

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

February 2024

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## **Ministerial foreword**

My vision is of a Scotland where everyone eats well and has a healthy weight.

Scotland has an issue with high levels of overweight and obesity and poor diet, which can have serious consequences for our health. 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.

What surrounds us shapes our health. This is why measures to transform the food environment are so important – to support people to eat well by making the healthier choice, the easy choice. Such measures are also more likely to be effective in reducing health inequalities than by only encouraging individual behaviour change.

Promotions such as multibuy offers or placement at checkouts can directly influence the choices we make – that is what they are designed to do. Evidence shows promotions are often applied to less healthy food and drinks. This can encourage us to buy things that we do not need and to overlook cheaper, healthier alternatives. By restricting the promotion of less healthy food and drink where they are sold to the public, we can encourage healthier options and make it easier for people to eat well.

Building on previous engagement, we consulted in 2022 to inform further development and impact assessment of the policy to restrict promotion of food and drink high in fat, sugar or salt. This provided the opportunity to take account of developments such as EU exit, COVID, cost of living and the introduction of equivalent restrictions in England.

As our policy has developed, we have continued to engage, most recently through a series of roundtable events with public health and business stakeholders. In line with our vision for an economy which strikes a balance between economic growth and health in Scotland, the feedback we have gathered through our extensive engagement has further informed the development of our proposals on the detail of regulations to restrict promotions on foods high in fat, sugar or salt. These detailed proposals are set out in this consultation document, which I am pleased to launch today.

Consultation is an important and essential part of the policy making process. This consultation is an opportunity for the Scottish Government to hear your views on our proposals. I would like to thank you in advance for your contribution.

Jenni Minto MSP  
Minister for Public Health and Women's Health

## Introduction

1. Improving diet and levels of healthy weight remains a public health priority for this Government. To help us realise our vision and support people to eat well, we continue to progress the ambitious and wide ranging action set out in our [Diet and Healthy Weight Delivery Plan](#).
2. Our food environment and the options available and promoted to us shape our health. Focusing on transforming the food environment is more likely to help improve diet and weight and be more effective in reducing health inequality than only encouraging individual behaviour change.
3. 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. Regular overconsumption of food and drink high in fat or sugar is one of the key factors leading to weight gain and, over time, obesity<sup>1,2</sup>.
4. Approximately two out of three adults in Scotland [are living with overweight or obesity](#). In 2022, 72% of adults in the most deprived areas of Scotland were living with overweight or obesity, compared to 61% of adults in the least [deprived areas](#). [One third of children](#) were at risk of overweight or obesity in 2022.
5. As part of a wide range of action to improve diet, and help create a food environment which better supports healthier choices, we remain committed to restricting promotions of food and drink high in fat, sugar or salt (HFSS) 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.
6. 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.
7. Restricting the promotion of less healthy food and drink is intended to make it easier for people to spend less on HFSS products and make healthier choices, in line with our public health priority to create a Scotland where everyone eats well and has a healthy weight.

## Previous consultations

8. In 2018/19, following a commitment in our Delivery Plan, we publicly [consulted on proposals to restrict the promotion and marketing of targeted food and drink](#)

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<sup>1</sup> [Carbohydrates and Health \(publishing.service.gov.uk\)](#) (SACN 2015)

<sup>2</sup> [Tackling obesities: future choices - mid-term review \(publishing.service.gov.uk\)](#) (2007)

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

9. We [consulted again in 2022](#) to inform further development and impact assessment of the policy. The 2022 consultation provided an opportunity to take account of developments since the 2018/19 consultation, including EU exit, COVID, cost of living pressures and the introduction of equivalent promotions regulations in England. [An analysis of the consultation](#) was published in May 2023.
10. In summary, feedback from the 2022 consultation found:
  - Non-industry respondents were generally supportive of restrictions but less supportive of some exemptions (for example for small businesses).
  - Views from businesses and other industry stakeholders were mixed. Where there was support, it generally related to a preference for alignment with the UK Government's promotions restrictions in England. Disagreement typically related to the view that there is insufficient evidence to justify aspects of the policy, such as targeting temporary price reductions, or that it would create disadvantages for certain types of businesses (particularly smaller businesses).
  - Individuals' views were relatively mixed. Views in support of the policy tended to be similar to those expressed by non-industry respondents. Those against the proposals tended to disagree with the need for restrictions at all or had concerns about how restrictions may affect the public financially.

## **Wider context**

11. The policy was previously proposed to be delivered as a Bill. Following our 2022 consultation and the further development of policy proposals, we determined that this policy can be delivered more efficiently by regulations.
12. The UK Government has put in place regulations in England to restrict the promotion of targeted HFSS foods by location and volume price - [The Food \(Promotion and Placement\) \(England\) Regulations 2021 \(SI 2021/1368\)](#). Location restrictions (for example, displaying foods at checkouts and end of aisle) came into force on 1 October 2022. The UK Government delayed the implementation of volume price restrictions, such as buy one get one free, citing rising cost of living pressures. Volume price restrictions were expected to come into force in England in October 2023, but UKG have delayed implementation by a further two years, until 1 October 2025.
13. In summer 2022, the Welsh Government consulted on similar proposals to restrict less healthy promotions in its [Healthy Food Environment consultation](#). The promotions proposals included restricting value-based promotions, including multi-buy, temporary price reductions and meal deals, and location restrictions, including at free standing display units, checkouts and end of aisles, on less healthy foods. The Welsh Government have since confirmed that they intend to

consider consistency with UK Government regulations, though [are also minded to include temporary price promotions and meal deals within scope of their policy](#).

14. The [Good Food Nation Bill](#) has been passed through the Scottish Parliament and became an Act in July 2022. It is the foundation upon which Scotland will build a Good Food Nation. The Act 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.
15. A group has been established to take forward recommendations as part of a [New Deal for Business](#), to strengthen co-operation between the Scottish Government and businesses. Engaging with businesses from an early stage of policy development is key to ensure policy is effective and proportionate.
16. 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**

17. This consultation seeks views on the detail of proposed regulations to restrict the promotion of HFSS foods where they are sold to the public, including across retail and out of home settings. As set out previously, the policy will target HFSS foods including, among other things, confectionery, cakes, crisps, savoury snacks and soft drinks with added sugar. It is proposed the policy will target promotion types including among other things, multi-buys, temporary price reductions, meal deals and positioning restrictions, such as at checkouts and front of store.
18. We intend to make Regulations under powers in the [Food Safety Act 1990](#) (“the 1990 Act”) and the [Food \(Scotland\) Act 2015](#) (“the 2015 Act”). The 1990 Act provides the Scottish Ministers with powers to make Regulations which impose requirements or prohibitions on the labelling, marking, presenting or advertising of food and the descriptions applied to food, and Regulations which prohibit or regulate commercial operations in relation to food in the interests of public health. These powers would allow Scottish Ministers to introduce requirements and restrictions on the promotion of HFSS foods. The 1990 Act and the 2015 Act together enable the Scottish Ministers to set down offences and make provision regarding the enforcement of the Regulations, including the use of administrative sanctions such as compliance notices and fixed penalty notices under the 2015 Act. This consultation is being carried out in accordance with [Article 9 of the General Food Law Regulation \(Regulation \(EC\) No 178/2002\)](#), which applies to the proposed Regulations.

19. Our consultation proposals have been informed by the feedback to our 2022 consultation and subsequent engagement with stakeholders, including from roundtables held in November and December 2023. Collectively this feedback has helped to refine our proposals and identify areas for further consideration and consultation.
20. In this consultation, we are seeking views on the detail of proposed regulations to restrict HFSS promotions including:
- targeted foods within the scope of restrictions;
  - price promotions within the scope of restrictions, including meal deals and temporary price reductions;
  - the approach to placement restrictions of targeted foods in store and online;
  - the qualifying businesses within the scope of restrictions, including proposed exemptions;
  - the proposed approach to enforcement and implementation.
21. A partial BRIA has been prepared and accompanies the consultation document. We are encouraging businesses to provide any data and relevant information to assist with further developing the final BRIA. The partial BRIA is available [here](#). Submissions can be made directly to [DietPolicy@gov.scot](mailto:DietPolicy@gov.scot).
22. Information on the Scottish Government consultation process and how to respond to the consultation is set out in Annex A.
23. Key publications which have informed the development of this policy are at Annex B.
24. A glossary of terms is at Annex C.

## Section 1: Foods subject to restriction

25. In our 2022 consultation, we sought views on the food<sup>3</sup> categories that would be subject to promotions restrictions in Scotland. We also sought views on targeting pre-packed foods and applying a nutrient profiling<sup>4</sup> approach to identify high fat, sugar or salt (HFSS) foods.
26. Overall, non-industry respondents indicated support for expanding the food categories within scope of restrictions beyond discretionary<sup>5</sup> to support a more comprehensive approach. Industry respondents tended to favour alignment with promotions restrictions for England, as set out in the [Food \(Promotion and Placement\) \(England\) Regulations 2021](#), on the basis that it would help to minimise regulatory and business burden. Individual views were mixed.
27. Overall, respondents supported the use of nutrient profiling to identify HFSS foods within targeted categories although views were mixed on targeting pre-packed foods only. Industry respondents tended to support targeting pre-packed foods on the basis that the approach would align with England. Non-industry tended to disagree with targeting pre-packed foods only, primarily due to concerns that it would create loopholes that could undermine the overall effectiveness of the policy.
28. A more detailed breakdown of the feedback is available in section 3 of the [independent analysis report of the consultation](#), published in May 2023.

### Food categories

29. Following careful consideration of the feedback received, we propose that the food categories<sup>6</sup> within scope of promotions restrictions are:

**Soft drinks with added sugar** (including soft drinks such as cola or lemonade, as well as juice based and milk based drinks with added sugar, fruit juices and smoothies with added sugar).

**Savoury snacks** (including crisps, corn puffs, tortilla chips, savoury crackers or rice cakes such as pretzels, papadums, salted popcorn and prawn crackers).

**Breakfast cereals** (including ready-to-eat cereals, granola, muesli, porridge oats and other oat-based cereals).

**Confectionery** (including chocolates and sweets).

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<sup>3</sup> Food(s) in this consultation refers to food and drink.

<sup>4</sup> 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 high in fat, sugar or salt (HFSS) – or not.

<sup>5</sup> Discretionary foods - foods that provide little or no nutritional benefit and are not necessary for a healthy diet, for example crisps, confectionery, cakes, soft drinks with added sugar.

<sup>6</sup> These categories have been adjusted slightly from our 2022 consultation to be consistent with the categories set out in Schedule 1 of the UKG regulations for England.



**Ice cream, ice lollies, frozen yogurt, water ices** and similar frozen products.

**Cakes and cupcakes** (including swiss rolls, tray bakes and cake bars).

**Sweet biscuits and bars** based on one or more of nuts, seeds or cereal.

**Morning goods** (including croissants, pains au chocolat and similar pastries, crumpets, pancakes, buns, teacakes, scones, waffles, Danish pastries and fruit loaves).

**Desserts and puddings** (including pies, tarts and flans, cheesecake, gateaux, dairy desserts, sponge puddings, rice pudding, crumbles, fruit fillings, powdered desserts, custards, jellies and meringues).

**Sweetened yoghurt and fromage frais**

**Pizza**

**Roast potatoes, chips and other similar potato products**

**Ready meals** (including ready to cook or reheat meals intended to be consumed as a complete meal, or meal centres<sup>7</sup>, such as ready to heat stews, curries, bolognese or pies, in addition to breaded or battered vegetable, meat, fish or poultry products.)

30. As detailed in our 2022 consultation paper at paragraphs 48 and 64, these food categories are significant contributors of calories, fat and sugar to the Scottish diet, and are the food categories of ‘most concern to childhood obesity’ as described in the UK-wide reformulation programmes. Targeting these categories supports our aim to reduce the public health harms associated with excess consumption of calories, fats, sugar and salt.

31. Our proposed approach is consistent with the food categories within scope of the regulations for England and with the Welsh Government’s proposed approach, as set out in its [consultation](#).

### **Defining food categories**

32. We propose to be consistent with the food category descriptors set out in [Schedule 1 of the UK Government regulations for England](#) (see Annex D) as far as possible. On a practical level, we recognise that consistency across the UK in respect of both the food categories within scope of regulations and category descriptors will help to minimise the regulatory burden on businesses, particularly those working across England, Wales and Scotland.

33. In addition to seeking views through this consultation, we will continue to engage with stakeholders as appropriate to inform final category descriptors and to

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<sup>7</sup> Meal centres are the main element or focus of a meal, but not a complete ready meal e.g. they come without a carbohydrate accompaniment such as rice or potatoes.

support the timely development of guidance materials which are comprehensive to support effective implementation and enforcement in Scotland.

### **Identifying food and drink products within scope of restrictions**

34. Within targeted food categories, we propose that promotions restrictions will only apply to pre-packed<sup>8</sup> food and drink products that are high in fat, sugar or salt (HFSS) as defined by the 2004/05 nutrient profiling<sup>9</sup> model (NPM). This was discussed in detail in our 2022 consultation at paragraphs 68-74.
35. This approach is consistent with the equivalent regulations for England. The 2004/05 NPM is a recognised, evidence based tool which is well-understood by the food industry. Applying a NPM approach will allow products within food categories that are non-HFSS to be identified, for example sugar free sweets.
36. Whilst feedback in response to the 2022 consultation on targeting pre-packed foods was mixed (see [paragraphs 3.28-3.35](#) of our consultation analysis report), applying a NPM to targeted foods requires availability of information on a product's composition. We therefore remain of the view that targeting pre-packed items is currently the most feasible approach to ensure that the information required to apply a NPM is more often readily available<sup>10</sup> which in turn will support implementation of the policy.
37. It is proposed that non-pre-packed products, such as loose bakery items, will be out of scope of the policy at this time because businesses may not be able to determine whether these products can or cannot be promoted due to relevant nutritional information not being available.
38. There will be 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) will be in scope of the policy. Further detail on our proposals in respect of unlimited refills is set out at paragraphs 51-53 of this consultation.

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<sup>8</sup> 'Prepacked food' 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. 'Prepacked food' does not cover foods packed on the sales premises at the consumer's request or pre-packed for direct sale (Article 2(2)(e) of [Regulation \(EU\) No 1169/2011](#) of the European Parliament and of the Council on the provision of food information to consumers.) A type of food pre-packed for direct sale could include, for example, a freshly-made, filled baguette, packaged and made available for sale in a chiller cabinet.

<sup>9</sup> 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. 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

<sup>10</sup> Most foods that are pre-packed such as confectionery or crisps are required to provide nutrition information (including calories per 100g/ml) through the Food Information to Consumers Regulation.

## Questions

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

Yes

No

Don't know

Please explain your answer.

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

Yes

No

Don't know

Please explain your answer.

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

Comment

## Section 2: Price promotions

39. Price promotions refer to special offers where there is a reduction in the usual price of a product. These may be time-limited or conditional on some other requirement, such as purchasing another item(s) or being a member of a loyalty scheme. It does not include other marketing and promotional strategies such as product placement or advertising.
40. In 2022, around 20% of the food and drink we bought in Scotland from shops including supermarkets was on price promotion, which can take a number of different forms. Most (14.4%) was purchased through temporary price reductions (TPRs), 5.1% on “Y for £X” e.g. 3 for £1 and other multi-buys e.g. buy one get one free and 0.4% via other forms of price promotion.<sup>11</sup> Discretionary foods have been found to be more frequently purchased using “Y for £X” promotions than some healthier categories such as fruit, vegetables or bread<sup>12</sup>.
41. In our 2022 consultation, we set out proposals to restrict multi-buy price promotions and sought views on including meal deals and ‘extra free’ within the scope of the policy. We also sought views on restricting unlimited refills for a fixed charge on targeted soft drinks with added sugar.
42. Overall, non-industry and individual respondents tended to support the inclusion of ‘extra free’ and ‘meal deal’ offers in multi-buy restrictions on the basis that these offers result in unintended purchases and over-consumption. Industry respondents showed some preference for including ‘extra free’ on the basis of alignment with England. Those that disagreed with the inclusion of ‘extra free’ primarily suggested ‘extra free’ promotions do not drive over-consumption or that restricting them would undermine competition and hamper smaller businesses and new products. Overall, industry respondents disagreed with the inclusion of meal deals, on the basis this would not align with restrictions in England, or that meal deals are distinct from other multi-buy offers, and are cost effective, convenient and do not drive over-consumption.
43. Non-industry and individual respondents tended to support restricting unlimited refills for a fixed charge on targeted soft drinks with added sugar on the basis that these offers encourage over-consumption of unhealthy drinks. A large proportion of industry respondents did not have a specific view on this issue. However, there was a level of support among industry on the basis that this approach would align with regulations in England.
44. A more detailed breakdown of the feedback is available in section 4 of the [independent analysis report of the consultation](#), published in May 2023.

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<sup>11</sup> Food Standards Scotland. [Monitoring Retail and Price Promotions in Scotland 2019-2022. Report in Preparation.](#)

<sup>12</sup> [Exploring the impact of COVID-19 on retail purchase and price promotion in Scotland between 2019 and 2020 | Food Standards Scotland](#)

## **Multi-buys and unlimited refills**

45. Taking into account the feedback to our 2022 consultation, we propose that the following types of price promotion will be within scope of restrictions:

### **A. Multi-buys**

46. Multi-buy means:

i) where the purchase of multiple items is cheaper than the purchase of each individual item separately. Examples include: 2 for £1, 3 for 2, buy 6 and get 25% off.

ii) where a promotion indicates that an item, or part of an item, is free. Examples include: buy one, get one free and 50% extra free.

47. Meal deals are also a form of multi-buy and are considered in detail at paragraphs 58-77 of this consultation.

48. We propose restricting multi-buys on the basis that these are particularly effective at increasing the overall volume of promoted product purchased. As noted at paragraph 78 in our 2022 consultation, data from around 30,000 British households between 2013 and 2015 showed an estimated volume uplift for multi-buys of 25%. Given these types of promotions encourage an increase in the amount of product purchased, they can encourage increased consumption.

49. We propose that multi-buy restrictions will apply to targeted foods which are pre-packed and are HFSS (as defined by the 2004/05 NPM). This approach was discussed in detail at paragraphs 34-38 of this consultation.

50. Our proposed approach to multi-buys is consistent with the UK Government regulations for England (excluding meal deals which are not restricted in England).

### **B. Unlimited refills**

51. Unlimited refill in this consultation means a promotion that offers the consumer at least one refill of the same drink or another drink (within scope of the restrictions) for free (including top ups) after the consumption of the first drink.

52. We propose that 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, will be restricted. Non-pre-packed refills of other targeted foods are not proposed to be within scope of the policy at this time.

53. This is on the basis that unlimited refill promotions are essentially a flexible form of a "buy one, get one free" multi-buy offer. As set out at paragraph 79 of our 2022 consultation, 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.

54. Our proposed approach to unlimited refills is consistent with the UK Government regulations for England.

### **Further considerations**

55. Price promotions (multi-buy and unlimited refills) that are within the scope of the proposed regulations and are communicated to the consumer via any means will be restricted. For example, promotions communicated via the packaging of targeted foods as well as promotions that are communicated to a consumer through associated signage, are proposed to be restricted. The proposed restrictions on price promotions include both in-store and online promotions – see section 4 of this consultation for further detail on businesses in scope of these proposed restrictions.

56. We propose that a period of 12 months is allowed for packaging that includes a volume price promotion within scope of restrictions (such as “extra free”) to be phased out. We expect this to provide sufficient time for businesses to work through existing stock with on-pack price promotions and for compliant packaging to become available.

57. We will continue to monitor the intentions of the UK Government (and the Welsh Government once they set out their plans) with regard to the planned coming into force of their volume price regulations and any proposed periods for the purposes of stock transition. As noted earlier in this consultation, the UK Government's volume price restrictions are currently due to come into force on 1 October 2025 and allow a period of 12 months to allow for stock transition of promotions on packaging.

### **C. Meal deals**

58. Meal deals are a form of multi-buy promotion where the purchase of multiple items is cheaper than the purchase of individual items separately, which could encourage consumers to purchase more in order to obtain a discount. For example, more than half of respondents to a 2023 consumer survey (55%) agreed that buying a meal deal means they buy and consume items they would not otherwise have purchased, compared to 21% that disagreed.<sup>13</sup>

59. Meal deal promotions come in a variety of forms but typically comprise three or four items - typically a ready to eat main, a snack and a drink or a combination of a main(s), side(s), starter and/or dessert and a drink. Healthier options are often available but not always. A mystery shopper study in Scotland in 2022<sup>14</sup> found healthier items were obviously available to include in meals deals in around three-quarters (76%) of outlets visited in-person, which included supermarkets and quick service restaurants. In almost a quarter (24%) of outlets surveyed, no healthier items were obviously available. An academic study by Leek et al (2023) analysed whether the calories contained in lunch meal deals in several UK chain

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<sup>13</sup> [Consumer Survey on where people shop and meal deals conducted by Progressive Partnership on behalf of the Scottish Government in September 2023 \(www.gov.scot\)](#)

<sup>14</sup> [Out of home businesses - marketing strategies: research \(www.gov.scot\)](#)

shops in a single locality were 600kcal or less for that meal occasion. They found that 23% of available deals exceeded 600kcal, with the highest calorie deal totalling 1,329kcal, more than double the recommended guideline.<sup>15</sup>

60. Evidence suggests that meal deals are prevalent and commonly purchased. A recent study found that 21% of adults in Scotland report purchasing a lunchtime meal deal once a week or more and 24% purchase a lunchtime or evening meal deal at least once a week. A majority (88%) of respondents reported typically choosing a less healthy snack, such as crisps or confectionary (which are discretionary items), to go with their lunchtime meal deal. Convenience is a key driver of purchase, followed by cost.<sup>16</sup>
61. Rebalancing meal deals towards healthier options has the potential to influence behaviour towards making healthier choices and reduce the purchase of HFSS items. For example, the consumer survey found that 32% of those who purchased meal deals reported their most likely response to less healthy items not being available as part of meal deals was to “still buy a meal deal but one that includes non-restricted, healthier items”. A further 9% reported they would “just buy and eat a main with no additional items”.<sup>17</sup>
62. Feedback to our 2022 consultation on targeting meal deals was mixed. Where there was agreement, this tended to be on the basis that meal deal offers are prevalent and targeting HFSS components would help to support a shift towards healthier alternatives. Disagreement was on the basis that the inclusion of meal deals would not align with the restrictions in England or the view that meal deals are distinct from other multi-buy offers and do not drive over-consumption.
63. The consumer survey found a greater proportion of respondents were supportive of restrictions on inclusion of less healthy items in meal deals (40%) than opposed (24%).
64. Further engagement through a series of recent roundtable discussions with key stakeholders largely mirrored the feedback to our consultation. Public health stakeholders supported the inclusion of meal deals within scope of the policy. This is on the basis that they encourage over consumption and a comprehensive policy will have the greatest public health impact. Industry stakeholders considered a meal deal to be a planned and not an impulse purchase and so did not have the same potential for over consumption and stockpiling as other volume price promotions. On this basis, overall industry stakeholders did not think that meal deals should be within scope of the policy.
65. Taking into account the feedback to the consultation, roundtable events and recent evidence gathering, we propose to include meal deal promotions within the scope of promotion restrictions on the basis that they encourage consumers

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<sup>15</sup> [Lunch meal deals contribution to overconsumption and use of the intervention ladder models to examine stakeholders’ potential actions to reduce calorie content \(tandfonline.com\)](#)

<sup>16</sup> [Consumer Survey on where people shop and meal deals conducted by Progressive Partnership on behalf of the Scottish Government in September 2023 \(www.gov.scot\)](#)

<sup>17</sup> [Consumer Survey on where people shop and meal deals conducted by Progressive Partnership on behalf of the Scottish Government in September 2023 \(www.gov.scot\)](#)

to purchase more than they may have otherwise planned, in order to get the deal and HFSS items are common elements of such deals.

66. We propose that a meal deal promotion is:

*an offer of a discounted price for multiple items promoted as intended to be consumed together as, or as part of, a meal by one, or by two or more people. Examples include lunchtime meal deals and dine in offers.*

67. We recognise that meal deals are somewhat unique in that they are available in a variety of formats and combinations, which can vary between types of stores and the type of meal deal on offer.

68. There are therefore different ways in which we could target meal deals to support improvements in diet - by helping reduce overconsumption of HFSS targeted foods and shifting the balance of meal deals toward healthier, non-HFSS choices.

## **Options**

### **Option 1: Meal deals cannot contain HFSS targeted foods.**

69. If one or more components of a meal deal are an HFSS targeted food (as defined by the NPM) then the products could not be sold as a meal deal, as proposed at paragraph 66. Meal deals that do not contain targeted HFSS foods (or contain targeted foods that pass the NPM) would not be subject to the restrictions.

70. This is the most comprehensive approach. It would mean that only non-HFSS targeted foods could be offered as part of a meal deal, which would support healthier choices and encourage positive behaviour change. It is recognised that this approach would limit the range of items that can be offered as part of a meal deal, however this option may also accelerate and encourage businesses to reformulate products in order to offer customers more choice. It is acknowledged that HFSS targeted foods could still be purchased in addition to a meal deal promotion.

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

71. If two or more components of a meal deal are a HFSS targeted food (as defined by the NPM) then the products could not be sold as a meal deal, as defined at paragraph 66. Meal deals that contain one targeted food that is HFSS, or only contain targeted foods that pass the NPM, would not be subject to the restrictions.

72. This option would support a rebalancing of meal deals toward healthier options by limiting the volume purchase of HFSS targeted foods (as defined by the NPM) as part of a meal deal. A meal deal could contain up to one HFSS targeted food, but would not be able to include multiple HFSS targeted foods – similar to our proposed approach to restricting standard multi-buy promotions. Whilst not as



comprehensive as option 1, we would still expect this approach to discourage the purchasing of multiple HFSS items and add-ons, in turn reducing consumption of HFSS targeted foods overall. By allowing up to one HFSS targeted food to be included, this option would provide businesses with greater flexibility on the range of items that could be offered as part of a meal deal. This balance may support businesses to maintain choice for consumers but with a greater emphasis on encouraging healthier choices. However, it is recognised that, compared to other options being considered, this approach might be more challenging to implement and communicate to consumers.

### **Option 3: Meals deals cannot contain targeted HFSS discretionary foods.**

73. If one or more components of a meal deal includes a targeted HFSS discretionary<sup>18</sup> food (as defined by the NPM) then the products could not be sold as a meal deal, as defined at paragraph 66. Meal deals that do not contain targeted HFSS discretionary foods (or contain targeted discretionary foods that pass the NPM) would not be subject to the restrictions.
74. This option focusses specifically on targeted HFSS discretionary foods which contribute substantially to energy, fat, and sugar intakes in the diet.<sup>19</sup> As noted at paragraph 60, discretionary food items (crisps and confectionary) are the most commonly reported item purchased as a typical snack for lunchtime meal deals<sup>20</sup>. Further examples of discretionary foods that are frequently sold as part of meal deals include soft drinks with added sugar, puddings and desserts. We therefore expect that restricting the availability of targeted HFSS discretionary foods offered as part of a meal deal would help to support consumers to make healthier choices.
75. Focussing on targeted HFSS discretionary foods only would not restrict the inclusion of other targeted foods, such as HFSS ready meals. We recognise that this is not as comprehensive an approach as set out in option 1. However, we propose that this approach would help to maintain greater flexibility on the range of items that businesses could offer as part of a meal deal, compared to option 1. Further, this option could encourage businesses to offer healthier alternative snacks as part of a meal deal which, in turn, could support positive changes in consumer behaviour.

### **UK Government and Welsh Government**

76. Meal deals are not within scope of the equivalent regulations for England.

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<sup>18</sup> Discretionary food categories are 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, ice cream and dairy desserts.

<sup>19</sup> [Restricting Multi-Buy Price Promotions on High Fat, Sugar or Salt Discretionary Foods: Summary of SRUC Analysis on Potential Calorie and Nutrient Intake Impact \(www.gov.scot\)](#); [Reducing health harms of foods high in fat, sugar or salt: economic modelling – final report - gov.scot \(www.gov.scot\)](#)

<sup>20</sup> [Consumer Survey on where people shop and meal deals conducted by Progressive Partnership on behalf of the Scottish Government in September 2023 \(gov.scot\)](#)

77. The Welsh Government set out in a [statement](#) in July 2023 that it is minded to pursue restrictions on meal deals but has still to set out its proposed approach. We will continue to explore with the Welsh Government opportunities for consistency in our approach to targeting meal deals, including with regard to definitions, so as to minimise regulatory burden on industry.

#### **D. Temporary price reductions**

78. Temporary price reductions (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 but this can vary.

79. [Food purchases have consistently been greater on TPRs than for other price promotion types](#). In 2022, 14.4%<sup>21</sup> of the food and drink purchased through retail was on TPRs.

80. As set out in our previous consultation, [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-buy promotions only. Further, whilst [multi-buys may generate the greatest sales increase when compared to TPRs, the latter still significantly expands sales](#).

81. Given the prevalence of TPRs, the evidence does suggest that restricting TPRs, in addition to multi-buys, is capable of enhancing 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.

82. Feedback to our 2022 consultation on the inclusion of TPRs was mixed. Agreement tended to be on the basis that TPRs are used to promote unhealthy products or could encourage unintended purchase. Disagreement was primarily on the basis of a preference for alignment with England or the suggestion that there was insufficient evidence to justify their inclusion. A more detailed breakdown of the feedback on TPRs is available in section 4 of the [independent analysis report of the consultation](#), published in May 2023.

83. Further engagement through a series of recent roundtable discussions with key stakeholders further reinforced the feedback to our consultation. Public health stakeholders strongly supported the inclusion of TPRs within scope of the policy to maximise the impact. This was on the basis that TPRs are highly prevalent and not targeting them would create a loophole that could significantly undermine the public health impact of the policy. Industry stakeholders strongly opposed the inclusion of TPRs on the basis that they are a competitive tool used to differentiate between brands and stores and support product development and innovation. It was noted that TPRs can also help to reduce costs for consumers.

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<sup>21</sup> Food Standards Scotland. Monitoring Retail and Price Promotions in Scotland 2019-2022. [Report in Preparation.]

Industry stakeholders reiterated that deviating from the approach in England would have significant implications for businesses.

84. Taking this feedback into account, the Scottish Government preferred policy position is to include TPRs within scope of restrictions. This is on the basis that they remain highly prevalent and there is clear evidence that restricting TPRs in addition to multi-buys has the potential to considerably enhance the positive impact of the policy on diet.

85. We propose to broadly define TPRs as follows:

*Temporary price reductions are a promotion where the normal price of an item is discounted for the duration of a defined, time limited period before reverting back to the item's usual price.*

## **UK Government and Welsh Government**

86. TPRs are not within scope of the equivalent regulations for England.

87. The Welsh Government has set out that it is minded to pursue restrictions on the use of TPRs. We will continue to explore opportunities for consistency with the Welsh Government, for example on the definition of TPRs, so as to minimise the regulatory burden on industry.

## **Definitions**

88. We propose to be consistent with the definitions for volume price promotions as set out in the UK Government regulations for England where possible and appropriate (excluding meal deals and TPRs which are not restricted in England).

89. We will engage with stakeholders as appropriate to support the timely development of guidance materials which are comprehensive to support effective implementation and enforcement.

## **Questions**

**Question 4** - Is the proposed description of the following sufficiently clear for the purpose of implementation and enforcement:

a. multibuy?    Yes/ No/ Don't know

b. extra free?    Yes/ No/ Don't know

Please explain your answers.

**Question 5** - Is the proposed timescale of 12 months at paragraph 56 sufficient to allow price promotions on packaging to be phased out?

Yes

No

Don't know

Please explain your answer.

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

Comment

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

Option 1 - Meal deals cannot contain HFSS targeted foods.

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

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

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

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

Yes

No

Don't know

Please explain your answer.

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

Comment

### Section 3. Location Restrictions

90. In our 2022 consultation, we proposed to restrict the location of targeted foods in prominent places in physical premises where they are sold to the public. This would include the 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; and
- island/bin displays.

91. We also proposed that these restrictions would apply to the equivalent locations online. These included home pages, certain searching or browsing pages, “pop-up” pages, favourites pages and shopping basket or checkout pages.

92. As set out in our 2022 consultation, how and where foods are promoted and marketed influences our purchasing decisions and drives sales of targeted foods. 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.<sup>22</sup> 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.

93. 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](#).

94. In feedback to our 2022 consultation, non-industry organisation respondents typically agreed with location restrictions proposed in the 2022 consultation (set out at paragraph 90 above) on the basis that they believe that promotions in certain locations encourage customers to purchase HFSS goods that they did not intend to buy. Individuals also tended more towards agreement than disagreement.

95. Responses from industry organisations were more mixed. There was some concern about a disproportionate impact on small stores. However, there was general support that if restrictions are introduced these should align with

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<sup>22</sup> [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; 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; 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.](#)

restrictions in England. A majority of industry respondents indicated restrictions should not include 'island/bin displays'. There were a number of other specific concerns expressed in respect of restricting island/bin displays, such as their specific use for meeting high demand for seasonal products and for displaying clearance products.

96. A more detailed breakdown of the feedback on in-store location restrictions is available in section 5 of the [independent analysis report of the consultation](#), published in May 2023.

## Proposals

### In-store

97. Having considered the feedback to our previous consultation, alongside the evidence base, we propose to restrict the location of targeted foods in prominent places in physical premises where they are sold to the public.

98. Targeted foods could not be placed in store at:

#### **Checkout areas** - meaning:

- i. any area within 2 metres of the checkout facility, which is the facility intended to be used by consumers to make a purchase, including a self-checkout terminal and a counter at which a cash register is used. Targeted HFSS foods would be able to be placed in an aisle (but not at the end of an aisle<sup>23</sup>) even if it is within 2 metres of a checkout.
- ii. any area within 2 metres of a designated queuing area or queue management system<sup>24</sup>. Targeted HFSS foods would be able to be placed in an aisle (but not at the end of an aisle) even if it is within 2 metres of a checkout.

**End of aisles** - meaning a display at the end of (but not within) an aisle, where the aisle end is adjacent to a main customer route through the store. Includes displays on a separate structure, such as an island bin, pallet, free standing unit, side stack or clip strip connected or adjacent to, or within 50cm of, such an aisle end.

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<sup>23</sup> As noted at paragraph 9292, there is consistent evidence that the placement/and or location of food and drink can influence consumer choices. 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.

<sup>24</sup> Designated queuing area - an area set aside and marked for the purpose of providing a place for consumer to wait to make a purchase.

**Store entrances** – meaning any point within the prohibited distance<sup>25</sup> of the midpoint of any public entrance to the store’s main shopping area.

**Covered external area** – meaning a covered area outside and connected to a store’s main shopping area, through which the public passes to enter the main shopping area (such as a foyer, lobby or vestibule).

**Free standing displays** – meaning free standing displays of products away from other products to increase their visibility. Display locations can include the middle of an aisle, along main customer routes through store, and other highly noticeable places. This would include displays using free standing structures such as pallets, fridges, freezers, island bins, aisle units and gondolas.

99. The location 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 location restrictions.

### Other considerations

100. We recognise that there may be specific considerations in terms of the implementation of store entrance restrictions for stores that offer predominantly non-food products alongside a smaller food offer in a dedicated area of the main store e.g. a department store with a small food hall or café area within the main store.

101. Location restrictions, as described at paragraph 98, would apply to these dedicated areas as they would to the rest of the store. However, we propose that implementation of store entrance restrictions for these areas should be based on the relevant floor area within store that is dedicated to the sale of food products where:

- the store has specific till points within the floor area dedicated to food products; and
- there is a separate external entrance and/ or internal entrance(s) to the area dedicated to food products.

102. To be clear, location restrictions, including in relation to store entrances, as described at paragraph 98, would apply in the rest of the store. This would cover for example, the placement of targeted foods at a non-food checkout or on display at the entrance to the main store. The specific consideration discussed here only applies to the specific areas in stores designated for the sale of food.

### Relevant floor area

103. When calculating the size of a store based on floor space, we recognise that there are areas within store that are not customer facing or relevant to the sale of targeted foods to the public, for example a store room or office.

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<sup>25</sup> Prohibited distance - the smaller of 15m or the following  $\sqrt{0.03 \times a}$  where  $a$  is the store’s relevant floor area;

104. Taking this into account, we propose that the relevant floor area of a store, in relation to these regulations, would be the internal floor area of a store, excluding any part of the store that:

- is not used for displaying or in connection with serving consumers products for example storage areas. Areas behind the counters would not be excluded from relevant floor area.
- is used for consultation with customers in connection with any medical services (such as a pharmacy or opticians' services) offered in the store.
- is intended as a seating area in areas where the food displayed is intended for immediate consumption, such as cafes.
- an area occupied by a separate business other than the store it is in (a concession), but only where the concession operates its own payment facilities.

### **UK Government and Wales**

105. With the exception of targeting free standing displays, our proposed approach is consistent with the equivalent regulations for England. We therefore propose consistency with the definitions set out in the UK Government regulations (unless we've indicated otherwise in this consultation) and where this supports delivery of the policy in Scotland.

106. In addition to store entrances, checkouts and end of aisle, the Welsh Government is also minded to target free standing display units (in addition to those associated with the end of an aisle). We will continue to explore with the Welsh Government the scope for consistency with definitions where this supports delivery of the policy in Scotland, recognising that this would help to reduce regulatory burden for businesses.

### **Questions**

**Question 10** - Are the proposed descriptions of the following prominent in-store locations, as described at paragraph 98, sufficiently clear for implementation and enforcement?:

- a. Checkout – Yes/ No/ Don't know
- b. End of aisle – Yes/ No/ Don't know
- c. Store entrances – Yes/ No/ Don't know
- d. Covered external area – Yes/ No/ Don't know
- e. Free standing displays – Yes/ No/ Don't know

Please explain your answers.



**Question 11** - Do you agree with the proposed approach to applying store entrance criteria to dedicated food areas within stores, as described at paragraphs 100-102?

Yes/ No/ Don't know

Please explain your answer.

**Question 12** - Do you agree with the proposed description for relevant floor area?

Yes/ No/ Don't know

Please explain your answer.

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

Comment

## Online

107. We proposed in our 2022 consultation that as more people purchase food online<sup>26</sup>, a trend that accelerated due to the COVID-19 pandemic<sup>27</sup>, these restrictions should apply to equivalent locations online, for example to home and checkout pages. Food Standards Scotland analysis of 2019 to 2022 data<sup>28</sup> suggests 8% of retail food and drink volume in 2022 was purchased online.

108. In feedback to our 2022 consultation proposals, non-industry respondents tended to support online location restrictions on the basis that these encourage unintended purchases of HFSS items. Individuals shared a similar view. There was a level of support for restricting the online locations among industry respondents on the basis that they supported alignment with restrictions in England.

109. A more detailed breakdown of the feedback on applying location restrictions to equivalent locations online is available in section 5 of the [independent analysis report of the consultation](#), published in May 2023.

110. Taking this feedback into account, we propose that restrictions on the placement of targeted HFSS foods would apply to equivalent locations online as follows:

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<sup>26</sup> Mintel (2019) Brits spent £12.3 billion on online groceries in 2018; Food Standards Scotland (2020) The Out of Home Environment (2019)

<sup>27</sup> Food Standards Scotland (2022) Exploring the impact of COVID-19 on retail purchase and price promotion in Scotland between 2019 and 2020; Food Standards Scotland (2021) The impact of Covid-19 on the out of home sector in Scotland

<sup>28</sup> Food Standards Scotland. [Monitoring Retail and Price Promotions in Scotland 2019-2022. Report in Preparation.](#)

- on a **home page**, whether or not the consumer enters the online marketplace via the home page. “Home page” means any of: (i) an online marketplace’s highest level public page; (ii) the highest level public page of an online marketplace’s grocery section.
- whilst a consumer is **searching for or browsing products**
  - i. other than targeted foods
  - ii. in targeted food categories unless:
    - a consumer browses or searches for a general category of product which includes the targeted food e.g. seasonality or nutritional or dietary characteristics.
    - a search term entered by the consumer matches in whole or in part the name under which the targeted food is marketed or an ingredient listed on the packaging of the targeted food.
- on a **favourite products page** unless the consumer has previously purchased the targeted food (whether in store or online) or intentionally identified it as a favourite product. “Favourite products page” means a page opened by a consumer for the purpose of browsing products they have previously purchased or intentionally identified as favourite products.
- on **pages not opened intentionally by the consumer** (such as “pop-ups” or a “brand burst”).
- on a **checkout page**, meaning a page shown to a consumer as part of the checkout process, such as a page listing items the consumer has so far selected for purchase or a page dealing with payment, collection or delivery.

111. Our proposed approach to online locations is consistent with the equivalent regulations for England and proposals set out by the Welsh Government. We therefore propose consistency with the definitions set out in the UK Government regulations where appropriate and this supports delivery of the policy in Scotland.

## Questions

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

- a. Home page - Yes/ No/ Don’t know
- b. Favourites page - Yes/ No/ Don’t know
- c. Pages not opened intentionally by the consumer - Yes/ No/ Don’t know
- d. Checkout pages - Yes/ No/ Don’t know

Please explain your answers

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

Yes/ No/ Don't know

Please explain your answer

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

Comment

## Section 4: Businesses in scope

### Points of clarification

#### Qualifying Businesses

As detailed in the following section, we propose that price and location restrictions (both instore and online) will apply to qualifying businesses.

As set out in paragraph 112, 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) – see glossary for further detail;
- Wholesale outlets where there are also sales made to the public (including online sales); and
- Other outlets such as clothes shops, tourist shops and pharmacies (including online sales).

At paragraph 116 we propose that a qualifying business would be:

- a) a business which offers pre-packed targeted foods, (and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge) for sale to the public in the course of business (whether in-store or online);
- b) a business with 50 or more employees.

#### Out of Home businesses operating within the premises of a qualifying business

At paragraph 126 we set out that concessions are separate businesses which operate in a designated area within the premises of a qualifying business if they operate their own payment facility.

The current policy intention is that a public facing out of home offering such as an in store café owned by a qualifying business operating in a designated area of that premises and with its own payment facilities would be considered similarly to a concession and treated as a separate business.

112. In our 2022 consultation, we proposed that price and location restrictions will apply 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) – see glossary for further detail;

- **Wholesale** outlets where there are also sales made to the public (including online sales); and
- **Other outlets** such as clothes shops, tourist shops and pharmacies (including online sales).

113. In feedback to our 2022 consultation, non-industry respondents tended to support promotion restrictions applying to retail, out of home, wholesale (where sales are also made to the public) and other outlets to ensure consistency so that the restrictions are effective. Industry respondents tended to agree with restrictions applying to retail but were quite split in respect of the other three places; some believed all four should be included to ensure a level playing field across businesses, while others thought there should be alignment with England where the primary focus is on retail.

114. A more detailed breakdown of the feedback is available in section 6 of the [independent analysis report of the consultation](#), published in May 2023.

## Proposals

115. Following careful consideration of the feedback received, we propose that price and location restrictions (both instore and online) will apply to a *qualifying business*. This would include retail, out of home, wholesale and other businesses as set out at paragraph 112. Proposed exemptions from location restrictions are explored in more detail in section 5 of this consultation paper.

116. We propose that a qualifying business would be:

- a) a business which offers pre-packed targeted foods, (and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge) for sale to the public in the course of business (whether in-store or online);
- b) a business with 50 or more employees.

117. We propose that the restrictions would not apply to:

- wholesale outlets (where sales are only to trade);
- where sales are not in the course of business, for example food provided through charitable activities<sup>29</sup>, for example bake sales;
- care homes<sup>30</sup>; and
- schools<sup>31</sup>

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

<sup>29</sup> Targeted HFSS foods (as defined by the NPM) which are sold by a non-charitable business with a proportion of the cost going to charity would be within scope of both price and location restrictions.

<sup>30</sup> A “care home service” is a service with the meaning of [schedule 12, paragraph 3](#) of the Public Services Reform (Scotland) Act 2010 which provides accommodation, together with nursing, personal care or personal support, for persons by reason of their vulnerability or need.

<sup>31</sup> “schools” means an institution for the provision of primary or secondary education or both primary and secondary education being a public school, a grant-aided school or an independent school, and includes a nursery school and a special school as defined at [section 135 of the Education\(Scotland\) Act 1980](#).

119. Where a qualifying business sells targeted foods to the public through a website or other online platform, such as an aggregator or delivery app, they will be required to comply with price and location restrictions in respect of those online sales of targeted foods. Parts of online aggregator sites or apps may be captured by promotions restrictions, such as checkout pages or pop-ups on the qualifying business' sections of the app or site.

## **Franchises and symbol groups**

120. We recognise that some food businesses operate on a franchise basis or as part of symbol groups (which are a form of franchise for convenience stores).

121. We consider **franchises** to be an authorisation granted or sold, such as to use a name or to sell products or services. In its simplest terms, a franchise is an authorisation from one undertaking or business permitting another undertaking or business to sell a product or service under a particular name or trademark.

122. We consider **symbol groups** to be a form of franchise of convenience stores. The group does not necessarily own or operate stores, but acts as suppliers to independent stores which may then trade under a common banner. Being part of a symbol group can offer, among other things, point of sale material, promotional activity and merchandising support.

123. In feedback to our 2022 consultation and recent roundtable discussions, some industry stakeholders highlighted that there are distinct differences between a franchise and a symbol group, with the latter not subject to the same strict controls as a franchise arrangement. It was also noted of the approximate 5000 convenience stores operating in Scotland, around 30% operate as part of a symbol group and that arrangements vary between stores and symbol groups.

124. Whilst we recognise that franchise and symbol group agreements are not one size fits all and comprise a spectrum of arrangements, there are aspects of these arrangements which are particularly relevant to this policy, as described at paragraph 122. Trying to differentiate between different arrangements could lead to complexity when determining which of the arrangements a business falls within, potentially leading to increased regulatory burden for businesses and enforcing authorities. We are also mindful of the overarching call from industry for alignment with the regulations for England.

125. Taking into account the feedback received, for the purposes of determining how many employees a business has, we propose that restrictions would apply to franchises or symbol groups where multiple businesses operate under the same name (where the total number of employees operating under that business name is 50 or more). For both franchises and symbol groups, the size of the business would be classified by the total employees of the business overall and not the employees of the individual franchise or symbol group store.

## **Concessions**

126. We propose that concessions are separate businesses which operate in a designated area within the premises of a qualifying business if they operate their own payment facilities.
127. Where a concession is located within a qualifying business's premises, but not part of its business, it is proposed that it would be treated as a separate business. If the concession meets the criteria to be considered a qualifying business in its own right, as set out at paragraph 116, it would be required to comply with promotion restrictions (both price and location).
128. Areas within stores that are owned and operated by the qualifying business – for example, the bakery section within a supermarket that is owned and operated by that supermarket – would not be considered concessions as they form part of the same business.

### **UK Government regulations for England**

129. The UK Government has set out in its regulations the criteria for determining whether businesses are within the scope of the restrictions. Our proposed approach, including with regard to the treatment of franchise and symbol groups and concessions, is consistent with that in England (with the exception of out of home, which is not within scope in England except in relation to free refills). Further detail is set out in the [regulations](#) and accompanying [guidance](#) for England.
130. It is recognised that the extent to which the proposals align with regulations in place in the rest of the UK may impact on the likelihood of the measure to impact on intra-UK trade. We will continue to consider these implications as the policy proposals develops and upon receipt of the consultation responses.

## Questions

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

Yes

No

Don't know

Please explain your answer.

**Question 18** - Is the proposed extension of restrictions to online sales, including through online aggregator sites and apps, (see paragraph 119) sufficiently described for the purpose of implementation and enforcement?

Yes

No

Don't know

Please explain your answer.

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

Yes

No

Don't know

Please explain your answer.

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

Yes

No

Don't know

Please explain your answer.



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

Comment

## Section 5: Exemptions from location restrictions

131. As set out in our 2022 consultation, we recognise that the food business landscape is incredibly diverse, comprising outlets of various sizes and layouts, selling a range of products. Consequently, the extent to which businesses may be able to comply with location restrictions will also vary.
132. Therefore, in considering whether there should be any exemptions, we continue to 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.
133. In feedback to our 2022 consultation proposals on exemptions from location restrictions, overall respondents supported exemptions for specialist businesses that only or mainly sell one type of food product category (such as chocolatiers and sweet shops) from location restrictions. Primarily this was on the basis that it would not be practical for these businesses to avoid displaying HFSS goods in the locations proposed for restrictions. It was also noted that the exemption would align with restrictions in England.
134. Industry respondents tended to support exemptions for businesses from location restrictions on the basis of number of employees and/or floor space due to a preference for alignment with England or a view that it would not be practical for smaller businesses to comply. The cost associated with reconfiguring store layouts was also noted. Non-industry respondents tended to disagree with proposals to extend exemptions from location restrictions beyond specialist businesses, primarily due to concerns that doing so would reduce the overall impact of the restrictions. Individual views were mixed.
135. A more detailed breakdown of the feedback is available in section 7 of the [independent analysis report of the consultation](#), published in May 2023.
136. Further engagement through a series of recent roundtable discussions with key stakeholders reinforced the feedback to our consultation. Public health stakeholders reiterated the view that there should be as few exemptions as possible so as to maximise the public health benefits of the policy, including consideration of health inequalities. Industry stakeholders were generally supportive of exemptions, citing practicalities of compliance as a key consideration and alignment with the regulations for England.
137. Taking into account the feedback received, we propose the following exemptions for qualifying businesses, as defined at paragraph 116, from locations restrictions:
- **Business type** - Specialist businesses with a limited product range, such as chocolatiers and sweet shops, will be exempt from location restrictions.

- **Store size** - Stores with a relevant floor area of less than 185.8 square metres (2,000 square feet) would not be within the scope of the location restrictions. Relevant floor area is discussed in more detail, including a proposed definition, at paragraph 103-104.

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

139. This approach also reflects the fact that smaller sized stores in general may have limited or no scope to comply with location restrictions for example, a small convenience shop or kiosk. Stores that are 185.8 square metres (2,000 square feet) or greater are typically expected to have distinct checkout and front-of-store areas and have multiple aisles and aisle ends and therefore have scope to comply with location restrictions.

140. We do not propose exemptions from location restrictions for products close to expiry on the basis that there remains sufficient scope throughout the supply chain to allow businesses to take action to reduce food waste.

141. Should we proceed with the proposed exemptions subject to the outcome of the consultation, we will continue to encourage businesses that are not subject to price and location restrictions to consider how they can support consumers to make healthier choices. There is a range of support and advice available, including the [Scottish Grocers Federation Healthy Living Programme](#) and [Reformulation for Health](#) programme.

## UK Government regulations for England

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

- Micro and small businesses (fewer than 50 employees) are 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) are exempt from location restrictions; and
- Specialist retailers that sell one type of food product category (e.g. chocolatiers or sweet shops) are exempt from location restrictions.

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

## Welsh Government

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

## Questions

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

Yes

No

Don't know

Please explain your answer.

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

Yes

No

Don't know

Please explain your answer.

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

Comment

## Section 6: Enforcement and implementation

145. In our 2022 consultation, we proposed:

- Enforcement functions should be delivered in a way that is transparent, accountable, proportionate, consistent, and targeted only where necessary, as set out in the Scottish Regulators' Strategic Code of Practice;
- To give local authorities the role of enforcing the proposed policy;
- To give Ministers powers to issue guidance to local authorities to support effective enforcement of the proposed policy;
- To develop materials for industry to support effective implementation;
- 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; and
- To work closely with COSLA and others to consider an appropriate and proportionate enforcement regime that supports compliance.

146. In feedback to the consultation, individuals and non-industry respondents tended to support the proposal for local authorities to enforce the policy. Industry respondents also supported that proposal but to a lesser extent. A substantial proportion of industry and non-industry respondents did not indicate a preference. Agreement tended to be on the basis that local authorities are well placed to enforce the policy based on their existing knowledge and relationship with relevant businesses. It was also noted that sufficient capacity and resources would need to be available to local authorities to enable effective enforcement of the policy.

147. A more detailed breakdown of the feedback is available in section 8 of the [independent analysis report of the consultation](#), published in May 2023.

148. Taking this feedback into account, we propose that local authorities will be responsible for enforcing the policy on the basis that they have experience of similar enforcement, have local knowledge and can incorporate enforcement of the policy into other inspection visits, where appropriate.

149. In addition, we propose:

- The enforcement process should be fair and proportionate, with a focus on supporting compliance;
- Relevant enforcement powers for handling non-compliance with legal requirements and relevant offences will be available to local authorities;
- Guidance will be issued to local authorities to support effective enforcement; and
- Guidance will be developed for industry to support effective implementation.

### UK Government regulations for England

150. 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.

## Enforcement powers

151. The intention is to use powers in the [Food Safety Act 1990](#) and the [Food \(Scotland\) Act 2015](#) to provide for enforcement of the Regulations. It is intended that local authorities (as food authorities) will be responsible for enforcing the policy.

152. It is important that enforcement of the Regulations is fair and proportionate. Non-compliance with the requirements or restrictions set out in the Regulations will amount to an offence, the ultimate penalty for which could result in a criminal penalty. The maximum criminal penalty proposed is that a person found guilty of an offence will be liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500)<sup>32</sup>. However, the intention is for local authorities to be able to issue administrative sanctions as an alternative to prosecution. The proposed administrative sanctions which would be made available would be compliance notices and fixed penalty notices – with compliance notices likely being available initially and fixed penalty notices at a later date. The administrative sanctions are intended to give enforcement officers more flexibility to deal with the offences. They would help ensure people who commit the offences can be dealt with more quickly and at less cost than if criminal sanctions alone were available.

153. Whilst administrative sanctions may be appropriate for most instances of non-compliance, there may be cases, for example where there are repeat offenders or large scale non-compliance, where prosecution may be more appropriate.

154. We propose that enforcement officers will be able to issue administrative penalties under the Food (Scotland) Act 2015. Under the 2015 Act, compliance notices and fixed penalty notices can be utilised in relation to “relevant offences”. It is our intention that the offences in the proposed Regulations will be considered “relevant offences” and therefore appropriate use of administrative penalties such as compliance notices and fixed penalty notices would be applicable where those offences are committed. Aligning with the enforcement regime for other offences in food law should provide for consistency and clarity for business and enforcement authorities.

155. Further provision about compliance notices and fixed penalty notices is included in sections 36 to 52 of the 2015 Act. Compliance notices and fixed penalty notices may be issued by authorised officers of the appropriate enforcement authority. In this case, the enforcement authority would be local authorities acting as food authorities.

156. A **compliance notice** will require a person or business to take steps to ensure they stop committing a relevant offence. A notice can only be issued if the

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<sup>32</sup> Section 225 of the [Criminal Procedure \(Scotland\) Act 1995](#).

authorised officer is satisfied to the “specified standard” that the person has committed an offence. In line with the [Food \(Scotland\) Act 2015 \(Compliance Notices\) Regulations 2023](#) (the 2023 Regulations), it is proposed that the specified standard of proof would be the balance of probabilities. This means that an officer needs to be satisfied that the offence has taken place, on the balance of probabilities, before issuing a notice.

157. The steps required to comply will be set out in the notice itself. The information that needs contained in the notice is set out in section 43 of the 2015 Act. It must, in particular, include the period of time within which the required steps must be taken - as determined by the authorised officer. Scottish Ministers have the power to set the maximum period of time this can be from the date the notice was issued (“the specified period”). In line with the 2023 Regulations, it is proposed that the specified period for these offences should be 14 days.
158. The Act provides that, if the person complies with the notice, then they cannot be convicted of the offence. They also cannot be convicted while a notice is still in force. A compliance notice cannot be issued in relation to an offence arising out of a particular act or omission if a notice has previously been issued in relation to the same offence arising out of the same act or omission or if criminal proceedings have already been brought.
159. Failure to comply with a compliance notice is an offence, for which a person is liable on summary conviction to a fine not exceeding level 5 on the standard scale (£5,000).
160. A person or business may appeal to a sheriff against the decision to issue the compliance notice. Appeal is by way of summary application, and must be made before the end of “relevant period” - being the earlier of either the compliance period or a period of one month beginning with the date the notice was issued. Details of the appeals process are provided in section 48 of the 2015 Act.
161. **Fixed penalty notices** may be issued in relation to relevant offences and are notices which allow a person to pay a sum of money to discharge their liability for the offence. The sum of money must not exceed level 4 on the standard scale (£2,500). The information that must be included in a fixed penalty notice is set out in section 37 of the 2015 Act. If a fixed penalty notice is issued, no criminal proceedings can be brought within the period for payment. If payment is made in accordance with the notice, the person cannot be convicted of the offence. A fixed penalty notice cannot be issued in relation to an offence arising out of a particular act or omission if a fixed penalty notice has previously been issued in relation to the same act or omission or if criminal proceedings have already been brought.
162. Under the 2015 Act, the Scottish Ministers have powers to make regulations to set the period of time within which payment is to be made, the standard of proof which applies when issuing the notice, and to make further provision about the form and content of fixed penalty notices. We propose that the standard of proof applying when issuing fixed penalty notices for these offences would be the

balance of probabilities, and regulations would provide for a fair period for paying notices.

## **Guidance**

163. It is important for enforcing authorities and businesses subject to restrictions to have clarity to support effective implementation and enforcement of the policy. To support this, we will work with appropriate stakeholders to develop guidance for both local authorities and businesses. As part of that, it will be important to ensure that all parties understand what is expected of them and their responsibilities for ensuring compliance.

## **Local authorities**

164. We will develop guidance for local authorities to support enforcement of the regulations. We will work closely with COSLA, Food Standards Scotland (FSS) and others as appropriate to develop this guidance, which we would expect to include information on, among other things, the maximum penalties and the circumstances in which a penalty is likely to be imposed or not, how liability for the penalty may be discharged, and rights to make representations and objections or to appeal.

165. We will also continue to work closely with COSLA and others to consider resourcing and training to support effective and consistent implementation of the policy.

## **Businesses**

166. We will develop guidance materials for businesses, in consultation with relevant stakeholders, to support effective implementation of the policy. This guidance will be additional to guidance for local authorities.

167. We will look, as appropriate, at the guidance developed by the UK Government for industry to support implementation of their regulations.

## **Implementation period**

168. In feedback to our 2022 consultation, industry respondents tended to favour a longer lead in time to allow for preparation for implementation and enforcement of the policy. Some did not indicate a time frame and instead suggested that the time required would depend on the final scope of the policy and the extent to which it aligned with the regulations for England. Non-industry views were mixed and a high proportion did not offer a view. Individuals were split between 12 and 24 months.

169. Taking this feedback into account, and in view of our detailed policy proposals and the extent to which these are consistent with the regulations for England, we propose a 12 month lead in time from when regulations are laid to them coming into force to allow preparation for enforcement and implementation of the policy.



## Monitoring and Reporting

170. We will consider the enforcement monitoring and reporting mechanisms as part of the policy's implementation. We will work closely with COSLA, FSS and others as appropriate to utilise existing systems, streamlining the process where possible.

## Questions

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

Yes

No

Don't know

Please explain your answer.

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

Yes

No

Don't know

Please explain your answer

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

a. Implementation? Yes/ No/ Don't know

b. Enforcement? Yes/ No/ Don't know

Please explain your answers.

## Section 7 – Other comments

**Question 28** - 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 21 May 2024.

Please respond to this consultation using the Scottish Government's consultation hub, [Citizen Space](#). Access and respond to this consultation online at <https://consult.gov.scot/population-health/restriction-promotion-of-food-and-drink-proposed>. You can save and return to your response while the consultation is still open. Please ensure that your consultation response is submitted before the closing date of 21 May 2024.

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

[DietPolicy@gov.scot](mailto:DietPolicy@gov.scot)

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

We are inviting feedback on the [partial BRIA](#) by 24 May 2024. Submissions should be sent directly to [DietPolicy@gov.scot](mailto:DietPolicy@gov.scot) or to the contact address above. Please complete the Respondent Information Form and include with your submission.

### 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 published alongside 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. 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 to [DietPolicy@gov.scot](mailto: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

Food Standards Scotland. Monitoring Retail and Price Promotions in Scotland 2019-2022. Report in Preparation.

February 2024 [Consumer Survey on Where People Shop and Meal Deals Purchasing Scottish Government](#)

January 2024 [Where People Shop Rapid Evidence Briefing Public Health Scotland](#)

January 2024 [Meal Deals Purchasing Rapid Evidence Briefing Public Health Scotland](#)

August 2023 [Consumption of discretionary foods and drinks and other categories of dietary concern in adults \(16+ years\) | Food Standards Scotland](#)

January 2023 [Out of home businesses - marketing strategies: research - gov.scot \(www.gov.scot\)](#)

December 2022 [Monitoring retail purchase and price promotions in Scotland 2021 | Food Standards Scotland](#)

December 2022 [Overview of the Total Food and Drink Landscape in Scotland 2021 | Food Standards Scotland](#)

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;  $23\text{kg/m}^2$  indicate increased risk and  $27.5\text{kg/m}^2$  indicate high risk, respectively.

**Franchise:** An authorisation granted or sold, such as to use a name or to sell products or services. In its simplest terms, a franchise is an authorisation from one undertaking or business permitting another undertaking or business to sell a product or service under a particular name or trademark.

**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, the UK Nutrient Profiling Model is applied to determine whether a food is HFSS or less healthy.

**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 or less healthy.

### 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. 'Prepacked food' does not cover foods packed on the sales premises at the consumer's request or pre-packed for direct sale (Article 2(2)(e) of [Regulation \(EU\) No 1169/2011](#) of the European Parliament and of the Council on the provision of food information to consumers.) A type of food pre-

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

**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.

**Symbol Group:** A form of franchise of convenience stores. The group does not necessarily own or operate stores, but acts as suppliers to independent stores which may then trade under a common banner. Being part of a symbol group can offer, among other things, point of sale material, promotional activity and merchandising support.

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

**The Food (Promotion and Placement) (England) Regulations 2021**  
**SCHEDULE 1**

**Categories of specified food**

**Category 1:** Prepared soft drinks containing added sugar ingredients (other than the exempt soft drinks listed in paragraph 4(1)).

The following provisions apply for the purposes of this category.

1.—(1) “Soft drink” means—

- (a) a beverage of an alcoholic strength not exceeding 1.2%, or
- (b) a liquid or a powder which, when prepared in a specified manner, constitutes a beverage of an alcoholic strength not exceeding 1.2%.

(2) A liquid or a powder is prepared in a specified manner if it is—

- (a) diluted,
- (b) combined with crushed ice, or processed so as to create crushed ice,
- (c) combined with carbon dioxide, or
- (d) prepared by way of a process that involves any combination of the processes mentioned in paragraphs (a) to (c).

2.—(1) A soft drink is “prepared” if it is—

- (a) a soft drink within paragraph 1(1)(a), or
- (b) a beverage that would result from preparing a liquid or a powder within paragraph

1(1)(b)—

- (i) in a specified manner (see paragraph 1(2)), and
- (ii) in accordance with the relevant dilution ratio.

(2) The “relevant dilution ratio” means—

- (a) the dilution ratio stated on, or calculated by reference to information stated on, the packaging of the soft drink, or
- (b) where no such dilution ratio or information is stated, the dilution ratio of similar drinks on the market.

3.—(1) A soft drink contains “added sugar ingredients” if any of the following are combined with other ingredients at any stage in the production of the soft drink—

- (a) calorific mono-saccharides or di-saccharides;
- (b) a substance containing calorific mono-saccharides or di-saccharides.

(2) But a soft drink does not contain “added sugar ingredients” only by reason of containing fruit juice, vegetable juice or milk (or any combination of them).

(3) For the purposes of sub-paragraph (2)—

- (a) “fruit juice” is to be construed in accordance with regulation 5 (sugar content condition: fruit juice) of the Soft Drinks Industry Levy Regulations 2018(1) (“the SDIL Regulations”);



(b)“vegetable juice” is to be construed in accordance with regulation 6 (sugar content condition: vegetable juice) of the SDIL Regulations;

(c)“milk” is to be construed in accordance with regulation 7 (sugar content condition and exempt soft drinks: milk and milk-based drinks) of the SDIL Regulations.

4.—(1) The following are “exempt soft drinks”—

(a)alcohol substitute drinks which meet specified conditions, and

(b)soft drinks of a specified description which are for use for medicinal or other specified purposes.

(2) For the purposes of sub-paragraph (1)(a), the specified conditions are—

(a)condition 1 provided for by paragraph (2) of regulation 9 (exempt soft drinks: alcohol substitute drinks) of the SDIL Regulations, and

(b)one or more of conditions 2, 3 and 4 provided for by paragraphs (3) to (5) of regulation 9.

(3) For the purposes of sub-paragraph (1)(b)—

(a)the specified purposes are the purposes provided for by paragraph (1) of regulation 10 (exempt soft drinks: for medicinal or other purposes) of the SDIL Regulations, and

(b)the specified descriptions are the descriptions provided for in paragraphs (2) and (3) of regulation 10.

**Category 2:** Any of the following:

1. Savoury snacks whether intended to be consumed alone or as part of a complete meal including—

(a)products made from potato, other vegetables, grain or pulses;

(b)extruded, sheeted and pelleted products;

(c)bagged savoury crackers, rice cakes or biscuits,

such as crisps, pitta bread based snacks, pretzels, poppadums, salted popcorn and prawn crackers (but not raw, roasted, coated or flavoured nuts).

2. Pork rind-based snacks whether intended to be consumed alone or as part of a complete meal.

**Category 3:** Breakfast cereals including ready-to-eat cereals, granola, muesli, porridge oats and other oat-based cereals.

**Category 4:** Confectionery including chocolates and sweets.

**Category 5:** Ice cream, ice lollies, frozen yogurt, water ices and similar frozen products.

**Category 6:** Cakes and cupcakes.

**Category 7:** Sweet biscuits and bars based on one or more of nuts, seeds or cereal.

**Category 8:** Morning goods, including croissants, pains au chocolat and similar pastries, crumpets, pancakes, buns, teacakes, scones, waffles, Danish pastries and fruit loaves.

**Category 9:** Desserts and puddings, including pies, tarts and flans, cheesecake, gateaux, dairy desserts, sponge puddings, rice pudding, crumbles, fruit fillings, powdered desserts, custards, jellies and meringues.

**Category 10:** Sweetened (whether with sugar or otherwise) yoghurt and fromage frais.

**Category 11:** Pizza (except plain pizza bases).

**Category 12:** Roast potatoes, potato and sweet potato chips, fries and wedges, potato waffles, novelty potato shapes (such as smiley faces), hash browns, rostis, crispy potato slices, potato croquettes.

**Category 13:** Any of the following:

1. Products that are marketed as ready for cooking or reheating without requiring further preparation and intended to be consumed as a complete meal.
2. Products, other than products that contain pastry, in or with a sauce (but not a marinade, glaze, dressing, seasoning or similar accompaniment) that are marketed as ready for cooking or reheating without requiring further preparation and intended to be consumed as the main element of a meal.
3. Breaded or battered—
  - (a) vegetable, fish, shellfish, meat, or poultry products;
  - (b) substitute fish, shellfish, meat or poultry products, including fish fingers, fish cakes, chicken nuggets and breaded meat substitute.



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Any enquiries regarding this publication should be sent to us at

The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-83521-905-8 (web only)

Published by The Scottish Government, February 2024

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS1405034 (02/24)

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