre-packed and would therefore not be covered under the regulations as proposed.

**All businesses selling food and drink products, even if this is not their primary product category** – this will ensure a consistent message is given about the health consequences of consuming HFSS products. A few non-industry respondents sought clarification whether entertainment venues such as cinemas, bowling, licensed premises and arcades, and sports facilities and stadiums were to be covered by the regulations.

**Movable businesses<sup>2</sup>** – a small number of respondents highlighted that moveable businesses are not clearly mentioned, with one specifically arguing they should be included.

**Schools** – one respondent suggested that schools should be included as they often operate in the same way as businesses with respect to selling HFSS foods. Several respondents felt it would be 'helpful' if organisations such as schools and care homes set a positive example to others, without going so far as suggesting they be included in the regulations.

Several non-industry respondents welcomed explicitly the inclusion of the out-of-home (OOH) sector in the regulations. These respondents commented that the OOH sector makes a major contribution to people's calorie intake, that people typically make several trips per week to OOH outlets, and that people from deprived

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<sup>2</sup> Meaning mobile food businesses such as food vans, trucks etc.

areas use the OOH sector more often than those from less deprived. One respondent however, felt there was little merit in diverging from the English approach by including OOH business. They commented that most businesses would have fewer than 50 employees and the majority of the foods sold across the sector would be non-pre-packed, so would fall outwith the regulations.

## Individuals

Individuals generally did not elaborate on their views, simply saying they thought the definitions were either sufficient or not sufficient. The main comment made by a small number of respondents was that they did not understand why schools and care homes were not in scope, especially given rising rates of childhood obesity.

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

There were 300 responses to the closed question element of Question 18 (246 individuals, 20 industry and 34 non-industry).

- Just under half (45%) of these industry respondents agreed the proposed extension of restrictions is sufficiently described, 15% disagreed, and two-fifths (40%) didn't know.
- Most (65%) non-industry respondents agreed, one-tenth (12%) disagreed, and a quarter (24%) didn't know.
- Views from individuals were mixed: two-fifths (41%) agreed, around a third (35%) disagreed, and a quarter (25%) didn't know.

## Industry respondents

The main issue that concerned industry respondents was resolving who would be liable if there was a breach in the regulations -the qualifying business or the third-party website/platform/aggregator. Aggregators tended to consider qualifying businesses would be responsible for complying with regulations; whereas non-aggregator businesses noted that there may be aspects of trading on a site that were outwith their control that impacted on their liabilities, and for which the aggregator should take responsibility.

Industry respondents welcomed the alignment with the English regulations and elsewhere in the UK, which they felt was beneficial. However, a small number were concerned that there was potential for misalignment, for example, with respect to the inclusion of out-of-home sector in Scotland due to being considered a qualifying business if they meet the criteria. This would mean they would need to comply with price/location restrictions if selling HFSS foods through a third-party platform. A small number were also concerned about how this measure would be enforced, with some suggesting clear guidance would be required.

## Non-industry respondents

Comments from non-industry respondents were broadly supportive of the proposals. A few simply commented that the description was sufficiently clear.

Some respondents said that while the proposal was welcomed, there remains some uncertainty over whether the restrictions would be limited to qualifying businesses as defined elsewhere in the consultation, and specifically whether businesses with fewer than 50 employees would be in scope. They commented that the majority of out-of-home businesses in Scotland were micro or small businesses, so it was likely that these would be outwith the scope of the regulations, diluting their impact.

Some suggested the regulations should be extended to include more or all of the online experience, to bring aggregators and websites fully within the regulations, and to include social media and online advertising within the regulations.

“This needs to cover unwanted adverts on mainstream social media channels, and platforms/sites aimed at/used by children.” [Public Sector Organisation]

## Individuals

Individuals raised several issues about the online restrictions, including concerns that the proposals would further restrict their freedom of choice, would make it more difficult to find cheaper products online, and result in higher costs for businesses which would be passed on to consumers. One person asked whether the restrictions would apply if the goods ordered were being sent to an address outside Scotland.

“Yes, it’s sufficiently described but I still think it’s wrong. We as consumers won’t be able to find the cheapest products by searching online anymore - which will mean we will all be even more out of pocket during a Cost of Living Crisis. You’re all mad to be taking away our choices and spending power.” [Individual]

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

There were 301 responses to the closed question element of Question 19 (246 individuals, 19 industry and 36 non-industry).

- Views from these industry respondents were mixed: a third (32%) agreed, a third (37%) disagreed, and a third (32%) didn’t know.
- Most (78%) non-industry respondents agreed, while just one-tenth (11%) disagreed, and a further tenth (11%) didn’t know.
- Views from individuals were also mixed: two-fifths (39%) agreed, a third (37%) disagreed, and a quarter (24%) didn’t know.

## Industry respondents

Almost all the comments came from industry respondents who disagreed with the proposals. Their comments largely related to the treatment of symbol stores within the regulations. Several disagreed that symbol stores should be treated interchangeably with franchises and disagreed that they should be included within the scope of the regulations. Many of these respondents emphasised that symbol stores are independent retailers that typically do not receive administrative support from the symbol operator; instead, in most cases, the operator provides branding and a branded wholesale agreement to the retailer. There were concerns that including symbol stores within the regulations would place them at a significant competitive disadvantage compared to independent stores that do not fall within the scope of the regulations. They also commented that this decision would potentially 1) create a significant administrative burden for these retailers, and 2) impact on the retail services in local communities, especially deprived and rural areas, which often rely on these businesses.

Some commented that further clarification on the English position on symbol stores was needed, i.e. whether they fell within or outwith the scope of the regulations. However, some felt that symbol stores in Scotland should be exempted regardless of the English position.

“SWA oppose symbol groups being treated in the same manner as a franchise. There are distinct differences between a franchise and a symbol group. Symbol group businesses are primarily independent legal entities, with no ownership or legal ties to their symbol group operator/wholesaler.” [Industry Representative Body]

Industry respondents who said they agreed with the proposals either did not comment or simply stated that they agreed with the arrangements described. Those that said they didn't know, also mostly did not make any further comments. However, one respondent, a manufacturer, commented that while the description seems accurate, they thought these restrictions would limit a brand's ability to use franchises and symbols to identify their products which they felt this was unnecessary. They did not explain further why the restrictions would limit a brand's ability to use franchises and symbols.

## Non-industry respondents

Comments from non-industry respondents were typically positive, reflecting the response to the closed element of the question. Most of those commenting said that the regulations were clear, and most agreed with the inclusion of both franchises and symbol stores in the regulations. They felt that the proposed approach would *'level the playing field'* as employee count would be based on the whole group, not individual stores.

A few commented that it was important to include these stores within scope of the regulations as people from more deprived households (lower occupational groups – C2DE) purchased more of the food from symbol stores than higher occupational groups (ABC1) households. Failure to include them could result in more deprived

groups continuing to be exposed to promotions of unhealthy food, further limiting access to healthy food options and widening health inequalities.

A few non-industry respondents were not supportive of the definition as it stood. A small number were unclear about the definitions being used for franchise/symbol stores and how they should be applied. One echoed the comment made by industry respondents that symbol stores were independent businesses, but another commented that these distinctions would become moot if the regulations were extended to businesses with fewer than 50 staff (which they believed should happen).

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

There were 293 responses to the closed question element of Question 20 (235 individuals, 25 industry and 33 non-industry).

- Just over half (56%) of these industry respondents said yes, while a quarter (24%) said no, and a fifth (20%) said they didn't know.
- Few (18%) non-industry respondents said yes, around a third (36%) said no, and nearly half (45%) didn't know.
- Views from individuals were similar to those of industry: most (60%) said yes, around a fifth (18%) said no, and a quarter (23%) didn't know.

### **Industry respondents**

The industry respondents who said they foresaw impacts and those who said they didn't know all raised concerns. Many commented on the additional costs for business that would arise because of divergence in the regulations between Scotland and the rest of the UK. For example, they cited additional complexity as well as logistical and compliance challenges. Some businesses commented on the inability to offer promotions such as multibuys and TPRs would impact on their capacity to generate revenues. A few commented that these detrimental impacts would fall especially hard on small businesses, who may find it harder to trade under the regulations. Some suggested these effects could threaten the viability of individual businesses and consequently impact local communities or the wider economy. The secure airside travel sector businesses reiterated the impacts the measures would have on their trade.

A few suggested that the potential disadvantages placed on Scottish businesses resulting from misalignment with the rest of the UK may be sufficient to open the regulation to challenges from the Internal Market Act. This would depend on the specific wording the restrictions proposed.

“The potential divergence on HFSS regulations is an area that was referenced as of interest to the Office for the Internal Market in their annual report.

Until a final decision has been taken on whether to include the restriction of meal deals, TPRs and freestanding display units it is impossible to tell from a legal

standpoint whether the regulations will trigger the UKIMA.” [Industry Representative Body]

### **Non-industry respondents**

There were few comments from non-industry respondents, and these were largely positive. A few respondents reiterated their call for the introduction of comprehensive locations promotions regulations in Scotland, covering as many types of promotions as possible and all types of food and drinks businesses. They considered this comprehensive approach to applying the regulations would level the playing field and encourage competition between businesses. One respondent commented that the proposals could prompt reformulation and innovation in healthy products, which could be commercially beneficial for many UK businesses.

A small number of non-industry respondents raised the same issues identified by industry respondents: that businesses will not be able to do TPRs anymore, and they may experience increased complexity and costs. One also noted manufacturers may need to re-engineer the products sold.

### **Individuals**

Many of the individuals who commented were concerned that the price of goods would increase to cover the additional costs businesses would incur to administer the regulation and that choice would be reduced if businesses elected to remove product-lines from their Scottish ranges. Some also expressed concern regarding potential job losses if businesses down-sized to ‘play the system’ (reduce their establishment to fewer than 50 employees), stopped trading in Scotland, or went out of business.

“This will impact greatly on cross border trade and make Scottish Businesses less competitive, and many non-Scottish traders will likely cease to trade here reducing choice / increasing costs.” [Individual]

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

Question 21 was an open question which asked respondents to provide any additional comments on the businesses proposed to be within the scope of the policy. There were 100 responses to this question: 60 from individuals, 19 from industry organisations and 21 from non-industry organisations.

## Industry respondents

The following points were raised, each by a few respondents:

- Airport retail businesses are different from traditional retailers in terms of store layout and usage, with customers typically only accessing them once or twice a year and the bulk of custom from foreign visitors
- OOH businesses should not be included to best align with the rest of the UK
- All businesses should be included to set a 'level playing field'.
- A query was also raised by a manufacturer around who would be responsible for classifying all of their 10,000 products HFSS/non-HFSS for sale/distribution in shops, cafes, etc., in Scotland – the manufacturer or the end-user?

## Non-industry respondents

Some of the non-industry respondents reiterated the view that businesses with fewer than 50 employees should also be qualifying businesses. The rationale provided was that these businesses made up a substantial proportion of the food and drink industry in Scotland, especially so in deprived areas, and excluding them would undermine the effectiveness of the regulations. One respondent suggested including modes of travel (for example trains) within the regulations, and one respondent questioned the exclusion of schools from the regulations.

## Individuals

Most of the comments from individuals were short statements to generally oppose the regulations as a whole or indeed any government restrictions to HFSS foods. The comments that addressed the regulations mainly asked why schools and care homes were excluded, and a small number suggested that small businesses should also be included. One individual commented that the regulations would have an adverse impact on small independent businesses. A small number said that they welcomed the regulations.

## Section 5: Exemptions from location considerations

The consultation document sets out proposed exemptions for qualifying businesses from location restrictions. These are:

- **Business type** - Specialist businesses with a limited product range, such as chocolatiers and sweet shops.
- **Store size** - Stores with a relevant floor area of less than 185.8 square metres (2,000 square feet).

This approach recognises that specialist businesses with a limited product range would have very limited or no scope to comply with location restrictions due to the very nature of the product being sold.

The approach also reflects the fact that smaller-sized stores in general may have limited or no scope to comply with location restrictions, for example, a small convenience shop or kiosk.

The consultation does not propose exemptions from location restrictions for products close to expiry, as there remains sufficient scope throughout the supply chain to allow businesses to take action to reduce food waste.

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

There were 303 responses to the closed element of Question 22 (244 individuals, 23 industry and 36 non-industry).

- Just under half (48%) of these industry respondents agreed the proposed exemptions based on business type are clear and sufficiently defined, a third (35%) disagreed, and a fifth (17%) didn't know
- Two-thirds (67%) of non-industry respondents agreed, around a fifth (19%) disagreed, and 14% didn't know.
- Views from individuals were mixed: two-fifths (43%) agreed, around a third (36%) disagreed, and a fifth (21%) didn't know.

### Industry respondents

Industry respondents suggested a number of business types that should be exempted from the regulations. These were:

- **Airside retail:** The duty free and air travel retail respondents requested an exemption for retail stores in the airside security zone, given their unique trading position and the atypical layouts of their stores
- **OOH sector:** OOH respondents commented there is an ambiguity around the definition of OOH; that businesses providing OOH and retail services may be difficult to categorise; and that regulations may be difficult to enforce in some circumstances (e.g., buffet-style catering in some cafés where customers help themselves from free-standing units and fridges)
- **Symbol group stores:** a few respondents said these businesses should be exempted, as they are under English regulations
- **Vending & unattended/automated retail:** one respondent said these businesses should be excluded from all definitions and location restrictions

The industry respondents who agreed with the definitions did not expand on their response, beyond reiterating they are clear and sufficiently defined.

## Non-industry respondents

Non-industry respondents generally accepted that specialist shops, such as confectioners, should be exempted from the location restrictions for practical reasons. However, several requested that the regulations should be explicit that specialist shops are only exempt from location restrictions and are not exempt from price promotion restrictions.

One respondent did feel that chocolateries and sweet shops should be included within the location restrictions. They noted the recent expansion of large high street sweet shops and were concerned that these (or a similar concept) would proliferate if location restrictions were not put in place.

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

There were 297 responses to the closed element of Question 23 (243 individuals, 23 industry and 31 non-industry).

- Three-fifths (61%) of these industry respondents agreed the proposed exemptions based on individual store relevant floor area are clear and sufficiently defined, a fifth (22%) disagreed, and a fifth (17%) didn't know
- Just over two-thirds (71%) of non-industry respondents agreed, 13% disagreed, and 16% didn't know
- Views from individuals were mixed: two-fifths (41%) agreed, a similar proportion (38%) disagreed, and a fifth (21%) didn't know.

## Industry respondents

Some of the industry respondents said they welcomed the exemptions based on business floor space. A small number qualified this by stressing it was important to ensure alignment with the English restrictions, and some commented that exemption may need further clarification, in particular to determine if it would indeed bring Scotland into alignment with England. A small number noted they welcomed the exemption as it prevents smaller independent businesses falling within the scope of the regulations.

A few commented that the floor size exemption should be extended to 3,000 square feet, to secure the ongoing viability of local retail community convenience stores, by removing the costs associated with meeting the regulations. It was also suggested that this may remove complexity of distinguishing franchises and symbol stores, where symbol stores are primarily under 3,000 square feet.

A small number reiterated that free standing display units should not be within scope of location restrictions.

## Non-industry respondents

Many non-industry respondents commented that the proposals are clear and recognised that the proposals align with the regulations for England. However, many did not support the proposed exemptions, and requested that these are reviewed or removed. Key concerns were the potential confusion for businesses where different sets of rules appear to apply to their business type and business size and the potential to exempt large numbers of businesses which would undermine the impact of the policy.

“We are concerned that there could be some confusion over which rules apply to which businesses and which one takes precedent when two contrary rules apply to a business. For example, a symbol or franchise store would be within scope (i.e. not exempt) of the regulations based on employee numbers but could be out with scope (i.e. exempt) if the floor space of their premise is less than the prescribed dimensions outlined. It needs to be clarified which rule would apply/take precedence in this instance. This creates a possible loophole and risks undermining the overall effectiveness of the policy, as it could be argued to be effectively exempting a (large) number of symbol and franchise stores, with floor space less than that prescribed in the consultation.” [Third Sector Organisation]

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

A few other issues were raised either directly in response to Question 24, which asked respondents to provide any additional comments on proposed exemptions from location restrictions, or in response to Questions 22 and 23.

One industry respondent commented that clear guidance on exemptions is required.

One non-industry respondent suggested that there should be a requirement for businesses to provide their store size and employee number to their local enforcement officers at least annually. They commented that this would facilitate enforcement required for compliance and achieving a level playing field. A small number of non-industry respondents commented that it may be difficult for enforcement officers to accurately measure the relevant areas within business premises.

Some non-industry respondents commented that the number of exemptions should be minimised, to maximise the impact from the restrictions and to prevent loopholes being exploited.

## Section 6: Enforcement and implementation

The consultation emphasises the importance of ensuring the enforcement process is fair and proportionate, with a focus on supporting compliance. It is proposed that Local authorities will be responsible for enforcing the policy on the basis that they

have experience of similar enforcement, have local knowledge and can incorporate enforcement of the policy into other inspection visits, where appropriate.

Non-compliance with the requirements or restrictions set out in the Regulations will amount to an offence, which could ultimately result in a criminal penalty (leading to and a maximum fine of £2,500). However, the intention is for local authorities to be able to issue administrative sanctions as an alternative to prosecution. The proposed administrative sanctions are compliance notices and fixed penalty notices - with compliance notices likely being available initially and fixed penalty notices at a later date. These administrative sanctions are intended to give enforcement officers more flexibility to deal with the offences.

It is proposed that failure to comply with a compliance notice could lead to a fine of up to £5,000, while fixed penalty notices may be levied up to £2,500.

A 12-month lead-in time is proposed between regulations being laid and coming into force to allow preparation for implementation and enforcement and the policy.

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

There were 313 responses to the closed element of Question 25 (255 individuals, 25 industry and 33 non-industry).

- Three-fifths (60%) of these industry respondents agreed with the proposed use of administrative sanctions for enforcement of the policy, while 4% disagreed, and over a third (36%) didn't know.
- Two-thirds (67%) of non-industry respondents agreed, a tenth (12%) disagreed and two-fifths (21%) didn't know.
- Most (78%) individuals disagreed, 16% agreed and 6% said they didn't know.

### **Industry respondents**

Industry respondents broadly welcomed the proposed use of administrative sanctions for enforcement of the policy. They considered the approach would be fair and proportionate, with a focus on supporting compliance. However, some commented that the proposals did not go far enough to assist businesses to fully understand and prepare for the requirements. A number of issues were raised both by those broadly in agreement and those unsure:

- Several respondents stressed that the focus should be placed on providing guidance and support to businesses in the first instance, with enforcement being a final resort. One respondent suggested that both guidance and enforcement procedures should be developed closely with businesses.
- A few respondents suggested that compliance notices would be a more appropriate measure than penalty notices. They would encourage compliance and allow businesses to rectify issues, whereas attaching penalty notices could place qualifying businesses at a competitive disadvantage.

Comments on enforcement of the regulations included the following:

- Several respondents commented that additional resources will be required to ensure local authorities are able to effectively enforce the regulations.
- One respondent commented enforcement agencies should work with business to promote compliance, instead of relying on penalties and sanctions.
- A few respondents felt strong enforcement would be essential to prevent non-compliance becoming an issue. They considered non-compliance could be to the detriment of well-managed compliant businesses, who would incur costs and administrative burden to be compliant while non-compliant businesses would '*get away with it*'.
- Linked to the above point, a few industry respondents commented that enforcement of the regulations in England had been limited or patchy, which they felt disadvantaged businesses that worked to comply with the regulations or were based in areas subject to strong enforcement.
- One industry respondent questioned whether scarce enforcement agency resources were best allocated to these new regulations, at the expense of issues such as retail crime.

“The intention of good regulation is to level the playing field and act in areas where there is no commercial advantage for a business to lead. But if enforcement is inadequate, and there are limited opportunities for enforcement to call out non-compliant businesses, many businesses will consider whether it would be better to incur a penalty than weather the costs of implementation and the ongoing commercial costs of compliance. We would urge the Scottish Government to significantly strengthen its plans for enforcement to avoid disadvantaging those businesses who want to do the right thing” [Industry Representative Body]

One respondent disagreed with the enforcement proposals. They commented that enforcement should be fair and proportionate, and that the role of enforcement agencies should be education and information, supporting businesses to comply with regulations.

### **Non-industry respondents**

There was general support for the proposed use of administrative sanctions, although respondents tended to qualify their response, with some suggesting that it would be helpful if both compliance notices and penalty notices could be available to enforcement officers at the same time, rather than fixed penalty notices being available after compliance notices, as set out in the consultation document. A few respondents suggested a stepped approach for fixed penalty notices, whereby the level of fine increases with each fine issued, up to a maximum. One respondent suggested that clearly accessible guidance in multiple formats and languages would support compliance.

A few suggested that consideration should be given to the implementation of a licensing/pre-registration/certificate to trade scheme for food businesses, to increase compliance across all areas of food law.

A few respondents were concerned about the administrative burden associated with penalty notices, if additional support is not provided by Scottish Government. It was noted that any income raised from fixed penalties is paid to Scottish Ministers, not to the administering local authority. Respondents from the local authority sector, which would have responsibility for enforcing the regulations, commented that many councils have reached or exceeded capacity to meet their statutory responsibilities, and that additional resources will be required to support training and enforcement of the new regulations. Some concerns were expressed that enforcing these regulations would be a low priority for local authorities.

One respondent commented that businesses should be required to produce annual compliance statements as part of 'good governance'.

Of those who did not support the proposals, one respondent felt it would be more helpful if both compliance notices and fixed penalty notices were available at the same time. One respondent requested clarification as to whether repeat penalty notices could be served and one respondent asked for clarification on the circumstances when penalty notices rather than compliance notices should be served.

## Individuals

Almost all individuals who responded to this question did not support the sanctions being proposed. They variously felt that the matter was too trivial to be sanctioned; that local authorities had insufficient resource to take on further responsibilities; or that local authority resources would be much better spent on other tasks. The few who were in broad agreement did not comment further.

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

There were 313 responses to the closed element of Question 26 (255 individuals, 26 industry and 32 non-industry).

- Three-fifths (58%) of these industry respondents agreed with the maximum penalties proposed for the offences in relation to enforcement of the policy, none disagreed, and two-fifths (42%) didn't know.
- Just over half (53%) of non-industry respondents agreed, a tenth (13%) disagreed, and a third (34%) didn't know.
- Most (80%) individuals disagreed, a tenth (11%) agreed and a tenth (9%) didn't know.

## Industry respondents

Comments from industry respondents were largely to repeat that compliance notices were a proportionate response to the regulations, and that penalty notices/penalties were not required. One industry respondent commented that they agreed with the proposed maximum penalties and another commented that the penalties are in line with other regulations, but stressed they should only be used as a last resort, in cases of “wilful and ongoing non-compliance”.

## Non-industry respondents

The comments from non-industry respondents were broadly supportive of the maximum penalties proposed. Local authorities noted that the maximum penalties appear in line with other regulations. Several other non-industry respondents suggested using a stepped approach for the fixed penalty notices, with the level of fines increasing with each fine issued, up to the maximum level. They argued that this would act as an effective deterrent to non-compliance.

However, some commented that such penalties may not have a significant deterrent effect, especially for large organisations, due to their low value. Indeed, one respondent suggested that the size of penalty should be proportionate to the size of the organisation to deter non-compliance. It was felt this would not only promote fairness by ensuring that penalties are equitable for smaller businesses but would also penalise larger businesses whose impact (on public health) and capacity for compliance are greater.

## Individuals

A few individuals commented on these proposals. They said the maximum penalties are not strong enough to deter businesses with a financial interest in non-compliance.

Question 27: Is the proposed 12 month period following the introduction of regulations sufficient to prepare for: a. Implementation, b. Enforcement?

There were 321 responses to the closed element of this question on implementation (257 from individuals, 27 from industry and 37 from non-industry) and there were 314 responses for the enforcement element (254 from individuals, 24 from industry and 36 from non-industry).

- Just a fifth of industry respondents considered the time to prepare for implementation and enforcement sufficient (19% and 21%, respectively). Most (59%) industry respondents said that there is not enough time to prepare for implementation, while around a fifth (22%) said don't know. Views were more mixed with respect to enforcement: two-fifths (38%) said that there is not enough time to prepare for enforcement, while two-fifths (42%) said don't know.

- Non-industry respondents tended to agree that there is time to prepare: 68% say there is time to prepare for implementation, and 61% regarding enforcement. In both cases, 14% said there is insufficient time, and around a fifth (19%) and a quarter (25%) respectively said they were unsure.
- Individuals tended to say there was not enough time to prepare: 68% with respect to implementation and 71% regarding enforcement.

## Industry respondents

Industry respondents, including manufacturers, industry representative bodies, and retailers, indicated it will take time for retailers to fully understand and implement the requirements of the regulations. Issues raised included:

- Some of the respondents suggested that SG should implement a full programme of guidance in advance of the regulations coming into force to give businesses time to resource the necessary changes. Respondents often suggested that regulations should only be implemented several months after the guidance has been issued, with periods of 12 months and 18 months after guidance is issued suggested.
- A few commented that the implementation period would depend on the complexity of the final set of regulations and linked to this, the extent to which they vary from the regulations already in place in England. These responses suggested the implementation period should range from 12 to 24 months, on the basis that the proposals imply regulations in Scotland will differ significantly from England. However, a few said further work was required to determine the implementation period required. One respondent suggested a horizon scanning exercise to inform the decision, while another suggested establishing pilot studies to determine the length of time required to implement the regulations in different types of business.
- One respondent specifically suggested extending the implementation period, for example to 18 months, to provide a longer bedding in period and to help minimise any likelihood of businesses receiving enforcement notices due to errors.
- One respondent suggested additional flexibility be given to small businesses that meet the definition of 'qualifying businesses' in recognition that they have reduced capacity to apply the proposed changes.
- A few respondents highlighted that some businesses would need to juggle different sets of regulations, for example, if they need to move where they locate alcohol in order to facilitate the changes, they will have to amend their licenses for each store which would delay commencement of works. They felt it is likely that local authorities will be dealing with numerous such applications.
- Businesses within secure airside travel retail commented they would need considerably longer than 12 months to prepare for implementation, given the practical and technical complexities of working in a secure airside

environment. They also flagged the possibility that, for simplicity, some goods may be withdrawn from the Scottish market

- One respondent commented a longer lead-time would be helpful if the regulations were to be implemented in the run-up to Christmas.

A few respondents mentioned that businesses will not be able seek interpretation and assured advice from a Primary Authority on f the regulations in Scotland, in the way businesses had been able to seek advice on the English regulations from an English Primary Authority. Concerns were expressed that this will make it more difficult for Scottish businesses to understand and implement the new regulations and put them at risk of breaching the regulations.

There were few comments from industry respondents about enforcement. The main comment, from several respondents, was that there should be a 6-month grace period once the regulations come into force during which no penalties are issued, to allow the industry to adapt to the new complex requirements. A small number of respondents said that they would anticipate that it will take enforcement bodies more than 12 months to develop the necessary guidance and internal policy resources, and to recruit, resource and train enforcement staff.

### **Non-industry respondents**

Several of the non-industry respondents consider 12 months sufficient for both implementation and for enforcement. Their view is that industry has known about the policy for some time, so it is reasonable to expect them to comply promptly. Many of the non-industry respondents expressed concern that an over-long implementation period will be used by industry to undermine the effectiveness of the policy and possibly to successfully lobby against elements of the regulations.

One response from the public sector highlights the workforce planning concerns facing councils across Scotland (including rising vacancy rates, an ageing workforce, and low recruitment to Environmental Health degree courses), coupled with an expanding portfolio of regulations to enforce. They are clear that further engagement with Scottish Government around resourcing and training will be needed to enable councils to enforce the proposed regulations.

One non-industry respondent commented that larger businesses are probably working to make the necessary changes. However, they suggest smaller businesses will require support in interpreting and implementing guidance, and suggested additional funds be made available to the relevant advisory bodies (local authorities, trade bodies, etc.) to support this process.

### **Local authorities**

Several local authorities commented that they do not currently have sufficient resource to implement and enforce the regulations. They suggest additional resources will be required if they are to take on these responsibilities. A few authorities anticipated there would be a need to respond to enquiries from

businesses about the new regulations, as well a requirement for awareness-raising/promotion about the regulations. One suggested these activities could be delivered by Government.

“There are not enough enforcement staff to deal with routine food safety controls aimed at preventing serious food poisoning outbreaks and incidents, and this position is not going to change in the foreseeable future. In fact, the staffing resource situation is expected to get worse due to staffing demographics throughout Scotland.

Consumers have no real control over the safety or integrity of the food they purchase, but they do have a choice in terms of the types of food they buy and consume.

The enforcement of any future regulations is highly unlikely given the other pressures and higher priorities local authorities have to address. This will create challenges in terms of consistency and fairness. If Scottish Government want to see the regulations applied and enforced, then significant resources will need to be provided. First to make up for the short fall in resources to meet existing priorities, and then to accommodate the new expectations of these regulations.” [Local authority respondent]

## Individuals

A few individuals commented on these proposals. Most of those commenting said they thought industry would require longer than 12 months to adequately prepare to implement the proposals. Some said that the 12 months would be sufficient, in many cases this was because they felt obesity was a crisis.

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

The final question gave respondents an opportunity to make any other comments on the consultation. Various respondents took the opportunity to provide information about their organisation; their policy view on healthy eating, public health, obesity and wellbeing goals; and to summarise or reiterate the comments they had made previously within the consultation.

In line with the summary above, the response to this question is structured into two distinct subsections: reiterated points, and additional points.

## Reiterated points

Below is a list of reiterated points noted by respondents. Unless stated, these points were shared across respondent groups.

- Many respondents felt it was important to make healthier foods cheaper and more accessible to the public to maximise the benefit of the regulations for public health.

- Many respondents were concerned the regulations would mean increased food prices for consumers which they felt was problematic in the current cost-of-living crisis.
- Some respondents felt it was preferable to use alternative approaches to tackling public health challenges e.g. educating the public via public information campaigns about how to cook/prepare cheap, healthy meals.
- Some industry respondents questioned the evidence presented relating to the impact of the proposed regulations and argued that the current trend in food production/marketing/retail is towards healthier eating.
- Some industry respondents felt the proposals did not accommodate for the circumstances of specific business types (e.g., secure airside retail).
- Some industry respondents felt additional resources would be required for local authorities to effectively enforce the regulations.
- Some industry respondents felt there a level playing field between all producers/manufacturers, suppliers, and retailers is essential, but the current proposals will create imbalances due to exclusions.
- Some industry respondents felt there should be alignment with England in all aspects of the regulations to reduce the administrative, operational, and cost burden for businesses.
- Some non-industry respondents felt OOH businesses should be included within the regulations to maximise the impact of the regulations on public health.
- Some non-industry respondents felt there should not be any exemptions in the regulations. They called variously for the inclusion of smaller businesses (those with fewer than 50 employees) and they disagreed with the granting of exemptions for certain store sizes
- Some non-industry respondents felt the regulations should go further to include all refills and non-pre-packed food.
- Many individuals felt the regulations will negatively impact consumer choice and they felt the government was unduly interfering in people's personal choices.

### **Additional points**

Other, additional points on the consultation were made. These are presented below. Unless stated, these points were shared across respondent groups.

- **Implementation:** Some industry respondents noted that the proposals are complex which they felt would make implementation challenging for businesses. They felt the complexity of the regulations would mean they are subject to legal review or challenge.
- **Cumulative impact of the regulations:** One industry respondent was concerned about the cumulative impact of regulatory changes on small businesses. They suggested that the BRIA (Business and Regulatory Impact

Assessment) provides an invaluable opportunity to build on the work that has already been undertaken to consult with the sector, to further assess the impact of the proposed regulations on qualifying small businesses.

Specifically, they propose the BRIA should involve:

- Engaging with smaller national businesses who are in the process of undertaking changes under the UK Government.
- Undertaking case studies of independent stores to understand the impact and challenges of the proposed changes.
- **Review of the restrictions:** Some non-industry respondents commented that it was important the outcomes and impacts of the regulations be monitored, to assess effectiveness of the policy, identify any unintended consequences and identify/close any loopholes that may exist.

Several, wider points were made not reflected in respondents' comments to the questions in the consultation. These are presented below. Unless stated, these points were shared across respondent groups.

- **Equalities impacts:** Several respondents, typically industry respondents, commented that the price impacts of the proposals will adversely affect consumers on low incomes/deprived areas. One local authority organisation noted that an Equalities Impact Assessment (EIA) for the proposed regulations has not been carried out. They raised the concern that in the most deprived communities, removing price reductions could significantly increase the price of calorie-dense food without subsidising the cost or increasing the availability of healthier options. They therefore recommend that Scottish Government undertakes more research into the impacts of these regulations through an equalities lens and considers which interventions would actively increase the uptake of healthier options in the most deprived communities.

Some respondents (from all groups) said more attention needs to be taken to address societal issues such as underlying societal issues, including addressing poverty and health inequalities that underpin health inequalities.

A few industry and non-industry respondents implied that those most at risk of poor food health (typically people who are time/money-poor, who rely more heavily on price promotions, meal deals, ready meals etc.) would be impacted most by these changes, so it is important that healthy alternatives are made available to this group.

One non-industry response was concerned about the disproportionate effects the current proposals could have on children and young people experiencing poverty. They consider much more needs to be done to understand drivers and causes of food poverty in Scotland. They note the arguments that promotions on food and drink high in fat, sugar and salt, are designed to make people make purchases that would not have made without the promotion. Their research with people on lower incomes in deprived areas contradicts this, it found that families on lower incomes will often meticulously plan their shopping ahead of time and shop around for deals, rather than making spontaneous buys.

One non-industry respondent highlighted the childhood obesity and young people's vulnerability to advertising. They recommended that SG keeps the particular needs of young people in mind when refining the regulations and further developing the policy. For example, they recommended emphasising healthier alternatives in marketing and restrictions on the types of food that can be advertised in physical settings; while they support the immediate implementation of the 9pm TV watershed ban and restrictions on online digital marketing.

- **Tackling obesity and the influence of marketing/promotions and added actions:** Several respondents, typically non-industry respondents, argued that the regulations will support the public to make better food choices, with a view to making a substantive impact on levels of adult and childhood obesity. They argue that marketing promotions are designed to encourage consumers to spend more money on products that they were not intending to buy, not to save people money. They suggest the regulations should focus on removing the unnecessary, discretionary HFSS products, which provide little or no nutritional benefit, and on addressing the drivers of consumption of these products – price, availability, and marketing. Several non-industry respondents also note that the EIA for the proposed regulations has not been carried out. Their view is that the regulations offer real potential benefits to people low incomes and from deprived areas and await the EIA to provide evidence.
- **Impacts on populations that require increased calorie intakes:** Several respondents (non-industry and individuals) raised concerns that the regulations would adversely impact on people who need access to high calorie foods for medical reasons. One non-industry respondent acknowledged these concerns but stated ideally these calories “should come from nutrient rich foods”.
- **Reducing food wastage:** A small number of respondents (industry and non-industry) highlighted that in some cases fat, salt or sugar may be included in products for technical purposes, to protect or preserve the food, enhance shelf life, and so on. They suggest potential implications for shelf-life/food wastage this will need to be taken into consideration if products are reformulated.
- **Focus should be on more pressing issues such as poverty reduction:** Many individuals who were opposed to the measures felt there should be greater focus should be on more pressing issues such as poverty reduction, crime and food production. They considered restricting people's food choices to be less serious than these other social issues.

# Appendices

## Appendix 1 – Tables

The table below shows the number of responses to each question by respondent type. It is worth noting that this is the aggregate response, across both closed and open elements where applicable (e.g., Question 1). Some respondents may have only responded to one element of the question which explains any discrepancies between the figures in this table, and the figures in the subsequent individual question tables.

**Table A: Number of responses to each question by respondent type (Number)**

	Individual	Industry	Non-industry	Total
Question 1	270	29	38	337
Question 2	269	28	38	335
Question 3*	171	22	37	230
Question 4**	268	29	38	335
Question 5	268	30	37	335
Question 6*	205	24	35	264
Question 7	261	29	38	328
Question 8	263	31	39	333
Question 9*	165	28	35	228
Question 10**	265	30	36	331
Question 11	264	23	35	322
Question 12	261	25	35	321
Question 13*	79	19	26	124
Question 14**	256	26	36	318
Question 15	252	25	36	313
Question 16*	72	18	27	117
Question 17	253	28	37	318
Question 18	250	26	35	311
Question 19	250	22	37	309
Question 20	248	27	35	310

<b>Table A (continued)</b>	Individual	Industry	Non-industry	Total
Question 21*	60	19	21	100
Question 22	246	25	36	307
Question 23	245	26	33	304
Question 24*	63	10	16	89
Question 25	256	28	36	320
Question 26	256	28	34	318
Question 27**	258	30	38	326
Question 28*	205	25	39	269

#### Notes

- \* These questions only comprised an open element
- \*\* These questions comprised multiple closed questions and an open element

### Question 1

**Table A1: Do you agree with the proposal to be consistent with the category descriptors set out in Schedule 1 of the UK Government regulations for England? (Consultation question 1)**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
Yes	88	33%	28	100%	28	74%	144	43%
No	165	62%	-	-	8	21%	173	52%
Don't know	15	6%	-	-	2	5%	17	5%
<b>Total</b>	<b>268</b>	<b>100%</b>	<b>28</b>	<b>100%</b>	<b>38</b>	<b>100%</b>	<b>334</b>	<b>100%</b>

There were 334 responses (268 from individuals, 28 from industry and 38 non-industry respondents).

- All (100%) of these industry respondents and three-quarters (74%) of the non-industry respondents said they agreed, while just a third (33%) of the individuals agreed.
- Around a fifth (21%) of the non-industry respondents and nearly two-thirds (62%) of the individuals disagreed with the proposal – as noted in the introduction, however, for individuals this tended to reflect a disagreement with the proposals overall rather than a specific concern with this element of the legislation.

## Question 2

**Table A2: Do the food category descriptors set out in Schedule 1 (and included in Annex D of the consultation paper) sufficiently describe the food categories within scope of regulations? (Consultation question 2)**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
Yes	142	53%	25	93%	25	68%	192	58%
No	83	31%	2	7%	10	27%	95	29%
Don't know	43	16%	-	-	2	5%	45	14%
<b>Total</b>	268	100%	27	100%	37	100%	332	100%

There were 332 responses to this question (268 from individuals, 27 from industry and 37 from non-industry).

- Most (93%) of the industry respondents, two-thirds (68%) of the non-industry respondents and half of the individual (53%) said they agreed with the descriptions.
- Just 7% of industry respondents, together with around a quarter of non-industry (27%) and a third (31%) of individuals, disagreed.

## Question 4

**Table A3: Q4. Is the proposed description of the following sufficiently clear for the purpose of implementation and enforcement: first for Multibuy, second for Extra free? (Consultation question 4)**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
<b>a. Multibuy</b>								
Yes	177	67%	25	96%	34	92%	236	72%
No	74	28%	-	-	1	3%	75	23%
Don't know	13	5%	1	4%	2	5%	16	5%
<b>Total</b>	264	100%	26	100%	37	100%	327	100%
<b>b. Extra free</b>								
Yes	170	65%	26	96%	22	59%	218	67%
No	77	29%	-	-	11	30%	88	27%
Don't know	16	6%	1	4%	4	11%	21	6%
<b>Total</b>	263	100%	27	100%	37	100%	327	100%

There were 327 responses to Question 4. To the multibuy element of this question, 264 responses were from individuals, 26 were from industry respondents, and 37 were from non-industry respondents. To the extra-free element of this question, 263 responses were from individuals, 27 were from industry respondents, and 37 were from non-industry respondents.

- For multi-buy, almost all (96%) of the industry respondents, the vast majority (92%) of the non-industry respondents, and two-thirds (67%) of the individuals said the proposed description was clear.
- Most of these respondents also considered the extra-free sufficiently clear: 96% of industry respondents, 59% of non-industry respondents and 65% of individuals.

## Question 5

**Table A4: Is the proposed timescale of 12 months sufficient to allow price promotions on packaging to be phased out? (Consultation question 5)**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
Yes	63	24%	10	40%	25	68%	98	30%
No	168	63%	10	40%	3	8%	181	55%
Don't know	34	13%	5	20%	9	24%	48	15%
<b>Total</b>	<b>265</b>	<b>100%</b>	<b>25</b>	<b>100%</b>	<b>37</b>	<b>100%</b>	<b>327</b>	<b>100%</b>

There were 327 responses to Question 5 (265 individuals, 25 industry and 37 non-industry).

- Industry respondents to this question were evenly split, with 40% saying the timescale is sufficient and 40% saying it isn't (with 20% unsure).
- Non-industry respondents tended to say the timescale is adequate (68%), with 8% saying the timescale is insufficient and around a quarter (24%) unsure.
- Individuals tended to say the timescale was not sufficient (63%) with a quarter (24%) saying the timescale was sufficient and 13% unsure.

## Question 7

**Table A5: If meal deals are included within scope of the policy, which would be your preferred option for targeting them? (Consultation question 7)**

There are three options:

**Option 1 - Meal deals cannot contain HFSS targeted foods.**

**Option 2 - Meal deals can contain up to one HFSS targeted food.**

**Option 3 - Meal deals cannot contain targeted HFSS discretionary foods.**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
Option 1	30	16%	2	13%	17	52%	49	21%
Option 2	129	70%	12	75%	2	6%	143	61%
Option 3	25	14%	1	6%	14	42%	40	17%
Don't know	-	-	1	6%	-	-	1	0%
<b>Total</b>	<b>184</b>	<b>100%</b>	<b>16</b>	<b>100%</b>	<b>33</b>	<b>100%</b>	<b>233</b>	<b>100%</b>

There were 233 responses to Question 7 (184 individuals, 16 industry and 33 non-industry).

- Of those that selected one of the options, Option 2 (meal deals can contain up to one HFSS targeted food) was the preferred option for both the industry respondents (selected by 75%) and individuals (selected by 70%). Less than one in 10 (6%) of non-industry respondents selected this option.
- Non-industry respondents were fairly split between Option 1 (meal deals cannot contain HFSS targeted foods), selected by 52%, and Option 3 (meal deals cannot contain targeted HFSS discretionary foods), selected by 42%. Neither of these options were popular with industry respondents: 6% selected Option 3 and 13% selected Option 1 (one and two respondents respectively).

## Question 8

**Table A6: If temporary price reductions (TPRs) are included within scope of the policy, is the proposed broad definition sufficient for implementation and enforcement?  
(Consultation question 8)**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
Yes	88	34%	6	23%	27	77%	121	38%
No	114	45%	17	65%	1	3%	132	42%
Don't know	54	21%	3	12%	7	20%	64	20%
<b>Total</b>	<b>256</b>	<b>100%</b>	<b>26</b>	<b>100%</b>	<b>35</b>	<b>100%</b>	<b>317</b>	<b>100%</b>

There were 317 responses to Question 8 (256 individuals, 26 industry and 35 non-industry).

- Industry respondents generally considered the definition was not sufficient (65% vs 23% who thought it was).
- Most (77%) non-industry respondents said they thought the definition was sufficient, with just 3% saying it wasn't.
- Individuals were more evenly split: 45% saying it wasn't and 34% saying it was.

## Question 10

**Table A7: Are the proposed descriptions of the following prominent in-store locations sufficiently clear for implementation and enforcement: checkouts, end of aisle, store entrances, covered external areas and free-standing displays? (Consultation question 10)**

	Individual		Industry		Non-industry		Total	
<b>Checkout</b>	No.	%	No.	%	No.	%	No.	%
Yes	157	62%	20	83%	22	61%	199	63%
No	77	30%	2	8%	11	31%	90	29%
Don't know	21	8%	2	8%	3	8%	26	8%
<b>Total</b>	<b>255</b>	<b>100%</b>	<b>24</b>	<b>100%</b>	<b>36</b>	<b>100%</b>	<b>315</b>	<b>100%</b>

  

	Individual		Industry		Non-industry		Total	
<b>End of aisle</b>	No.	%	No.	%	No.	%	No.	%
Yes	152	61%	15	65%	29	81%	196	63%
No	78	31%	4	17%	3	8%	85	27%
Don't know	21	8%	4	17%	4	11%	29	9%
<b>Total</b>	<b>251</b>	<b>100%</b>	<b>23</b>	<b>100%</b>	<b>36</b>	<b>100%</b>	<b>310</b>	<b>100%</b>

  

	Individual		Industry		Non-industry		Total	
<b>Store entrances</b>	No.	%	No.	%	No.	%	No.	%
Yes	152	60%	16	70%	27	77%	195	63%
No	78	31%	4	17%	4	11%	86	28%
Don't know	23	9%	3	13%	4	11%	30	10%
<b>Total</b>	<b>253</b>	<b>100%</b>	<b>23</b>	<b>100%</b>	<b>35</b>	<b>100%</b>	<b>311</b>	<b>100%</b>

  

	Individual		Industry		Non-industry		Total	
<b>Covered external area</b>	No.	%	No.	%	No.	%	No.	%
Yes	147	59%	20	87%	22	63%	189	61%
No	78	31%	1	4%	2	6%	81	26%
Don't know	25	10%	2	9%	11	31%	38	12%
<b>Total</b>	<b>250</b>	<b>100%</b>	<b>23</b>	<b>100%</b>	<b>35</b>	<b>100%</b>	<b>308</b>	<b>100%</b>

Table A7 continued	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
<b>Free standing displays</b>								
Yes	152	60%	5	21%	29	85%	186	60%
No	77	31%	16	67%	2	6%	95	31%
Don't know	23	9%	3	13%	6	3%	29	9%
<b>Total</b>	<b>252</b>	<b>100%</b>	<b>24</b>	<b>100%</b>	<b>34</b>	<b>100%</b>	<b>310</b>	<b>100%</b>

There were between 308 and 315 responses to each of the parts of Question 10 (from between 250 and 255 individuals, 23 and 24 industry respondents, and 34 and 36 non-industry respondents). Generally, respondents in all three categories considered the descriptions to be sufficiently clear.

- Industry respondents were especially likely to consider the descriptions for checkouts (83%) and covered external areas (87%) to be clear. Notably just one fifth (21%) considered the description of free-standing displays to be clear, while two-thirds (67%) said it was not clear.
- At least three-fifths (>60%) of non-industry respondents said each of the location descriptions were clear, this rose to four-fifths for those relating to end of aisle (81%) and free-standing displays (85%).
- Views from individuals were broadly constant across all the locations: around three-fifths (c.60%) said they felt the descriptions were clear and three in ten (c.30%) said they were not.

## Question 11

**Table A8: Do you agree with the proposed approach to applying store entrance criteria to dedicated food areas within stores? (Consultation question 11)**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
Yes	56	21%	9	45%	29	85%	94	30%
No	176	67%	4	20%	1	3%	181	57%
Don't know	29	11%	7	35%	4	12%	40	13%
<b>Total</b>	<b>261</b>	<b>100%</b>	<b>20</b>	<b>100%</b>	<b>34</b>	<b>100%</b>	<b>315</b>	<b>100%</b>

There were 315 responses to Question 11 (261 individuals, 20 industry and 34 non-industry).

- Just under half (45%) of industry respondents agreed with the proposed approach, while a third (35%) said they didn't know and a fifth (20%) did not agree.
- Most (85%) non-industry respondents said they agreed with the approach, while around one in ten (12%) didn't know.
- Most (67%) individuals did not agree, while around a fifth (21%) agreed and around one in ten (11%) didn't know.

## Question 12

**Table A9: Do you agree with the proposed description for relevant floor area? Consultation question 12)**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
Yes	70	27%	12	63%	30	86%	112	36%
No	149	58%	5	26%	2	6%	156	50%
Don't know	40	15%	2	11%	3	9%	45	14%
<b>Total</b>	<b>259</b>	<b>100%</b>	<b>19</b>	<b>100%</b>	<b>35</b>	<b>100%</b>	<b>313</b>	<b>100%</b>

There were 313 responses to Question 12 (259 individuals, 19 industry and 35 non-industry).

- Around two-thirds (63%) of these industry respondents agreed with the proposed description, while a quarter (26%) said they didn't agree and a tenth (11%) didn't know.
- Most (86%) non-industry respondents also said they agreed with the description, while around one in ten (9%) didn't know.
- Conversely, most (58%) individuals did not agree with the description, while around a quarter (27%) agreed and 15% didn't know.

## Question 14

**Table A10: Are the proposed descriptions of the following online equivalent in-store locations sufficiently clear for implementation and enforcement: covering home page, favourites page, pages not opened intentionally by the consumer and checkout pages (Consultation question 14)**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
<b>a. Home page</b>								
Yes	137	55%	19	86%	33	94%	189	61%
No	81	32%	-	-	-	-	81	26%
Don't know	33	13%	3	14%	2	6%	38	12%
<b>Total</b>	<b>251</b>	<b>100%</b>	<b>22</b>	<b>100%</b>	<b>35</b>	<b>100%</b>	<b>308</b>	<b>100%</b>
<b>b. Favourites page</b>								
Yes	128	52%	18	82%	24	67%	170	56%
No	88	35%	1	5%	10	28%	99	32%
Don't know	32	13%	3	14%	2	6%	37	12%
<b>Total</b>	<b>248</b>	<b>100%</b>	<b>22</b>	<b>100%</b>	<b>36</b>	<b>100%</b>	<b>306</b>	<b>100%</b>
<b>c. Pages not opened by consumer</b>								
Yes	127	51%	19	86%	33	94%	179	58%
No	84	34%	-	-	-	-	84	27%
Don't know	38	15%	3	14%	2	6%	43	14%
<b>Total</b>	<b>249</b>	<b>100%</b>	<b>22</b>	<b>100%</b>	<b>35</b>	<b>100%</b>	<b>306</b>	<b>100%</b>

**Table A10  
continued**

<b>d. Checkout pages</b>	No.	%	No.	%	No.	%	No.	%
Yes	131	53%	18	82%	32	91%	181	59%
No	83	33%	1	5%	1	3%	85	28%
Don't know	34	14%	3	14%	2	6%	39	13%
<b>Total</b>	<b>248</b>	<b>100%</b>	<b>22</b>	<b>100%</b>	<b>35</b>	<b>100%</b>	<b>305</b>	<b>100%</b>

There were between 305-308 responses to the different elements of Question 14 (248-251 individuals, 22 industry and 35-36 non-industry). Generally, the respondents from all three categories considered the descriptions sufficiently clear, although as indicated below, the responses from individuals were more varied.

- Most (82%-86%) of these industry respondents considered the descriptions for online locations clear. Around one tenth (14%) said they didn't know.
- Almost all (91%-94%) of non-industry respondents said the online location descriptions were clear. The exception to this was for favourites pages – just two-thirds (67%) said the description was sufficiently clear.
- Around half (51%-55%) of individuals agreed that the online location descriptions were clear, while around a third (32%-35%) said they were not.

## Question 15

**Table A11: Are there any other equivalent online locations that should be within scope of the policy? (Consultation question 15)**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
Yes	12	5%	-	-	24	67%	36	12%
No	163	66%	16	76%	2	6%	181	60%
Don't know	71	29%	5	24%	10	28%	86	28%
<b>Total</b>	<b>246</b>	<b>100%</b>	<b>21</b>	<b>100%</b>	<b>36</b>	<b>100%</b>	<b>303</b>	<b>100%</b>

There were 303 responses to Question 15 (246 individuals, 21 industry and 36 non-industry).

- None of the industry respondents said there were other online locations that should be included.

- Two-thirds (67%) of the non-industry respondents and one in twenty individuals (5%) thought other online locations should be included (a total of 36 respondents).

### Question 17

**Table A12: Are the types of business within the scope of the policy sufficiently described for the purpose of implementation and enforcement? (Consultation question 17)**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
Yes	105	42%	9	36%	25	69%	139	45%
No	91	36%	12	48%	5	14%	108	35%
Don't know	55	22%	4	16%	6	17%	65	21%
<b>Total</b>	<b>251</b>	<b>100%</b>	<b>25</b>	<b>100%</b>	<b>36</b>	<b>100%</b>	<b>312</b>	<b>100%</b>

There were 312 responses to the closed question element of Question 17 (251 individuals, 25 industry and 36 non-industry).

- Around one-third (36%) of these industry respondents said they agreed with the proposed description, while nearly half (48%) said they didn't agree and 16% didn't know.
- Two-thirds (69%) of non-industry respondents agreed, while 14% said they didn't, and a similar proportion (17%) didn't know.
- Views of individuals were mixed: around two-fifths (42%) agreed, around a third (36%) did not and a fifth (22%) didn't know.

### Question 18

**Table A13: Is the proposed extension of restrictions to online sales, including through online aggregator sites and apps, sufficiently described for the purpose of implementation and enforcement? (Consultation question 18)**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
Yes	100	41%	9	45%	22	65%	131	44%
No	86	35%	3	15%	4	12%	93	31%
Don't know	60	24%	8	40%	8	24%	76	25%
<b>Total</b>	<b>246</b>	<b>100%</b>	<b>20</b>	<b>100%</b>	<b>34</b>	<b>100%</b>	<b>300</b>	<b>100%</b>

There were 300 responses to the closed question element of Question 18 (246 individuals, 20 industry and 34 non-industry).

- Just under half (45%) of these industry respondents agreed the proposed extension of restrictions is sufficiently described, 15% disagreed, and two-fifths (40%) didn't know.
- Most (65%) non-industry respondents agreed, one-tenth (12%) disagreed, and a quarter (24%) didn't know.
- Views from individuals were mixed: two-fifths (41%) agreed, around a third (35%) disagreed, and a quarter (25%) didn't know.

## Question 19

**Table A14: Are the arrangements for franchises and symbol groups sufficiently described for the purpose of implementation and enforcement? (Consultation question 19)**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
Yes	96	39%	6	32%	28	78%	130	43%
No	90	37%	7	37%	4	11%	101	34%
Don't know	60	24%	6	32%	4	11%	70	23%
<b>Total</b>	<b>246</b>	<b>100%</b>	<b>19</b>	<b>100%</b>	<b>36</b>	<b>100%</b>	<b>301</b>	<b>100%</b>

There were 301 responses to the closed question element of Question 19 (246 individuals, 19 industry and 36 non-industry).

- Views from these industry respondents were mixed: a third (32%) agreed, a third (37%) disagreed, and a third (32%) didn't know.
- Most (78%) non-industry respondents agreed, while just one-tenth (11%) disagreed, and a further tenth (11%) didn't know.
- Views from individuals were also mixed: two-fifths (39%) agreed, a third (37%) disagreed, and a quarter (24%) didn't know.

## Question 20

**Table A15: Do you foresee any impacts on the ability of businesses to trade either within the UK market or internationally from any of the proposed measures? (Consultation question 20)**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
Yes	140	60%	14	56%	6	18%	160	55%
No	42	18%	6	24%	12	36%	60	20%
Don't know	53	23%	5	20%	15	45%	73	25%
<b>Total</b>	<b>235</b>	<b>100%</b>	<b>25</b>	<b>100%</b>	<b>33</b>	<b>100%</b>	<b>293</b>	<b>100%</b>

There were 293 responses to the closed question element of Question 20 (235 individuals, 25 industry and 33 non-industry).

- Just over half (56%) of these industry respondents said yes, while a quarter (24%) said no, and a fifth (20%) said they didn't know.
- Few (18%) non-industry respondents said yes, around a third (36%) said no, and nearly half (45%) didn't know.
- Views from individuals were similar to those of industry: most (60%) said yes, around a fifth (18%) said no, and a quarter (23%) didn't know.

## Question 22

**Table A16: Are the proposed exemptions from location restrictions based on business type clear and sufficiently defined to enable implementation and enforcement? (Consultation question 22)**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
Yes	104	43%	11	48%	24	67%	139	46%
No	89	36%	8	35%	7	19%	104	34%
Don't know	51	21%	4	17%	5	14%	60	20%
<b>Total</b>	<b>244</b>	<b>100%</b>	<b>23</b>	<b>100%</b>	<b>36</b>	<b>100%</b>	<b>303</b>	<b>100%</b>

There were 303 responses to the closed element of Question 22 (244 individuals, 23 industry and 36 non-industry).

- Just under half (48%) of these industry respondents agreed the proposed exemptions based on business type are clear and sufficiently defined, a third (35%) disagreed, and a fifth (17%) didn't know
- Two-thirds (67%) of non-industry respondents agreed, around a fifth (19%) disagreed, and 14% didn't know.
- Views from individuals were mixed: two-fifths (43%) agreed, around a third (36%) disagreed, and a fifth (21%) didn't know.

### Question 23

**Table A17: Are the exemptions from location restrictions based on individual store relevant floor area clear and sufficiently defined to enable implementation and enforcement?**

**(Consultation question 23)**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
Yes	99	41%	14	61%	22	71%	135	45%
No	92	38%	5	22%	4	13%	101	34%
Don't know	52	21%	4	17%	5	16%	61	21%
<b>Total</b>	<b>243</b>	<b>100%</b>	<b>23</b>	<b>100%</b>	<b>31</b>	<b>100%</b>	<b>297</b>	<b>100%</b>

There were 297 responses to the closed element of Question 23 (243 individuals, 23 industry and 31 non-industry).

- Three-fifths (61%) of these industry respondents agreed the proposed exemptions based on individual store relevant floor area are clear and sufficiently defined, a fifth (22%) disagreed, and a fifth (17%) didn't know
- Just over two-thirds (71%) of non-industry respondents agreed, 13% disagreed, and 16% didn't know
- Views from individuals were mixed: two-fifths (41%) agreed, a similar proportion (38%) disagreed, and a fifth (21%) didn't know.

## Question 25

**Table A18: Do you agree with the proposed use of administrative sanctions for enforcement of the policy? (Consultation**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
Yes	42	16%	15	60%	22	67%	79	25%
No	198	78%	1	4%	4	12%	203	65%
Don't know	15	6%	9	36%	7	21%	31	10%
<b>Total</b>	<b>255</b>	<b>100%</b>	<b>25</b>	<b>100%</b>	<b>33</b>	<b>100%</b>	<b>313</b>	<b>100%</b>

There were 313 responses to the closed element of Question 25 (255 individuals, 25 industry and 33 non-industry).

- Three-fifths (60%) of these industry respondents agreed with the proposed use of administrative sanctions for enforcement of the policy, while 4% disagreed, and over a third (36%) didn't know.
- Two-thirds (67%) of non-industry respondents agreed, a tenth (12%) disagreed and two-fifths (21%) didn't know.
- Most (78%) individuals disagreed, 16% agreed and 6% said they didn't know.

## Question 26

**Table A19: Do you agree with the maximum penalties proposed for the offences in relation to enforcement of the policy? (Consultation question 26)**

	Individual		Industry		Non-industry		Total	
	No.	%	No.	%	No.	%	No.	%
Yes	28	11%	15	58%	17	53%	60	19%
No	205	80%	-		4	13%	209	67%
Don't know	22	9%	11	42%	11	34%	44	14%
<b>Total</b>	<b>255</b>	<b>100%</b>	<b>26</b>	<b>100%</b>	<b>32</b>	<b>100%</b>	<b>313</b>	<b>100%</b>

There were 313 responses to the closed element of Question 26 (255 individuals, 26 industry and 32 non-industry).

- Three-fifths (58%) of these industry respondents agreed with the maximum penalties proposed for the offences in relation to enforcement of the policy, none disagreed, and two-fifths (42%) didn't know.

- Just over half (53%) of non-industry respondents agreed, a tenth (13%) disagreed, and a third (34%) didn't know.
- Most (80%) individuals disagreed, a tenth (11%) agreed and a tenth (9%) didn't know.

## Question 27

**Table A20: Is the proposed 12 month period following the introduction of regulations sufficient to prepare for implementation and enforcement? (Consultation question 27)**

	Individual		Industry		Non-industry		Total	
<b>Implementation</b>	No.	%	No.	%	No.	%	No.	%
Yes	56	22%	5	19%	25	68%	86	27%
No	176	68%	16	59%	5	14%	197	61%
Don't know	25	10%	6	22%	7	19%	38	12%
<b>Total</b>	<b>257</b>	<b>100%</b>	<b>27</b>	<b>100%</b>	<b>37</b>	<b>100%</b>	<b>321</b>	<b>100%</b>
<b>Enforcement</b>	No.	%	No.	%	No.	%	No.	%
Yes	44	17%	5	21%	22	61%	71	23%
No	180	71%	9	38%	5	14%	194	62%
Don't know	30	12%	10	42%	9	25%	49	16%
<b>Total</b>	<b>254</b>	<b>100%</b>	<b>24</b>	<b>100%</b>	<b>36</b>	<b>100%</b>	<b>314</b>	<b>100%</b>

There were 321 responses to the closed element of this question on implementation (257 from individuals, 27 from industry and 37 from non-industry) and there were 314 responses for the enforcement element (254 from individuals, 24 from industry and 36 from non-industry).

- Just a fifth of industry respondents considered the time to prepare for implementation and enforcement sufficient (19% and 21%, respectively). Most (59%) industry respondents said that there is not enough time to prepare for implementation, while around a fifth (22%) said don't know. Views were more mixed with respect to enforcement: two-fifths (38%) said that there is not enough time to prepare for enforcement, while two-fifths (42%) said don't know.
- Non-industry respondents tended to agree that there is time to prepare: 68% say there is time to prepare for implementation, and 61% regarding enforcement. In both cases, 14% said there is insufficient time, and around a fifth (19%) and a quarter (25%) respectively said they were unsure.
- Individuals tended to say there was not enough time to prepare: 68% with respect to implementation and 71% regarding enforcement.

## Appendix 2 – List of organisations that responded to the consultation

Organisation	Organisation type (granular)	Organisation type (broad)
ACS (Association of Convenience Stores)	Industry Representative Bodies	Industry
Ags airports ltd	Industry Representative Bodies	Industry
AVA: The Vending & Automated Retail Association	Industry Representative Bodies	Industry
British Soft Drinks Association	Industry Representative Bodies	Industry
Federation of Independent Retailers (aka NFRN)	Industry Representative Bodies	Industry
Federation of Small Businesses	Industry Representative Bodies	Industry
Food and Drink Federation	Industry Representative Bodies	Industry
Scotland Food and Drink	Industry Representative Bodies	Industry
Scottish Chambers of Commerce	Industry Representative Bodies	Industry
Scottish Grocers Federation	Industry Representative Bodies	Industry
Scottish Retail Consortium	Industry Representative Bodies	Industry

The Scottish Wholesale Association	Industry Representative Bodies	Industry
UK Hospitality Scotland	Industry Representative Bodies	Industry
UK Potato Processors' Association	Industry Representative Bodies	Industry
UK Travel Retail Forum	Industry Representative Bodies	Industry
Bidfood UK	Manufacturer	Industry
Coca-Cola Europacific Partners	Manufacturer	Industry
Dairy UK	Manufacturer	Industry
Danone UK & Ireland	Manufacturer	Industry
Kellanova	Manufacturer	Industry
Mars Wrigley	Manufacturer	Industry
Mondelez International	Manufacturer	Industry
Nestle UK Ltd.	Manufacturer	Industry
PepsiCo UK & Ireland	Manufacturer	Industry
Asda	Retailer	Industry
Boots	Retailer	Industry
Scottish Midland Co-operative Society	Retailer	Industry
Marks and Spencer	Retailer	Industry
Sainsbury's	Retailer	Industry
Tesco PLC	Retailer	Industry
The Co-Operative Group	Retailer	Industry
Waitrose & Partners	Retailer	Industry
WDFG UK Ltd	Retailer	Industry
Costa Coffee	Out of Home	Industry
Deliveroo	Out of Home	Industry

Just Eat	Out of Home	Industry
Tayside Contracts	Out of Home	Industry
Community food and health team NHS Tayside	Public sector	Non-industry
COSLA (Convention of Scottish Local Authorities)	Public sector	Non-industry
Glasgow City Council	Public sector	Non-industry
NHS Ayrshire & Arran	Public sector	Non-industry
NHS Dumfries and Galloway	Public sector	Non-industry
NHS Grampian	Public sector	Non-industry
NHS Greater Glasgow & Clyde	Public sector	Non-industry
North Ayrshire Council	Public sector	Non-industry
Perth and Kinross Council	Public sector	Non-industry
Public Health Nutrition Group, Public Health Scotland c/o ScotPHN	Public sector	Non-industry
Public Health Scotland	Public sector	Non-industry
Renfrewshire Council Environment, Housing and Infrastructure	Public sector	Non-industry
Scottish Food Enforcement Liaison Committee (SFELC)	Public sector	Non-industry
SGF Healthy Living Programme	Public sector	Non-industry
Society of Chief Officers of Trading Standards in Scotland (SCOTSS)	Public sector	Non-industry
South Lanarkshire Council	Public sector	Non-industry
The Highland Council	Public sector	Non-industry
West Lothian Council	Public sector	Non-industry
Alcohol Focus Scotland	Third sector	Non-industry
BHF Scotland	Third sector	Non-industry
Cancer Research UK	Third sector	Non-industry
Chest Heart and Stroke Scotland	Third sector	Non-industry
NCD Alliance Scotland	Third sector	Non-industry
Diabetes Scotland	Third sector	Non-industry

Edinburgh Community Food	Third sector	Non-industry
Nourish Scotland	Third sector	Non-industry
Obesity Action Scotland	Third sector	Non-industry
Scottish Obesity Alliance	Third sector	Non-industry
The ALLIANCE	Third sector	Non-industry
The Food Foundation	Third sector	Non-industry
UK Health Alliance on Climate Change	Third sector	Non-industry
Advertising Standards Authority	Other	Non-industry
Alloa Spiritualist Church	Other	Non-industry
British Dental Association	Other	Non-industry
British Society of Lifestyle Medicine	Other	Non-industry
Centre for Food Policy, City, University of London; MRC Lifecourse Epidemiology Centre, University of Southampton; Royal Holloway, University of London; Institute for Fiscal Studies	Other	Non-industry
Global Academy of Agriculture and Food Systems	Other	Non-industry
Institute of Food Science and Technology	Other	Non-industry
Institute for Social Marketing and Health, University of Stirling	Other	Non-industry
MRC/CSO Social and Public Health Sciences Unit, University of Glasgow	Other	Non-industry
Nesta	Other	Non-industry
Royal College of Paediatrics and Child Health Scotland	Other	Non-industry
The British Psychological Society	Other	Non-industry
The Children and Young People's Commissioner Scotland	Other	Non-industry
The Royal College of Physicians of Edinburgh.	Other	Non-industry
The Royal College of Surgeons of Edinburgh Faculty of Dental Surgery	Other	Non-industry



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