

Consultation on Restricting Promotions of Food and Drink High in Fat, Sugar or Salt

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Scottish Government
Riaghaltas na h-Alba
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Ministerial foreword



Poor diet and excess weight remain a significant public health challenge in Scotland. The coronavirus (COVID-19) pandemic has further underlined the associated health risks with poor diet and has emphasised pre-existing health inequalities. The importance of public health has never been clearer as is the continued need to better support people to have a healthy diet and weight.

I have a vision of a Scotland where everyone eats well and we all have a healthy weight. But achieving this is not straightforward. There is no single step nor quick fix that can address our dietary challenges. We need a comprehensive range of actions to deliver significant and lasting change.

The food environment is a key factor which influences the daily food choices we make, both in and out of home. Promotion of less healthy food and drink can significantly influence our dietary choices. Unfortunately the food environment remains skewed towards them. This encourages us to purchase more than we need and to over-consume. It is not surprising we continue to struggle as a nation to meet our dietary goals. We consume too many calories and too much fat, sugar and salt and not enough fruit, vegetables and fibre.

In 2018, we consulted on restricting the promotion and marketing of food and drink that has little or no contribution to a healthy diet, where they are sold to the public, to help us consider legislation. We paused our plans because of the pandemic, recognising the need to understand, as far as possible, the impact of these unprecedented circumstances on business and consumer behaviour.

As we now look forward, we committed in our [2021/22 Programme for Government](#) to bring forward legislation during this Parliament to restrict '*unhealthier food and drink promotions*'.

I am pleased to launch this consultation which seeks further views on our proposals, and takes into account the outcome of the previous consultation. This further consultation provides a chance to hear views on how best to restrict food and drink promotions. This includes how we should take into account changes over the past few years in meeting our aim to reduce the public health harm caused by over consumption of food and drink high in fat, sugar or salt.

We consult to make better policy. Your views will help us to ensure that our policy is proportionate, and likely to deliver beneficial outcomes for public health. Your responses will inform development of legislation and impact assessments. I would like to thank you in advance for your contribution.

Maree Todd, MSP
Minister for Public Health, Women's Health and Sport

Executive summary

Introduction

1. In [2021-22 Programme for Government](#), the Scottish Government committed to bring forward legislation during this Parliament to restrict '*unhealthier food and drink promotions*'.

2. The primary aim of the policy is to reduce the public health harms associated with the 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. We are also aware of the need to reduce diet-related health inequalities, including in relation to socioeconomic disadvantage, and for the policy to support our aim to halve childhood obesity by 2030.

Foods that would be subject to restrictions

3. We are seeking views on including the following food¹ categories within scope of promotions restrictions:

Option 1: Discretionary foods only

- confectionery
- sweet biscuits
- crisps
- savoury snacks (for example, cereal snacks, popcorn, corn snacks)
- cakes
- pastries (for example, Danish pastries, croissants, pain au chocolats, tarts)
- puddings (for example, fruit puddings, sponge puddings, sticky toffee pudding)
- soft drinks with added sugar (this includes soft drinks such as cola or lemonade, as well as juice or milk based drinks with added sugar²).

Option 2: Discretionary foods + ice cream and dairy desserts

- All categories in Option 1 above
- Ice cream and dairy desserts.

Option 3: Categories that are of most concern to childhood obesity

This option would be consistent with those set out in the UK Government regulations for England.

- All categories in Options 1 and 2 above
- Breakfast cereals
- Sweetened yoghurt and fromage frais
- Pizza
- Ready meals
- Roast potatoes, chips and similar potato products.

¹ Food(s) in this consultation refers to food and drink.

² As per [Guidance on what drinks are liable/exempt for the Soft Drink Industry Levy](#).

Option 4: All categories included in the UK-wide reformulation programmes

- All categories in Options 1, 2 and 3 above
- Garlic bread
- Pies and quiches
- Bread with additions
- Savoury biscuits crackers and crispbreads
- Cooking sauces and pastes
- Table sauces and dressings
- Processed meat product
- Pasta /rice/ noodles with added ingredients and flavours
- Prepared dips and composite salads as meal accompaniments
- Egg products/dishes
- Sweet spreads.

4. We propose to apply the 2004/05 Nutrition Profiling Model³ (NPM), which is a scoring model developed to identify HFSS products, to all targeted food categories. Foods identified as non-HFSS within targeted food categories would not be subject to restriction.

5. We propose that only pre-packed foods within targeted food categories would be within scope of the restrictions as nutrition and ingredients information is more readily available to support calculation of a NPM score. For unlimited refills for a fixed charge, non-pre-packed soft drinks with added sugar would also be within scope of the policy.

Price promotions

6. We propose to restrict the following types of price promotions on targeted foods⁴:

i) Multi-buys of pre-packed foods, including:

- “X for Y”, (e.g. “buy one get one free”, “extra free”, and “3 for 2” offers)
- “Y for £X” (e.g. “3 for £2”, meal deals);

ii) Unlimited refills for a fixed charge on soft drinks with added sugar that are HFSS or “less healthy” (as defined by the NPM), whether pre-packed or non-pre-packed.

³ The nutrient profiling model was developed by the Food Standards Agency (FSA) in 2004- 2005 to provide Ofcom, the broadcast regulator, with a tool to differentiate foods on the basis of their nutritional composition, in the context of television advertising foods to children.

⁴ Targeted foods – Food and drink products that will be subject to promotions restrictions in Scotland. Our proposed targeted foods are set out in section 1 of this consultation paper.

Location promotions

7. We propose to restrict the location of targeted foods in prominent places in physical premises where they are sold to the public. This would include following locations:

- checkout areas, including self service
- end of aisle
- front of store, including store entrances and covered outside areas connected to the main shopping area
- island/ bin displays⁵.

8. We also propose that these restrictions would apply to the equivalent locations online, for example home and checkout pages.

9. The restrictions would apply to pre-packed targeted foods. Promotions of non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge would also be within scope of the restrictions.

10. We propose to be consistent in our definition of locations, where appropriate to do so, with those set out in UK Government regulations and Welsh Government consultation proposals.

Places

11. We propose to apply the restrictions to any place where pre-packed targeted foods, and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge, are sold to the public in the course of business. This would include:

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

12. We propose that the restrictions should also apply to online sales of pre-packed targeted foods from retail, out of home (OOH), wholesale outlets and other outlets selling targeted foods. This would include home delivery services such as third party apps that facilitate the order of food from a restaurant or takeaway to a consumer as well as online grocery shopping sites.

⁵The prominent display of products away from other products to increase their visibility. Island/bin displays may be at end of aisles, in the middle of a store, or in other highly noticeable places.

13. The restrictions would **not** apply:
- to other wholesale outlets (where sales are only to trade), because any promotion or marketing would not directly encourage the public to purchase the foods
 - where sales are not in the course of business, for example charitable food and bake sales.

Exemptions

14. We propose, as a minimum, that specialist businesses with a limited product range, such as chocolatiers and sweet shops, would be exempt from location restrictions.

15. Restrictions on price promotions would still apply to specialist businesses.

Enforcement and implementation

16. We propose to give local authorities the role of enforcing the proposed policy.

17. We propose to give Ministers powers to issue guidance to local authorities to support effective enforcement of the proposed policy.

18. We propose to develop materials for industry to support effective implementation.

Legislative framework

19. In giving consideration to legislation needed, we propose to aim to ensure that there is sufficient flexibility to future-proof public health policy to develop over time to improve diet and levels of healthy weight.

Monitoring and evaluation

20. It is proposed that the Scottish Government and Food Standards Scotland would review and monitor the implementation and impacts of the policy to ensure it produces the intended outcomes.

Introduction

21. As we set out in our [2018 Diet and Healthy Weight Delivery Plan](#) (the Delivery Plan), to protect public health, we want to create a Scotland where everyone eats well and has a healthy weight.

22. Approximately two out of three adults in Scotland [are living with overweight or obesity](#). In 2019, 70% of adults in the most deprived areas of Scotland were living with overweight or obesity, compared to 60% of adults in the least [deprived areas](#). A [higher prevalence of excess weight⁶ is also seen in some minority ethnic groups](#). [Associated health risks](#) occur at a lower levels of excess weight in these groups compared with other groups. There is also a [higher prevalence of children at risk of overweight or obesity in the most deprived areas](#) (35%) compared to in the least deprived areas (22%).

23. As a nation we have [consistently not met our dietary goals](#) since they were set in 1996. These [goals](#) describe, in nutritional terms, the diet that will improve and support the health of the Scottish population. Our [diet remains too high in calories, fat, sugar and salt](#) which can have serious consequences for our health.

24. To protect public health, we need change that supports healthier eating and healthy weight. In our Delivery Plan, we outlined five key outcomes to help realise our vision:

- 1) Children have the best start in life – they eat well and have a healthy weight; reaffirmed in [Programme for Government 2021/22](#), this includes aiming to halve childhood obesity by 2030
- 2) The food environment supports healthier choices
- 3) People have access to effective weight management services
- 4) Leaders across all sectors promote healthy diet and weight
- 5) Diet-related health inequalities are reduced.

25. As part of a wide range of action to improve diet and ensure everyone is a healthy weight. This consultation focuses on restricting promotions of [unhealthier food and drink at the point of purchase](#). This is when people make their decisions about what and how much to buy and to consume, for themselves as well as for their families. In particular, it seeks to reduce the purchase (and consumption) of food and drink that is high in fat, sugar or salt, given the public health harm associated with their overconsumption. We anticipate such action will help deliver outcomes 1, 2 and 5 of our Delivery Plan.

Previous consultations

26. In 2018/19, following a commitment in our Delivery Plan, we publically [consulted on proposals to restrict the promotion and marketing of targeted food and drink \('food'\) high in fat, sugar or salt \(HFSS\)](#) where they are sold to the public. The consultation ran from 2 October 2018 to 9 January 2019. [An analysis of the consultation](#) was published in September 2019. A previous [consultation in 2017/18](#)

⁶ A definition of this term is provided in the glossary of terms at Annex C.

included questions on restricting promotions. [An analysis](#) of this was published in April 2018.

27. There was general support in the 2018/19 consultation for the overarching aim of the policy. But views on the specific proposals set out in the consultation were more mixed:

- Non-industry respondents were generally supportive of the proposals and considered them necessary in light of the scale of the public health challenge. Some suggested that the proposals should go further and target a wider range of foods and promotion types and limit exemptions.
- Industry respondents generally disagreed with the approach or did not state a specific view. Key concerns raised included: the potential negative impact on businesses generally and specifically on smaller and specialist businesses; and concern about conflict with and the undermining of existing approaches, such as reformulation.
- Individuals' views were mixed but supportive overall.

Wider context

28. There have been significant changes since our 2018/19 consultation. A Bill on Restricting Foods Promotions was due to be introduced during the last session (session 5, 2020/21) of the Scottish Parliament. [The Bill was paused](#) recognising the impact of the COVID-19 pandemic on the food and drink industries and on consumer behaviour. Our exit from the European Union remains an ongoing consideration for the food and drink industry. Further, the current increasing cost of living is impacting on consumers and businesses. The COVID-19 pandemic has also exacerbated existing diet related health inequalities^{7 8}.

29. The UK Government put in place regulations to restrict the promotion of targeted HFSS foods by location and volume price in England in [The Food \(Promotion and Placement\) \(England\) Regulations 2021 \(SI 2021/1368\)](#). Made on 2 December 2021, the regulations are due to come into force on 1 October 2022. However, the UK Government has [announced](#) that restrictions on volume price promotions will be delayed by 12 months. This means that only the restrictions on the location of targeted HFSS foods will come into force as planned on 1 October 2022. (The UK Government also noted that new regulations will be introduced to delay the restriction of volume price promotions.)

30. On 9 June, the Welsh Government published its [Healthy Food Environment consultation](#). The promotions proposals contained in this wider consultation include restricting value promotions, including multi-buy, temporary price reductions and meal deals, and location promotions, including at checkouts and end of aisles, on HFSS foods. The Wales consultation closes on 1 September.

31. In September 2021, we published our [Out of Home Action Plan](#). This sets out a series of measures to support people to make healthier and more informed choices

⁷ [Scottish Government \(2020\) Scottish Health Survey – telephone survey – August/ September 2020: main report; Chapter 4: Diet, Obesity & Food Insecurity](#)

⁸ [Public Health Scotland \(2021\) Primary 1 Body Mass Index \(BMI\) statistics Scotland - School year 2020 to 2021 - Primary 1 Body Mass Index \(BMI\) statistics Scotland](#)

when eating out of home or ordering in. On 8 April this year, we published a [consultation paper on proposals to introduce mandatory calorie labelling in the out of home sector](#). This consultation closes on 1 July 2022.

32. The [Good Food Nation Bill](#) was introduced to the Scottish Parliament in October 2021. It is the foundation upon which Scotland will build a Good Food Nation. The Bill provides a framework for clear, consistent and coherent future Scottish food policy and supports cross Government action we are already undertaking to deliver our Good Food Nation ambition by ensuring that people are supported to make healthier choices.

33. Measures to restrict in-store promotion and marketing of HFSS foods are intended to complement measures at UK^{9,10} and Scottish¹¹ levels to encourage reformulation to reduce the calorie, salt and sugar content of HFSS foods, including by reducing portion sizes.

34. At both national and local level, the Scottish Government is taking wide ranging action to improve diet and support people to be a healthy weight. This includes, among other things, [nutritional standards](#) to support healthier food provision in schools, [free school meals](#), information, advice and support for families through [Parent Club](#) and [Best Start Foods](#), and improving availability of healthier food in local communities through the Scottish Grocers Federation [Healthy Living Programme](#).

This consultation paper

35. In [2021-22 Programme for Government](#), the Scottish Government committed to bring forward legislation during this Parliament to restrict '*unhealthier food and drink promotions*'.

36. The primary aim of the policy is to reduce the public health harms associated with the 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. We are also aware of the need to reduce diet-related health inequalities, including in relation to socioeconomic disadvantage, and for the policy to support our aim to halve childhood obesity by 2030.

37. To progress these aims, we propose to restrict the promotion of HFSS foods where these are sold to the public, including across retail and out of home settings. The HFSS foods we are considering targeting include, among other things, confectionery, cakes, crisps, savoury snacks and soft drinks with added sugar. The promotion types we are considering restricting include, among other things, multi-buys and positioning restrictions, such as at checkouts and front of store.

⁹ [UK Government \(2020\) Sugar reduction and wider reformulation](#)

¹⁰ [UK Government \(2016\) Soft Drinks Industry Levy - Policy paper](#)

¹¹ The Scottish Government's [Reformulation for Health Programme](#) through the Food and Drink Federation Scotland supports Scottish SMEs to reformulate their products.

38. In light of the changes in context, we are consulting again to inform and assist with the development and impact assessment of this policy. This will help us to assess whether the proposed measures are proportionate as well as to consider their impact on health inequalities. This consultation also provides a chance for us to hear views on our proposals in the context of the UK Government regulations for England and the proposals for Wales set out in the recent Welsh Government consultation paper. This will help us consider in more detail the potential for policy consistency where that is in Scotland's best interests.

39. In this consultation, we are seeking views on proposals to restrict promotions on the following issues:

- Introducing restrictions on promotions of additional food categories beyond so-called 'discretionary foods' (foods that provide little or no nutritional benefit and are not necessary for a healthy diet)
- Types of promotions that should be restricted
- Places where restrictions should apply, including possible exemptions
- Enforcement and implementation of the proposed restrictions
- Impact on business and health inequalities
- Potential for policy consistency with the equivalent UK Government restrictions for England and the proposals for Wales set out in the recent Welsh Government consultation paper.

40. Further information on the evidence underpinning our proposals is set out in the **next section**.

41. Information on the Scottish Government consultation process and how to respond to the consultation is set out in **Annex A**.

42. Key publications which have informed the development of this policy are at **Annex B**.

43. A glossary of terms is at **Annex C**.

Evidence summary

Poor diet and over consumption of high fat, sugar and salt food

44. Improving the nation's diet and promoting healthy weight is important to improve people's overall health and reduce the risk of diet and weight-related ill health.

45. The [association between poor diet, excess weight and health outcomes](#) such as heart disease, type 2 diabetes and certain cancers has been established for some time. The COVID-19 pandemic has further emphasised the risks associated with being overweight. Evidence indicates [excess weight is associated with an increased risk of serious COVID-19 outcomes](#).

46. There is also evidence that there has been a [widening of inequalities with respect to dietary health outcomes as a result of the COVID-19 pandemic](#). For example, recent data found that the proportion of [primary 1 children at risk of overweight or obesity](#) increased by 8.4% among children living in the most deprived areas between 2019/20 and 2020/21, compared to a 3.6% increase in the least deprived areas.

47. Approximately [two out of three adults in Scotland are living with overweight or obesity, and around 30% of children are at risk of overweight \(including obesity\)](#). A range of inequalities exist, for example, 70% of adults in the most deprived areas of Scotland were living with overweight or obesity, compared to 60% of adults in the least [deprived areas](#); 22% of children in the least deprived areas are at risk of overweight or obesity compared to 35% in the most [deprived areas](#). A higher [prevalence of excess weight is also seen in some minority ethnic groups](#), with the [health risks of obesity arising at a lower BMI in these groups](#).

48. The [Scottish diet is too low in fruit, vegetables and fibre and too high in calories, saturated fat, salt and sugar](#). For example, in 2018, the average energy density of the diet in Scotland was 172 calories per 100g of food compared to the population level goal of 125 calories per 100g of food. The average intake of fruit and vegetables is around 265g per person per day compared to the dietary goal of 400g. Additionally, discretionary foods (foods not required for a healthy balanced diet, such as confectionery, sweet biscuits, savoury snacks, cakes, pastries, puddings and sugar containing soft drinks) account for around 20% of calories and fat in our diet, and more than half of free sugars¹² intake.

Challenge of the food environment and promotions activity

49. Everyone needs to eat to provide us with the energy and nutrients we need to remain healthy. Food is available all around us in shops, from takeaways, restaurants, cafes and canteens as well as online. The food environment includes all aspects of where we buy and produce food and has a key influence on our dietary choices. At present, the food environment heavily incentivises and promotes low cost

¹² Free sugars are any sugars added to food or drink products by the manufacturer, cook or consumer in addition to those naturally found in honey, syrups and unsweetened fruit juice.

[foods which contribute disproportionately to energy, fat, saturated fat, free sugar and salt intakes.](#)

50. [In 2020, around 27% of the food and drink we bought from shops and supermarkets was on price promotion.](#) The majority of these were on temporary price reductions and Y for £X style offers. In Scotland, in the out of home environment, around 9% of visits included a price promotion, the majority (6.4% of visits) being meal deals or multi-buys¹³.

51. [Marketing of food that contributes to unhealthy diets is persuasive.](#) Promotions encourage us to buy more than we would otherwise have done, encouraging increased intake of calories^{14 15 16}. This [increase in calories remains even when storing purchases to consume at a later date or swapping to other brands or products is taken into account.](#)

52. [Research has also shown that less healthy food and drink is more likely to be promoted](#) and with a [greater discount or cost saving compared to 'healthier' ones.](#) Other evidence shows that [as food prices increase, shoppers adapt their behaviour by purchasing more products on promotion.](#) This is concerning in light of the current context of the rising cost of living, including rising food prices and further underpins the need to regulate promotion of HFSS products. [Addressing our exposure to promotions of unhealthy food is one way to help support diet, healthy weight and overall health improvement](#) as part of wide ranging actions.

53. [Economic modelling](#) has estimated that removal of price promotions such as temporary price reductions, multi-buy and 'Y for £X', just on discretionary foods such as cakes, biscuits, confectionary, crisps, etc., has the potential to reduce calorie intake by 613 calories per person per week. The impact is expected to be even greater if a wider range of high fat, sugar and salt food categories is included.

54. [Restricting promotions is also regarded as more effective to help reduce inequalities than other approaches](#) such as education and reliance on individual behaviour change.

¹³ Kantar Out of Home 2020 data purchased by Food Standards Scotland (unpublished)

¹⁴ [Chandon P, Wansink B. \(2002\) When are stockpiled products consumed faster? A convenience-salience framework of post-purchase consumption incidence and quantity. Journal of Marketing Research. 39:321–35](#)

¹⁵ [Revoredo-Giha and McNamee et al \(2022\) Economic modelling: reducing health harms of foods high in fat, sugar or salt – final report](#)

¹⁶ [Public Health England \(2020\) An analysis of the role of price promotions on the household purchases of food and drinks high in sugar, and purchases of food and drinks for out of home consumption](#)

Section 1. Foods that would be subject to restrictions

Summary of our proposals

We are seeking views on including the following food¹⁷ categories within scope of promotions restrictions:

Option 1: Discretionary foods only

- confectionery
- sweet biscuits
- crisps
- savoury snacks (for example, cereal snacks, popcorn, corn snacks)
- cakes
- pastries (for example, Danish pastries, croissants, pain au chocolats, tarts)
- puddings (for example, fruit puddings, sponge puddings, sticky toffee pudding)
- soft drinks with added sugar (this includes soft drinks such as cola or lemonade, as well as juice or milk based drinks with added sugar¹⁸).

Option 2: Discretionary foods + ice cream and dairy desserts

- All categories in Option 1 above
- Ice cream and dairy desserts.

Option 3: Categories that are of most concern to childhood obesity

This option would be consistent with those set out in the UK Government regulations for England.

- All categories in Options 1 and 2 above
- Breakfast cereals
- Sweetened yoghurt and fromage frais
- Pizza
- Ready meals
- Roast potatoes, chips and similar potato products.

Option 4: All categories included in the UK-wide reformulation programmes

- All categories in Options 1, 2 and 3 above
- Garlic bread
- Pies and quiches
- Bread with additions
- Savoury biscuits crackers and crispbreads
- Cooking sauces and pastes
- Table sauces and dressings
- Processed meat product
- Pasta /rice/ noodles with added ingredients and flavours
- Prepared dips and composite salads as meal accompaniments
- Egg products/dishes
- Sweet spreads.

¹⁷ Food(s) in this consultation refers to food and drink

¹⁸ As per [Guidance on what drinks are liable/exempt for the Soft Drink Industry Levy](#).

We propose to apply the 2004/05 Nutrition Profiling Model¹⁹ (NPM), which is a scoring model developed to identify HFSS products, to all targeted food categories. Foods identified as non-HFSS within targeted food categories would not be subject to restriction.

We propose that only pre-packed foods within targeted food categories would be within scope of the restrictions as nutrition and ingredients information is more readily available to support calculation of a NPM score. For unlimited refills for a fixed charge, non-pre-packed soft drinks with added sugar would also be within scope of the policy²⁰.

Food categories

55. In our 2018/19 consultation, we proposed targeting discretionary food categories i.e. those foods typically high in calories, fat, sugar and/or salt and which are not needed as part of a healthy balanced diet. This includes: confectionery, cakes, sweet biscuits, pastries, savoury snacks, puddings and soft drinks with added sugar. We also sought views on whether discretionary foods should include ice cream and dairy desserts²¹.

56. Feedback to the 2018/19 consultation suggested overall support from individuals and non-industry organisations for targeting discretionary foods as a minimum or including additional food categories. Over half of industry stakeholders did not offer a view and a sizeable proportion were against restricting any categories.

57. Non-industry organisational respondents were in support of including ice cream and dairy desserts within scope of the restrictions, whilst a majority of industry respondents either disagreed or did not provide a view. Views from individual respondents were fairly evenly split.

UK Government regulations for England

58. Since we last consulted, the UK Government has set out in [regulations](#) the foods that will be subject to restrictions in England. The UK Government's approach is to target the food categories that contribute the most sugar and calories to children's diets. These categories are based on the [Public Health England Calorie and Sugar reformulation programme](#) and [Soft Drinks Industry Levy](#) (UK wide reformulation programmes) that are of [most concern in contributing to childhood obesity](#).

Welsh Government consultation

59. The [Welsh Government consultation](#) paper seeks views on which categories included in the UK-wide reformulation programmes should be targeted: (a) those of

¹⁹ The nutrient profiling model was developed by the Food Standards Agency (FSA) in 2004- 2005 to provide Ofcom, the broadcast regulator, with a tool to differentiate foods on the basis of their nutritional composition, in the context of television advertising foods to children.

²⁰ The detail of our proposals for free refills of non-pre-packed soft drinks with added sugar is set out at paragraph 87.

²¹ Dairy desserts include, among other things, yogurts, custards and rice puddings.

most concern to childhood obesity (the same approach as UK Government regulations) or (b) all the categories.

Our proposals

60. Feedback to our 2018/19 consultation suggests some support for targeting discretionary food categories as a minimum, including ice cream and dairy desserts. There was also support for expanding the food categories that would be subject to restrictions beyond discretionary. That said, we do recognise that many industry respondents did not offer a view or opposed restrictions in general.

Option 1: Discretionary foods only

61. Taking this into account, and to support our aim to reduce the public health harms associated with excess consumption of calories, fats, sugar and salt, we propose to proceed with targeting the discretionary food categories set out in our 2018/19 consultation. These are:

- confectionery
- sweet biscuits
- crisps
- savoury snacks (for example, cereal snacks, popcorn, corn snacks)
- cakes
- pastries (for example, Danish pastries, croissants, pain au chocolats, tarts)
- puddings (for example, fruit puddings, sponge puddings, sticky toffee pudding)
- soft drinks with added sugar (this includes soft drinks such as cola or lemonade, as well as juice or milk based drinks with added sugar).

Option 2: Discretionary foods + ice cream and dairy desserts

62. We also propose to target ice cream and dairy desserts in view of our proposed approach to differentiate products within categories, set out at paragraphs 66-74. These are:

- All categories in Option 1 above
- Ice cream and dairy desserts.

Option 3: Categories that are of most concern to childhood obesity

63. We are also considering expanding the food categories that would be subject to promotional restrictions to target all food categories 'of most concern to childhood obesity' according to the UK-wide reformulation programmes. This would be consistent with those set out in the UK Government regulations for England.

- All categories in Options 1 and 2 above
- Breakfast cereals
- Sweetened yoghurt and fromage frais
- Pizza
- Ready meals
- Roast potatoes, chips and similar potato products.

64. In Scotland, at a population level, these additional categories account for a [further 11% of calories](#) in the diet, with breakfast cereals, yoghurts and fromage frais specifically contributing an additional 6% of free sugars. In the UK, these additional categories (alongside discretionary items) are also key contributors to children's energy intakes, with breakfast cereals, yoghurt, fromage frais and other dairy desserts also being [key contributors to free sugars intake](#). This data provides further impetus to expand our consideration of food categories subject to restrictions in Scotland. Targeting these additional food categories will help to enhance the impact of our proposals on diets in Scotland, including helping to support progress towards achieving our Dietary Goals. It is also intended that our proposals would support improvements in children's diets, and support our aim to halve childhood obesity by 2030. On a more practical level, being consistent in the food categories we plan to target with those set out in the regulations for England and proposals for Wales may be helpful for businesses which operate in England, Wales and Scotland.

Option 4: All categories included in the UK-wide reformulation programmes

65. Another option, which the Welsh Government is also consulting on, is to include all the categories included in the UK-wide reformulation programmes. These are:

- All categories in Options 1, 2 and 3 above
- Garlic bread
- Pies and quiches
- Bread with additions
- Savoury biscuits crackers and crispbreads
- Cooking sauces and pastes
- Table sauces and dressings
- Processed meat product
- Pasta /rice/ noodles with added ingredients and flavours
- Prepared dips and composite salads as meal accompaniments
- Egg products/dishes
- Sweet spreads.

Defining food categories

66. We previously consulted on defining the foods that would be subject to restrictions on a 'by category' basis, which would require clear definitions for each category. Responses to our 2018/19 consultation supported the need for clear definitions and our proposals to draw on expert technical advice.

67. The UK Government has now set out category descriptors in its regulations and in supporting [guidance](#). We intend to explore the potential for policy consistency with these category descriptors. We will seek expert, technical advice to ensure that any category descriptors proposed are fit for purpose and provide sufficient clarity to support effective implementation and enforcement in a Scottish context.

Nutrient Profiling

68. The UK Government regulations specify the use of the [2004/05 Nutrient Profiling Model](#) 2004/05 (NPM) to identify the products within categories which are subject to restrictions in England. The Welsh Government consultation also proposes that Wales will use the 2004/05 NPM. Nutrient profiling uses a scoring system which balances the contribution made by beneficial nutrients that are particularly important in diets with components in the foods that the population should eat less of. The overall score indicates whether that food (or drink) is HFSS – or not. Foods which score 4 or higher, and drinks which score 1 or higher under this model are classed as HFSS. Using a NPM requires the availability of information on a product's composition. This includes the energy, saturated fat, sugar and sodium content of a product, as well as the content of fruit and vegetables, fibre and protein.

69. We recognise that a category based approach alone would not allow identification of non-HFSS products within food categories. We propose to apply nutrient profiling to the foods within each targeted food category to define whether a food or drink product is HFSS and within scope of the restrictions. Targeting HFSS or less healthy foods would help to support improvements in dietary health and progress towards achieving our dietary goals.

70. We propose to use the 2004/05 NPM as this is a recognised, evidence based tool which is well-understood by the food industry. The 2004/05 NPM is commonly used in ensuring food advertising meets relevant [advertising codes](#). The [nutrient profiling technical guidance 2011](#) provides instructions on how to calculate the NPM score for different products.

71. Consistent with the Welsh Government consultation proposals, we recognise that a modified Nutrient Profiling Model was published for consultation on 24 March 2018 but has not yet been published for use. If published in time, the Scottish Government would consider the use of a revised NPM. A [summary of responses to the 2018 consultation](#) has been published.

72. Applying a NPM approach will allow products within food categories that are non-HFSS to be identified, for example sugar free sweets. This approach is particularly helpful for food categories, such as pizza and ice cream and dairy desserts, which, unlike confectionery, may include a range of HFSS and non-HFSS products. This will enable ice-cream and dairy desserts that are assessed as healthier using the NPM to be excluded from the promotional restrictions. This will also allow reformulated products that meet the NPM and are non-HFSS to be identified and exempted from restrictions e.g. some breakfast cereals and ready meals.

73. As outlined above, applying a NPM to categories requires availability of information on a product's composition. Foods that are pre-packed²² off premises such as confectionery or crisps are required to provide nutrition information (including calories per 100g/ml) through the Food Information to Consumers Regulation. Because of this, our proposed approach most feasibly applies to pre-packed products only, as nutritional information is more easily available.

74. Non-pre-packed products, such as loose bakery items, would be out of scope because businesses may not be able to determine whether these products can or cannot be promoted due to relevant nutritional information not being available. We propose an exception in respect of unlimited refills of soft drinks for a fixed charge, where non-pre-packed soft drinks with added sugar that are HFSS or 'less healthy' (as defined by the NPM) would be in scope of the policy. Further detail on our proposals in respect of unlimited refills is set out at paragraph 87.

Questions

Question 1 - Which food categories should foods promotion restrictions target?

- Option 1: Discretionary food categories (see paragraph 61)
- Option 2: Discretionary foods + ice-cream and dairy desserts (see paragraph 62)
- Option 3: Categories that are of most concern to childhood obesity (see paragraphs 63-64)
- Option 4: All the categories included in the UK-wide reformulation programmes (see paragraph 65)

Other – please specify
Don't know

Please explain your answer.

Question 2 - Should nutrient profiling be used within all targeted food categories to identify non-HFSS foods? (see paragraphs 68-72 for information on nutrient profiling)

Yes
No
Don't know
Other – please specify

Please explain your answer.

²² Pre-packed means [any single item for presentation as such to the final consumer and to mass caterers](#), consisting of a food and the packaging into which it was put before being offered for sale, whether such packaging encloses the food completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging. Pre-packed food' does not cover foods packed on the sales premises at the consumer's request or pre-packed for direct sale.

Question 3 - If nutrient profiling were used, do you agree with the proposal to only target pre-packed products and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge? (see paragraphs 73-74 for further information)

Yes

No

Don't know

Other – please specify

Please explain your answer.

Section 2. Price promotions

Summary of our proposals

We propose to restrict the following types of price promotions on targeted foods²³:

i) Multi-buys of pre-packed foods, including:

- “X for Y”, (e.g. “buy one get one free”, “extra free”, and “3 for 2” offers)
- “Y for £X” (e.g. “3 for £2”, meal deals);

ii) **Unlimited refills for a fixed charge** on soft drinks with added sugar that are HFSS or “less healthy” (as defined by the NPM), whether pre-packed or non-pre-packed.

Types of price promotion

75. 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). It does not include other marketing and promotional strategies such as product placement or advertising.

76. Price promotions can take a number of different forms. Within this consultation, price promotions being considered are:

- **multi-buys** - where purchase of multiple items is cheaper than purchase of each individual item alone. (This includes for example buy one get one free, 3 for £2, 3 for 2 offers, extra free and meal deals.)
- **unlimited amounts for a fixed charge**²⁴ - for example free refills
- **temporary price reductions (TPRs)** - a temporary reduction in the cost of a product, e.g. 10% off.

77. [In 2020, around 27% of the food and drink we bought from shops including supermarkets was on price promotion](#): breaking this down, most (19%) calories were purchased through retail TPRs, 5.6% from “Y for £X” e.g. 3 for £1 and other multi-buys e.g. buy one get one free²⁵ and 2.7% from other forms of price promotion. Discretionary foods are also more frequently purchased using “Y for £X” promotions than some healthier categories such as fruit, vegetables or bread. For example, [in 2020, 7.4% of confectionery was purchased on “Y for £X” compared to just 4% of fruit](#). In 2020, in Scotland, in the out of home sector, around 9% of visits included a price promotion, the majority (6.4% of visits) being multi-buys including meal deals²⁶.

²³ Targeted foods – Food and drink products that will be subject to promotions restrictions in Scotland. Our proposed targeted foods are set out in section 1 of this consultation paper.

²⁴ Unlimited amounts of a particular product are in effect a form of ‘flexible’ buy one get x free where the additional quantity given away for free is not fixed.

²⁵ Data on price promotions from Kantar defines multi-buys as including buy one get one free and 3 for 2 offers. Extra free style deals are captured within ‘other’ promotions.

²⁶ Kantar Out of Home 2020 data purchased by Food Standards Scotland (unpublished)

In the last eight years, there have been a decline in the proportion of calories purchased on promotion in the retail environment^{27 28}.

78. Multi-buys are particularly effective at increasing the overall volume of promoted product purchased. [Data from around 30,000 British households between 2013 and 2015](#) showed, for example, an estimated volume uplift for multi-buys of 25%. In comparison, TPRs were shown to drive volume uplift by 17%.²⁹ Given all these types of [promotions encourage an increase in the amount of product purchased, they can encourage increased consumption](#). Restricting these types of promotions presents an opportunity to reduce the purchase of HFSS foods and supports our aim to improve dietary health through a reduction in the excess consumption of calories, fats, sugar and salt.

79. Unlimited offers, such as free refills on soft drinks, operate on much the same basis as multi-buys – where unlimited amounts are offered for a fixed charge. There is [evidence to suggest that consumers seek to get their “money’s worth”](#) leading to an increase in consumption and this can be affected by the price charged.

UK Government regulations for England

80. Since we last consulted, the UK Government has set out in [regulations](#) the types of promotions that will be subject to restrictions in England. In respect of price promotions, the English regulations will restrict:

- volume based price promotions such as such as "buy one get one free" or "3 for 2" offers on pre-packed targeted foods;
- free refills of non-pre-packed drinks that are HFSS or “less healthy” (as defined by the NPM)

81. Meal deal promotions are not within scope of the regulations in England. This is on the basis that [meal deals are generally targeted as lunch options for adults to consume on the go that day rather than being stockpiled at home; and they aim to reduce the cost of a single meal](#).

Welsh Government consultation

82. In its [consultation](#), Welsh Government is seeking views on proposals to restrict temporary price restrictions, multi-buy offers and volume offers. Welsh Government include ‘meal deals’ in their volume offers.

²⁷ [Food Standards Scotland \(2022\) Exploring the impact of COVID-19 on retail purchase and price promotion in Scotland between 2019 and 2020](#)

²⁸ [Food Standards Scotland \(2020\) Monitoring retail purchase and price promotions in Scotland \(2014 - 2018\)](#)

²⁹ Figures shown apply to discounts in the range of 5 to 25%. A similar difference is present at all levels of discount analysed (up to 55%)

Our proposals

83. Feedback to our previous consultation indicated that respondents from non-industry organisations were largely in favour of the proposals to restrict multi-buys and unlimited amounts for a fixed charge. Industry organisations views were mixed or provided no specific view. Individual responses also were mixed.

84. Taking this feedback into account, and in view of the enhanced impact of multi-buy promotions compared to other types of price promotions, we propose to target the following:

i) Multi-buys of pre-packed foods, including:

- “X for Y”, (e.g. “buy one get one free”, “extra free”, and “3 for 2” offers)
- “Y for £X” (e.g. “3 for £2”, meal deals);

ii) Unlimited refills for a fixed charge on soft drinks with added sugar that are HFSS or “less healthy” (as defined by the NPM), whether pre-packed or non-pre-packed.

Multi-buys

85. We propose to restrict multi-buys on targeted foods which are pre-packed and are HFSS or ‘less healthy’ (as defined by the NPM). In addition to buy one get one free and 3 for 2 offers, we propose that “extra free” would be within scope of restrictions based on the understanding that the promotion operates on a similar basis to “buy one get one free” – where the promotion indicates that an item or part thereof is free.

86. We received very little feedback in our previous consultation on our proposal to include meal deals as part of our proposed restrictions. We propose that meal deals would be within scope of restrictions because they are a form of “Y for £X” and could encourage consumers to purchase more in order to obtain a discount, as set out earlier. We propose that if one or more components of a meal deal were a targeted food that was HFSS or ‘less healthy’ (as defined by the NPM) then the products could not be sold at less than the sum of their individual prices. Meal deals that do not contain targeted foods (or contain targeted foods that pass the NPM) would not be subject to the restrictions. This would provide the opportunity for consumers to take advantage of meal deals that are healthier and would support our aim to improve dietary health and encourage healthier choices.

Unlimited refills for a fixed charge

87. We propose to restrict the sale of unlimited refills on soft drinks with added sugar for a fixed charge on the basis that this type of promotion is essentially a flexible form of “buy one get x free” multi-buy offer. We propose that the restriction would apply to soft drinks with added sugar that are HFSS or ‘less healthy’ (as defined by the NPM), whether pre-packed or non-pre-packed. This is on the basis that [these drinks alone contribute around 20% to the average intake of free sugars in Scotland](#) and, as set out in section 1 of this consultation, reducing consumption

would be of benefit to dietary health and would further support progress towards our Scottish Dietary Goals with respect to intake of free sugars.

Other price promotions - temporary price reductions (TPRs)

88. [TPRs are short term reductions in the price of food and drink products](#). Most retailers will run such offers on specific items for a typical duration of 2-4 weeks before reverting back to the full price.

89. In our previous consultation, we did not propose to restrict TPRs specifically. Feedback found industry respondents mostly in favour of the proposal. Non-industry respondents had mixed views, with similar proportions agreeing, disagreeing or not offering a view. Individuals typically agreed with the proposal not to restrict TPRs.

90. However, the scale of the diet and obesity challenge we currently face alongside our aim to halve childhood obesity by 2030 has led us to consider the inclusion of other forms of price promotions within scope of this policy, such as TPRs. Further as we are no longer pursuing promotion of value restrictions (see paragraphs 113-114) we want to take this opportunity to explore views on restricting TPRs specifically.

91. Since 2014, the overall balance of different types of price promotions has not changed. [Food purchases have consistently been greater on TPRs than for other price promotion types](#). As set out earlier, [in 2020, 19% of the food and drink purchased through retail was on TPRs](#).

92. [Economic modelling indicates that a policy to restrict all price promotions](#) (i.e., TPRs, multi-buy, “Y for £X” and other promotions) of discretionary foods (including ice cream and dairy desserts) could potentially lead to a reduction of 613 calories per person each week compared to a reduction of 155 calories per person for restricting multi-buy³⁰ promotions only. Further, whilst [multi-buys may generate the greatest sales increase when compared to TPRs, the latter still significantly expands sales](#).

93. Given the prevalence of TPRs, the data does suggest that restricting TPRs, in addition to multi-buys, could enhance the positive impact of the policy on dietary health. This would in turn support our aim to reduce the health harms associated with the excess consumption of calories, fats, sugars and salt. We are therefore seeking views on including TPRs within the scope of this policy. We recognise that there may be some challenges in targeting TPRs, such as what would be considered “temporary”, but we would suggest that these are not insurmountable. We also recognise that this approach would diverge with that being taken in England, where TPRs will not be subject to restriction.

Defining price promotions

94. Further work informed by this consultation will be required to develop more detailed definitions. In doing so, we will seek expert advice and explore the

³⁰ “Multi-buys” are defined in this report as (a) two or more separate products sold together to obtain a discount or (b) one or more products given free as a result of a purchase.

opportunities to be consistent with the definitions set out in the UK Government regulations, where appropriate, whilst also considering to what extent consistency across the UK would support the implementation and delivery of the policy in Scotland. Whilst consistency may be helpful in terms of implementation, doing so could reduce the scope, and in turn, the impact of the policy on dietary health in Scotland. These are key considerations and we will consult again on detailed definitions before we implement the policy.

Questions

Question 4 - What are your views on the proposal to include the following within the scope of multi-buy restrictions?

Extra free: Agree/Disagree/Don't know

Meal deals: Agree/Disagree/Don't know

Please explain your answer

Question 5 - What are your views on the proposal to restrict unlimited refills for a fixed charge on targeted soft drinks with added sugar?

Agree/ Disagree/ Don't know

Other – please specify

Please explain your answer

Question 6 - Should other targeted foods be included in restrictions on unlimited amounts for a fixed charge?

Yes/ No/ Don't know

Please explain your answer

Question 7 - What are your views on the proposal to restrict temporary price reductions (TPRs)?

Agree/ Disagree/ Don't know

Other – please specify

Please explain your answer

Question 8 - Are there any other forms of price promotion that should be within scope of this policy?

Yes/ No/ Don't know

Please explain your answer

Section 3. Location and other non-price promotions

Summary of our proposals

We propose to restrict the location of targeted foods in prominent places in physical premises where they are sold to the public. This would include following locations:

- checkout areas, including self service
- end of aisle
- front of store, including store entrances and covered outside areas connected to the main shopping area
- island/ bin displays³¹.

We also propose that these restrictions would apply to the equivalent locations online, for example home and checkout pages.

The restrictions would apply to pre-packed targeted foods. Promotions of non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge would also be within scope of the restrictions³².

We propose to be consistent in our definition of locations, where appropriate to do so, with those set out in UK Government regulations and with proposals in the Welsh Government consultation.

Non-price promotions

95. How and where foods are promoted and marketed influences our food purchasing decisions and drives sales of targeted foods. In addition to price, [non-price promotions can also influence consumer purchase behaviour](#).

96. There are different types of non-price promotions. These include, amongst other things: placement of products in prominent locations, such as checkouts and end of aisles, in-store marketing, purchase rewards and coupons and branded chiller and floor display units.

97. A key message from our [previous consultation on our Diet and Healthy Weight Delivery Plan](#) is that there is a risk that restricting only price promotions may lead to more non-price promotions.

UK Government regulations for England

98. The UK Government has set out in regulations the locations that will be subject to restrictions in England. Location restrictions will apply to the following:

- store entrances
- covered external areas

³¹The prominent display of products away from other products to increase their visibility. Island/ bin displays may be at end of aisles, in the middle of a store, or in other highly noticeable places.

³² The detail in respect of our proposals to target pre-packed and non-pre-packed foods is set out at paragraphs 73-74.

- aisle ends (including separate structures within 50cm of aisle ends such as island bins)
- checkouts
- designated queuing areas

99. The restrictions will also apply to the online equivalents of these locations. These include home pages, certain searching or browsing pages for other food categories, “pop-up” pages, favourites pages (unless the consumer has purchased it or identified it as a “favourite” product) and shopping basket or checkout pages.

100. The UK Government [regulations](#), [explanatory memorandum](#) and [implementation guidance](#) provide further detail on the UK Government location restrictions. This includes definitions for, amongst other things, checkouts and store entrances.

Welsh Government consultation

101. Welsh Government propose in their [consultation paper](#) the following locations should be subject to restrictions:

- store entrance
- at the till
- end of aisle
- free standing display units

Our proposals

102. We previously sought views on restricting a wide range of non-price promotion types. This included, amongst other things, restrictions on where targeted foods could be located in store and the promotion of value, for example, drawing attention to price reductions.

103. Feedback to our previous consultation found that non-industry organisations generally indicated agreement with the proposed approach while industry respondents tended to either indicate disagreement or not offer a specific view. Individuals’ views were mixed. It was, however, noted by all respondent types that more information was required to more fully comment on the proposals, including how these promotions would be defined, particularly in relation to location restrictions.

104. Despite mixed views from individual respondents to the consultation, a [2019 Food Standards Scotland survey](#) found 56% of those who took part supported restricting HFSS food placement at checkouts. [Obesity Health Alliance’s 2020 survey](#) found that 72% of those surveyed supported government action on restricting promotion of unhealthy food in prominent places.

105. There is consistent and extensive evidence from a range of studies that non-price promotions (positional or placement or location promotions) influence consumer choice of food (to either purchase healthy or unhealthy products) in both

retail and out of home settings^{33 34 35}. For example, [an observational study in England](#), which controlled for price, evidenced that end of aisle display significantly increased purchase of carbonated soft drinks. A [2018 survey by the Obesity Health Alliance](#) showed that 43% of all food and drink products located in prominent areas, such as store entrances, checkouts, and aisle ends were for sugary foods and drinks. By contributing to a reduction in the purchase of HFSS foods, restricting non-price promotions therefore presents an opportunity to support reductions in the purchase and consumption of calories, fats, sugar and salt and progress towards achieving our Dietary Goals.

106. In relation to online, a [2021 survey by Obesity Action Scotland](#) found that non-price promotions were most often found at the stage of selecting items, such as product landing pages and in the search results, or in the offers tabs.

107. Having considered the evidence base, alongside feedback to the previous consultation and in view of the UK Government regulations, our proposals focus on restricting the non-price promotion types where we have the best evidence of impact on consumer purchases at this time.

Location³⁶ restrictions

108. We propose to restrict the location of targeted foods in prominent places in physical premises where they are sold to the public. This would include:

- checkout areas, including self service
- end of aisle
- front of store, including store entrances and covered outside areas connected to the main shopping area
- island/ bin displays³⁷.

109. As more people purchase food online^{38,39}, a trend that has been accelerated due to the COVID 19 pandemic^{40 41}, we propose that these restrictions should apply to equivalent locations online, for example to home and checkout pages. Our proposed approach to online is discussed in more detail in section 4 of this consultation.

³³ [Shaw et al \(2020\) A systematic review of the influences of food store product placement on dietary-related outcomes, Nutrition Reviews, 78 \(12\):1030–1045](#)

³⁴ [Hollands et al \(2019\) Altering the availability or proximity of food, alcohol and tobacco products to change their selection and consumption \(Review\). Cochrane Database of Systematic Reviews 2019\(8\) Art no. CD012573](#)

³⁵ [Bucher et al \(2016\) Nudging consumers towards healthier choices: a systematic review of positional influences on food choice. British Journal of Nutrition;115\(12\):2252-63.](#)

³⁶ Referred to as placement restrictions in our previous consultation. We have revised our terminology here to be consistent with UK Government terminology and avoid confusion.

³⁷ The prominent display of products away from other products to increase their visibility. Island/bin displays may be at end of aisles, in the middle of a store, or in other highly noticeable places.

³⁸ [Mintel \(2019\) Brits spent £12.3 billion on online groceries in 2018](#)

³⁹ [Food Standards Scotland \(2020\) The Out of Home Environment \(2019\)](#)

⁴⁰ [Food Standards Scotland \(2022\) Exploring the impact of COVID-19 on retail purchase and price promotion in Scotland between 2019 and 2020](#)

⁴¹ [Food Standards Scotland \(2021\) The impact of Covid-19 on the out of home sector in Scotland](#)

110. The restrictions would apply to pre-packed targeted foods. Promotions of non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge would also be within scope of the restrictions. Further detail in respect of our proposals to target pre-packed and non-pre-packed foods is set out at paragraphs 73-74.

Definitions

111. We will consider carefully how we define location restrictions, seeking expert advice as required.

112. The UK Government has set out in [regulations](#) for England the definitions for its location restrictions. This provides an opportunity to explore the scope for aligning our own definitions with those set out in the UK Government regulations. In considering this, we would want to ensure any definitions would be fit for purpose in the Scottish context and that alignment would be in Scotland's best interests. We also need to recognise the potential benefits of alignment, where clear and consistent definitions applied on a UK basis would likely help to minimise the regulatory burden for businesses operating in both Scotland and England. At this stage, we would propose consistency with the UK Government definitions where appropriate and where this supports delivery of our policy in Scotland.

Promotion of value

113. In our previous consultation, we also sought views on restricting promoting the value of the products (i.e. no extra prominence would be given on the basis of price, size or volume,), and upselling (e.g. being asked if you want an additional product at the till or to increase the size of it). We received few specific comments in the consultation to help inform our proposals on promotion of value.

114. We commissioned [research to explore the potential impact of promotion of value](#). The research concluded there was no impact. Taking into consideration the results of this research, the 2018/19 consultation feedback, and the overall limited evidence in relation to promotion of value at this time, we do not intend to include any restrictions on this form of promotion in our current proposals.

Questions

Question 9 - Should the location of targeted foods in-store be restricted at:

Checkout areas, including self-service - Yes/ No/ Don't know

End of aisle - Yes/ No/ Don't know

Front of store, including store entrances and covered outside areas connected to the main shopping area - Yes/ No/ Don't know

Island/ bin displays - Yes/ No/ Don't know

Please explain your answers.

Question 10 - Should any other types of in-store locations be included in restrictions?

Yes (please specify)

No

Don't know

Please explain your answer

Question 11 - If included, should the location of targeted foods online be restricted on:

Home page - Yes/ No/ Don't know

Favourite products page - Yes/ No/ Don't know

Pop-ups, and similar pages not intentionally opened by the user - Yes/ No/ Don't know

Shopping basket - Yes/ No/ Don't know

Checkout page - Yes/ No/ Don't know

Please explain your answer.

Question 12 - Should any other online locations be included in restrictions?

Yes (please specify)

No

Don't know

Please explain your answer.

Question 13 - Are there other types of promotions (in-store or online) not covered by our proposals for restricting price and location promotions that should be within scope?

Yes/ No/ Don't know

Please explain your answer.

Section 4. Places that would be subject to restrictions

Summary of our proposals

We propose to apply the restrictions to any place where pre-packed targeted foods, and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge⁴², are sold to the public in the course of business. This would include:

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

We propose that the restrictions should also apply to online sales of pre-packed targeted foods from retail, out of home (OOH), wholesale outlets and other outlets selling targeted foods. This would include home delivery services such as third party apps that facilitate the order of food from a restaurant or takeaway to a consumer as well as online grocery shopping sites.

The restrictions would not apply:

- to other wholesale outlets (where sales are only to trade), because any promotion or marketing would not directly encourage the public to purchase the foods
- where sales are not in the course of business, for example charitable food and bake sales.

115. In terms of spend, food and drink in Scotland was worth £14.1bn in 2021. Of this, the majority (£10.4bn) came from the retail environment. The majority of calories we consume also come from food and drink purchased from shops and supermarkets. However, around [a quarter of calories we consume now also comes from the OOH sector](#). This includes any food or drink bought and eaten away from home, including 'on the go' and any takeaway or home delivered food.

116. Over the past twenty years the internet has altered the shopping landscape, with many food purchases now made online. The proportion of food purchases made online, either in retail or OOH was increasing prior to the pandemic, but the pandemic accelerated this trend further. [Analysis of Kantar data](#) found that, Scotland saw a 31% increase in the market value of takeaways and a 54% increase in new customers to the delivery sector in 2020 compared to 2019, bucking the downward trend of the rest of the OOH market as a result of the trading conditions of the pandemic. Ordering takeaways using online restaurant apps and third party apps

⁴² The detail in respect of our proposals to target pre-packed and non-pre-packed foods is set out at paragraphs 73-74.

also saw a huge rise, which has continued into 2021⁴³. [Kantar data](#) also showed an increase in online grocery shopping with 64% more groceries bought online in 2020 compared to 2019. Online grocery shopping continues to represent a significant proportion of spend on food and drink in 2021 (around 8%)⁴⁴ further underlining the importance of including online sales.

UK Government regulations for England

117. The UK Government has set out in its [regulations](#) the places where promotion restrictions will apply in England. The restrictions will apply to:

- all retail businesses which sell food and drink within scope of the regulations, including their franchises and online outlets
- OOH outlets in respect of free refill promotions.

The regulations will not apply to charity food sales.

118. It should be noted that these definitions take into account exemptions the UK Government has set out for businesses within scope of restrictions. The UK Government [regulations](#), [explanatory memorandum](#) and [implementation guidance](#) provide further detail on the UK Government location restrictions. Exemptions are explored in more detail in section 5 of this consultation paper.

Welsh Government consultation

119. The Welsh Government propose in their [consultation paper](#) to follow the approach taken in UK Government regulations and outlined above.

Our proposals

120. We consulted previously in 2018/19 on proposals to apply restrictions to any place where targeted foods are sold to the public in the course of business, including retail, OOH, and wholesale outlets where there are also sales to the public, as well as other outlets such as clothes shops, selling targeted foods. We also proposed that the restrictions would not apply to other wholesale outlets (where sales are only to trade) and activities such as charity 'bake sales'.

121. We also sought views on whether restrictions should be applied online, and if so, to what extent.

122. Feedback to our previous consultation found that non-industry respondents agreed with the proposals that promotions restrictions should apply to any place where targeted foods are sold to the public. Industry respondents' views were more mixed, with some agreement and others providing no views. Individual views were also mixed. Agreement centred on the view that to be effective, the restrictions should apply equally, with some industry respondents voicing that there should be a 'level playing field'.

⁴³ Kantar Out of Home 2020 data purchased by Food Standards Scotland (unpublished)

⁴⁴ Food Standards Scotland analysis of data from Kantar (online retail spend, 2021 (unpublished))

123. In respect of whether restrictions should apply to online environments, there was a high level of agreement amongst both non-industry and industry respondents. Among individual respondents, views were again mixed.

124. Having taken account of the evidence and the feedback to the consultation, we propose to proceed on the basis that restrictions on promotions would apply to any place, both physical premises and online, where pre-packed targeted foods (and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge)⁴⁵, are sold to the public.

125. This would include:

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

126. The restrictions would not apply to:

- other wholesale outlets (where sales are only to trade), because any promotion or marketing would not directly encourage the public to purchase the foods.
- where sales are not in the course of business, for example food provided through charitable activities, for example bake sales.

127. This approach will help to ensure parity across types of business, both in physical stores and online. It is important that these regulations help to create a level playing field and mitigate competitive disadvantage which could arise, for example, if only retail outlets were subject to restrictions. Further, applying restrictions on our proposed basis would stop one outlet increasing its promotional activity to capture promotional sales lost by another, which would undermine the expected health benefits of the policy, including our aim to support healthier choices and healthy weight.

128. We recognise that the types of businesses we propose should be within scope of this policy goes beyond that set out in the UK Government regulations for England (see paragraph 117) and those proposed by the Welsh Government in their consultation. However, understanding that the food and drink industry often operates on a UK basis, we will explore the opportunities for consistency, where appropriate, with the definitions set out in the regulations for England and Welsh Government proposals. Exemptions are also explored in more detail in section 5 of this consultation paper.

⁴⁵ The detail in respect of our proposals to target pre-packed and non-pre-packed foods is set out at paragraphs 73-74.

Questions

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

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

Question 14 - Which places, where targeted foods are sold to the public, should promotions restrictions apply to:

Retail - Yes/ No/ Don't know

Out of home - Yes/ No/ Don't know

Wholesale (where sales are also made to the public) - Yes/ No/ Don't know

Other outlets - Yes/ No/ Don't know

Don't know

Please explain your answer.

Question 15 - Are there other places/ types of business to which the restrictions should apply?

Yes/ No/ Don't know

Please explain your answer.

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

Question 16 - Are there other places/ types of business which should not be within the scope of the restrictions?

Yes/ No/ Don't know

Please explain your answer.

Section 5. Exemptions to restrictions

Summary of our proposals

We propose, as a minimum, that specialist businesses with a limited product range, such as chocolatiers and sweet shops, would be exempt from location restrictions.

Restrictions on price promotions, as set out in section 2, would still apply to specialist businesses.

Exemptions from location restrictions

129. The food business landscape is incredibly diverse. The restrictions we are considering would apply to many different outlets of various sizes and layouts, selling a wide range of products. While this would not have a material bearing on many of the proposed restrictions, it could affect the ability of some businesses from complying with some location restrictions (at checkouts, end-of-aisle etc.). For example, a small convenience store could comply with price promotion restrictions but might struggle to comply with location restrictions due to the size of the premises.

130. In considering whether there should be any exemptions, we will be guided by the following key principles:

- Implementable: can the exemption be implemented in a proportionate way
- Meaningful: the exemption does not undermine the overall aims and benefits of the policy.

131. In our previous consultation, we sought views on exempting businesses from positioning restrictions (in relation to displays at end of aisle, checkouts etc.) on the basis of there being no reasonable alternative to displaying foods elsewhere. This was suggested to reflect the fact that in some stores, primarily small businesses, the display of foods in particular locations may simply reflect the realities of the physical size or layout of the premises or the limited product range (for example, chocolates being sold in a chocolatier).

132. Feedback to this proposal was mixed. Industry organisations who provided a response were mostly in favour of the proposed exemptions. Non-industry organisations and individuals both had mixed views. Concerns were expressed around whether such an exemption could create a loophole which could undermine implementation, for example, by stores purposely implementing layouts that would meet the criteria for the exemption. Concern was also expressed about the potentially disproportionate impact of the proposals on smaller businesses which could limit their ability to compete with larger businesses.

UK Government regulations for England

133. The UK Government has set out in its regulations exemptions for certain businesses within scope of the restrictions. In summary, these are as follows:

- Micro and small businesses (fewer than 50 employees) will be exempt from volume price restrictions (multi-buy, “extra free”, unlimited refills)
- Micro and small businesses (fewer than 50 employees) will also be exempt from location restrictions
- Premises smaller than 185.8 square metres (2,000 square feet) (even if they are part of a medium or large business with 50+ employees) will be exempt from location restrictions
- Specialist retailers that sell one type of food product category (e.g. chocolatiers or sweet shops) will be exempt from location restrictions.

134. Further information on the definitions for these exemptions is set out in the UK Government [regulations](#), [explanatory memorandum](#) and [implementation guidance](#).

Welsh Government

135. The Welsh Government propose in their [consultation paper](#) to follow the approach taken in UK Government regulations and outlined above.

Our proposals

136. Regarding exemptions, there are several considerations. To maximise the health impact and support our aim to reduce the health harms associated with the excess consumption of calories, fats, sugars and salt, restrictions need to apply to as many businesses as possible. There is also a clear desire for restrictions to be implemented as widely as possible so as to create a level playing field. We recognise that there are challenges for smaller businesses. The business impact of any proposed exemptions will need to be considered alongside the potential health impacts. For example, excluding small and micro businesses from the policy could limit the positive impacts of the policy, due to the large [proportion of such food businesses \(based on employee number\) in Scotland](#).

137. We also need to take into account our proposed approach to apply restrictions to sales of pre-packed targeted foods (and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge). We recognise that the impact of the policy will vary depending on the extent to which a business in scope sells pre-packed targeted foods.

138. Taking these considerations and feedback to our previous consultation into account, we propose, as a minimum, that specialist businesses with a limited product range, such as chocolatiers and sweet shops, would be exempt from location restrictions. Restrictions on price promotions would still apply to these businesses, both in-store and online.

139. Further to this, and in view of the exemptions set out in the UK Government regulations, detailed at paragraph 133, (which Welsh Government are also proposing to apply) we are also seeking views on exempting businesses from location restrictions on the basis of employee number and/ or floor space. In doing so, we recognise that smaller businesses may have limited (or no) scope to comply with location restrictions, for example, a small convenience shop or kiosk. We will also consider the criteria set out in the UK Government regulations and explore the scope for consistency where appropriate, alongside the feedback we receive to this consultation.

Products close to expiry

140. In our previous consultation, we sought views on whether a targeted food marked as discounted because it is close to expiry should be exempt from location and promotion of value restrictions. This issue was explored after some responses to our 2017 Diet and Healthy Weight Delivery Plan consultation highlighted that this practice helps reduce food waste.

141. Feedback on the proposal was mixed. In relation to exemptions for foods close to expiry from location and promotion of value restrictions, non-industry organisations respondents had mixed views. Industry respondents either agreed with the proposals or offered no view. Individuals had mixed views. Specific feedback in favour of an exemption centred around supporting practice to help reduce food waste and align with other commitments around reducing waste. Views against an exemption included that this might be used to circumvent restrictions with expiry dates deliberately shortened on targeted foods. Others highlighted that targeted foods should be restricted regardless of whether close to expiry or not.

142. As we are no longer pursuing promotion of value restrictions, an exemption for targeted foods close to expiry on that basis is no longer applicable. Should we pursue restrictions on TPR, products close to expiry would not be within scope of such restrictions as any discount applied to foods close to expiry would be permanent before the product is sold or removed from sale.

143. In relation to location restrictions, having considered the feedback we received, we do not intend to pursue an exemption for targeted foods that are close to expiry from location restrictions. An exemption on the basis of location is not considered necessary as there remains sufficient scope throughout the supply chain to allow businesses to take action to reduce food waste. For example, products close to expiry would still be able to be displayed in alternative areas of the store such as in-aisle. In addition, there remain opportunities to reduce food waste higher up the supply chain. An exemption for products close to expiry could also inadvertently create a loophole which could undermine our proposed restrictions on the positioning of targeted foods from prominent locations in-store, as discussed at paragraph 108. We know that businesses respond to restrictions on some promotions by changing their marketing tactics⁴⁶.

⁴⁶ Rapid review: Trade responses to the restrictions on the marketing of unhealthy commodities, Public Health Scotland (forthcoming publication)

Questions

Question 17 - Do you agree with our proposal to exempt specialist businesses that mainly sell one type of food product category, such as chocolatiers and sweet shops, from location restrictions?

Yes/ No/ Don't know

Please explain your answer.

Question 18 - If exemptions are extended beyond our proposal to exempt specialist businesses that mainly sell one type of food product category, should exemptions be applied on the basis of:

Number of employees – Yes/ No/ Don't know

Floor space – Yes/ No/ Don't know

Other (please specify)

None

Don't know

Please explain your answer.

Question 19 - If you agreed in question 18 that businesses should be exempt from location restrictions based on number of employees, what size of business should be exempt?

All businesses in scope of restrictions, i.e. no exemptions based on employee number

All in scope except businesses with fewer than 10 employees (micro)

All in scope except businesses with fewer than 50 employees (small and micro)

All in scope except businesses with fewer than 250 employees (medium, small and micro)

Other – please specify

Please explain your answer.

Question 20 - If you agreed in question 18 that businesses should be exempt from location restrictions based on floor space, what size of business should be exempt?

Less than 93 square metres (1000 square feet)

Less than 186 square metres (2000 square feet)

Less than 279 square metres (3000 square feet)

Other – please specify

Please explain your answer.

Question 21 - Are there any other types of exemptions that should apply?

Yes/ No/ Don't know

Please explain your answer.

Section 6. Enforcement and implementation

Summary of our proposals

We propose to give local authorities the role of enforcing the proposed policy.

We propose to give Ministers powers to issue guidance to local authorities to support effective enforcement of the proposed policy.

We propose to develop materials for industry to support effective implementation.

Background

144. As set out in the [Scottish Regulators' Strategic Code of Practice](#), enforcement functions should be delivered in a way that is transparent, accountable, proportionate, consistent, and targeted only where necessary.

145. Local Authorities (LAs) are responsible for enforcing existing food law in the businesses within scope of this policy. In our previous consultation, we recognised that LAs are well placed to support with the delivery and enforcement of this policy and sought views on our proposals for enforcement and implementation, which were as follows:

- giving LAs the role of enforcing the proposed policy, with relevant powers and relevant offences created
- giving Ministers powers to issue guidance to LAs on matters for which LAs should have regard when discharging their functions (This could include, for example, guidance on location restrictions (e.g. at checkouts, end-of-aisle etc.))
- publishing a guide for industry to support effective implementation.

146. In feedback to our previous consultation, non-industry organisation respondents generally indicated agreement with the proposals for enforcement. Industry respondents either indicated agreement or did not offer a view. Views from individuals were mixed.

147. Respondents expressed a number of views in relation to the proposals including: (i) concern about the potential burden that enforcement would place on LA teams and suggestions that separate funding would be required for this function; and (ii) concern that sufficient lead-in time would be needed to implement the changes.

UK Government regulations for England

148. Enforcement of the UK Government regulations in England will be carried out by food authorities in their local areas. Whilst the local government landscape differs in England, overall this is a comparative approach to what we are proposing for Scotland, using existing arrangements to create an appropriate and proportionate approach to regulation. Further details of how the regulations will be enforced in England is set out in the UK Government [regulations](#), [explanatory memorandum](#) and [implementation guidance](#).

Welsh Government consultation

149. The Welsh Government do not cover delivery or enforcement of their proposals in their [consultation](#), noting that a further technical consultation will follow that will cover these issues.

Our proposals

150. Taking into account the feedback we received to our previous consultation, and on the basis that LAs remain responsible for enforcing existing food law in the businesses within scope of this policy, we propose that LAs are best placed to support delivery and enforcement of the policy outlined in this consultation paper.

151. We propose that local authorities are given relevant enforcement powers, including powers of entry and powers to obtain information. Similar to food safety legislation, we are considering that local authorities would also have relevant powers for handling non-compliance with legal requirements.

152. The proposed approach would help to minimise additional demands on: (a) existing enforcing authorities, and (b) those subject to the restrictions. For example, given food businesses must already register with their local authority, we do not anticipate a need for a new register for this policy. We also recognise the importance of clarity in ensuring the effective implementation of this policy. To support this, we would plan to work with LAs and industry in developing the regulations and guidance.

153. We want to take this opportunity to seek views on the practicalities of enforcement, based on points raised by respondents to the previous consultation, outlined at paragraph 146-147. This includes consideration of resourcing, guidance and adequate lead-in times for implementation of the policy.

154. We propose to work closely with the Convention of Scottish Local Authorities (COSLA) and others to consider resourcing, training and guidance to support effective and consistent implementation of the policy. We would also welcome views on these issues to help inform our discussions.

155. In relation to lead-in times, we will need to allow sufficient time to enable both LAs and businesses to prepare for implementation of the policy. We propose to engage both LAs and businesses to discuss what a suitable lead-in time might be. We would welcome views on this issue to help inform our discussions.

156. We will also work closely with COSLA and others to consider an appropriate and proportionate enforcement regime that supports compliance. This will include consideration of appropriate guidance and enforcement powers. We will consult further on the detail of our enforcement proposals ahead of implementation.

Support for industry

157. We propose to develop materials for industry, co-designed by industry representative bodies, to support effective implementation.

Other issues

158. Further to the feedback we received to the 2018/19 consultation, we are also mindful of the impact of the coronavirus pandemic and also EU exit on LAs in terms of their capacity and resources, as well as on consumers and the food and drink industry. We are therefore seeking further views on the proposed approach to enforcement, including whether it remains appropriate.

Questions

Question 22 - Do you agree with the proposal that local authorities are best placed to enforce the policy?

Yes

No

Other – please specify who

Don't know

Please explain your answer.

Question 23 - If local authorities were to enforce the policy, what resources (for example staffing/ funding) do you think would be required to support enforcement?

Please explain your answer.

Question 24 - What do you think would be an appropriate lead-in time to allow preparation for enforcement and implementation of the policy?

6 months

12 months

18 months

24 months

Other – please specify

Don't know

Please explain your answer.

Question 25 - Are there any further considerations, for example as a result of the coronavirus pandemic, EU exit or rise in cost of living, that need to be taken into account in relation to enforcement?

Please explain your answer.

Section 7: Legislative framework

159. In giving consideration to legislation needed, we propose to aim to ensure that there is also sufficient flexibility to future-proof public health policy to develop over time to improve diet and levels of healthy weight.

160. Ensuring that legislation is sufficiently flexible would enable changes to legislation or further legislation to be made in the light of experience of diet and healthy weight policies as well as to take into account changes to the underlying evidence base or new evidence becoming available. This would enable appropriate action to be taken to reduce public health harms of practices that facilitate or encourage the sale (and thereby consumption) of less healthy food and drink. It would include, for example the labelling, marking, presenting or advertising of less healthy food and drink, and the descriptions which may be applied to them.

161. We are considering whether Scottish Ministers and local authorities may need additional powers (or adjustments made to current powers) in order to allow for more rapid implementation and enforcement of future measures to protect public health relating to less healthy food and drink. We propose that Scottish Ministers would be able to make provision in secondary legislation, following consultation, for regulating such practices in relation to specified less healthy food and drink and to make suitable arrangements for their enforcement, including the setting of offences and the issuing of compliance notices and fixed penalty notices.

Question

Question 26 - Do you agree that Scottish Ministers should be able to make provision in secondary legislation, following consultation, to regulate in relation to specified less healthy food and drink and to arrange for enforcement (including the setting of offences and the issuing of compliance notices and fixed penalty notices)?

Yes/ No/ Don't know

Please explain your answer.

Section 8. Impact Assessments

162. In order to inform our equality and fairer Scotland impact assessments, and to give due consideration to potential unintended consequences, we would welcome your views on the following questions:

Question 27 - What impacts, if any, do you think the proposed policy would have on people on the basis of their: age, sex, race, religion, sexual orientation, pregnancy and maternity, disability, gender reassignment and marriage/civil partnership?

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

Comment

Question 28 - What impacts, if any, do you think the proposed policy would have on people living with socio-economic disadvantage? Please consider both potentially positive and negative impacts and provide evidence where available.

Comment

Question 29 - Please use this space to identify other communities or population groups who you consider may be differentially impacted by this policy proposal. Please consider both potentially positive and negative impacts and provide evidence where available.

Comment

Question 30 - Please tell us about any other potential unintended consequences (positive or negative) to businesses, consumers or others you consider may arise from the proposals set out in this consultation.

Comment

Section 8. Monitoring and evaluation

163. It is proposed that the Scottish Government and FSS would review and monitor the implementation and impacts of the policy to ensure it produces the intended outcomes.

Section 9. Other comments

Question 31 - Please outline any other comments you wish to make on this consultation.

Comment

Consultation process

Responding to this consultation

We are inviting responses to this consultation by 23 September 2022.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at [Restricting Price and Location Promotions on Foods Consultation - Citizen Space](#). You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 23 September 2022.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form and consultation questionnaire and return to:

Restricting Promotions Consultation
Diet and Healthy Weight Team
Scottish Government
3E, St Andrews House
Regent Road
Edinburgh
EH1 3DG

DietPolicy@gov.scot

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our [privacy policy](#).

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at [Scottish Government consultations](#).

If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at DietPolicy@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work. You can find all our consultations online at [Scottish Government consultations](#). Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Key publications

May 2022 [Economic modelling: reducing health harms of foods high in fat, sugar or salt](#), SRUC/University of Aberdeen

May 2022 [Restricting Multi-Buy Price Promotions on High Fat, Sugar or Salt Discretionary Foods: Summary of SRUC Analysis on Potential Calorie and Nutrient Intake Impact](#), Scottish Government

April 2022 [Restricting promotions of products high in fat, sugar or salt by location and by volume price: implementation guidance](#), UK Government

March 2022 [Exploring the impact of COVID-19 on retail purchase and price promotion in Scotland between 2019 and 2020](#), Food Standards Scotland

March 2022 [Exploring the impact of COVID-19 on eating patterns and behaviours inside the home in Scotland](#), Food Standards Scotland

February 2022 [Estimation of food and nutrient intakes from food purchase data in Scotland between 2001 and 2018](#), Food Standards Scotland

December 2021 [The Food \(Promotion and Placement\) \(England\) Regulations 2021](#), UK Government

September 2021 [Systematic review: The Impact of Non-Price In-premise Marketing on Food and Beverage Purchasing and Consumer Behaviour](#), Public Health Scotland

October 2020 [The Scottish Diet - It needs to change 2020 update](#), Food Standards Scotland

August 2020 [Monitoring retail purchase and price promotions in Scotland \(2014 - 2018\)](#), Food Standards Scotland

May 2019 [Rapid systematic literature review: Impact of in-premise marketing on consumer purchasing and consumption](#), NHS Health Scotland

October 2018 [Methodologies for identifying foods high in fat, sugar and salt for limiting marketing and promotions](#), NHS Health Scotland

September 2018 [Briefing on Discretionary Foods](#), Food Standards Scotland

October 2017 [Rapid evidence review: The impact of promotions on high fat, sugar and salt \(HFSS\) food and drink on consumer purchasing and consumption behaviour and the effectiveness of retail environment interventions](#), NHS Health Scotland

October 2015 [Sugar Reduction: The evidence for action](#), Public Health England

Glossary of Terms

Excess weight: Classified by the National Institute for Health and Care Excellence (NICE) as an adult living with overweight, obesity or severe obesity with a BMI $\geq 25\text{kg/m}^2$. BMI cut-off for treatment services are lower for Black, Asian and Minority Ethnic (BAME) groups than White groups; 23kg/m^2 indicate increased risk and 27.5kg/m^2 indicate high risk, respectively.

Free sugars: Any sugars added to food or drink products by the manufacturer, cook or consumer in addition to those naturally found in honey, syrups and unsweetened fruit juice.

HFSS (high fat, sugar and salt): Foods which are high in fat, sugar and/or salt. In the UK, these are defined by the UK Nutrient Profiling Model.

Island/ bin displays: The prominent display of products away from other products to increase their visibility. Island bin displays may be at end of aisles, in the middle of a store, or in other highly noticeable places.

Multi-buy: Where purchase of more than one item is cheaper than purchase of each individual item alone. This includes for example buy one get one free, 3 for £2, 3 for 2 offers, extra free and meal deals.

NPM (Nutrient profile model): The nutrient profiling model uses a scoring system which balances the contribution made by beneficial nutrients that are particularly important in diets with components in the food that the population should eat less of. The overall score indicates whether that food (or drink) is high in fat, sugar or salt (HFSS) or not. Foods which score 4 or higher, and drinks which score 1 or higher under this model are classed as HFSS.

OOH (Out of home):

- Cafes, all types of restaurants, takeaways, pubs/bars, bakeries, sweet and dessert shops, vending machines, workplace canteens, hotels, mobile caterers, leisure and entertainment venues
- Supermarkets, delicatessens and convenience stores who provide "food on the go"
- Places where we purchase food and non-alcoholic drinks when commuting or travelling
- Manufacturers and suppliers of food to the OOH sector
- Food delivery services, including online services
- Any other venue or outlet that sells non-prepacked food ready for immediate consumption.

Pre-packed: Any single item for presentation as such to the final consumer and to mass caterers, consisting of a food and the packaging into which it was put before being offered for sale, whether such packaging encloses the food completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging. 'Pre-packed food' does not cover foods packed on the sales premises at the consumer's request or pre-packed for direct sale, for

example a freshly-made, filled baguette, packaged and made available for sale in a chiller cabinet.

Price promotion: 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. It does not include other marketing and promotional strategies such as product placement or advertising.

SDIL (soft drinks industry levy): A levy applied to the producer and importers of soft drinks containing added sugar. The SDIL came into force in April 2018 in the UK and applies a higher rate for drinks containing more than 8g sugar per 100ml, and a lower rate for those containing 5g or more.

Targeted foods: Food and drink products that we propose will be subject to promotional restrictions in Scotland.

TPRs (temporary price reductions): A temporary reduction in the cost of a product, e.g. 10% off.

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

RESPONDENT INFORMATION FORM

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

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

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

Are you responding as an individual or an organisation?

- Individual
- Organisation

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

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

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

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

Full name or organisation's name

Phone number

Address

Postcode

Email

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

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

Information for organisations:

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

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

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

- Yes
- No



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