

MINISTERIAL WORKING GROUP ON FOOD – 12 JANUARY 2023

UPDATED BRIEFING NOTE

AGENDA

| No | Agenda Item | Time |
|----|--|---------------|
| 1 | Welcome and Introduction | 9:30 – 9:35 |
| 2 | An Update on the Good Food Nation Act | 9:35 – 9:45 |
| 3 | Public Health (Standing Agenda Item) | 9:45 – 9:55 |
| 4 | An update on work progressing on Food Security | 10:05 – 10:15 |
| 5 | Cost of Living | 10:15 – 10:25 |
| 6 | AOB | 10:25 – 10:30 |

ITEM 3 – PUBLIC HEALTH - YOU ARE LEADING

Timing: 5 minutes for update + 5 minutes for discussion

Items relate to minutes from previous meeting on 11 May 2022, as follows:

- **Ms Todd:** *number of public health items including the live consultation on mandatory out of home calorie labelling, the outputs of which will be worked into forthcoming Public Health Bill (consultation closes 01 July). This Bill will also address food and alcohol promotions and will need to align with the GFN policy and plan.*

[Redacted – out of scope]

Public Health (Restriction on Promotions) Bill

- In Programme for Government, we announced our intention to introduce a Public Health (Restriction of Promotions) Bill in the 2022/23 parliamentary year.
- The Bill will be the first step towards implementing restrictions on the promotion of less healthy food and drink.
- We have consulted on proposals to restrict promotions of less healthy food and drink where they are sold to the public – from 1 July to 23 September 2022.
- Responses to the consultation are being analysed to help inform the development of the policy. An external analysis of the responses will be published in due course.
- We are continuing to engage widely with key stakeholders, including the food and drink industry and public health organisations, to consider the impacts of the policy.
- The Bill will also look to take powers allowing Scottish Ministers to pass regulations to mandate the provision of calorie labelling information at the point of consumer choice in the Out Of Home sector.

[Redacted – out of scope]

Minister for Public Health, Women's Health and Sport

PUBLICATION OF CONSULTATION ANALYSIS REPORTS ON RESTRICTING PROMOTIONS OF FOODS HIGH IN FAT, SUGAR OR SALT AND MANDATORY CALORIE LABELLING IN THE OUT OF HOME SECTOR

Priority and Purpose

1. To:
 - a) provide an update on the feedback received to the consultation on *Restricting promotions of foods high in fat, sugar or salt*;
 - b) provide final drafts of the independent analysis reports for the *Restricting promotions of foods high in fat, sugar or salt* and *Mandatory calorie labelling (MCL) in the out of home sector* consultations and to seek your approval to publish the reports; and
 - c) propose a handling plan for publication of the consultation analysis reports for your consideration and agreement.
2. **Routine:** A response by 23 January would be helpful to allow sufficient time to make the required arrangements for publication.

Recommendation

3. That the Minister notes i) the final drafts of the independent analysis reports for the foods promotions and MCL consultations for publication and ii) approves the recommended handling plan (option 2) for publication, including the draft GIQ and draft letter to the convener of the Health, Social Care and Sport Committee.

Context and Issues

Promotions

4. We consulted on our proposals for [Restricting Promotions of Foods High in Fat, Sugar and Salt](#) from 1 July – 23 September 2022. 110 responses were received to the consultation - 38 from individuals and 72 from organisations. Organisation responses comprised of 41 from industry (industry representative bodies, manufacturers, retailers and out of home providers) and 31 from non-industry (public sector, third sector and 'other').
5. Perpetuity Research was commissioned to undertake an independent analysis of the responses received to the consultation.
6. The executive summary of the analysis report is at **Annex A**. The final draft of the full analysis report is attached separately to this submission. These documents are final and we do not expect any changes ahead of publication.

7. The independent analysis found distinct views on the policy from different respondent groups:
- **Non-industry** respondents were generally supportive of restrictions but less supportive of some exemptions (for example for small businesses). Comprehensive restrictions were generally favoured and avoiding the possibility of loopholes that could undermine the overall effectiveness of the approach.
 - **Industry** respondents' views were mixed. Where there was support, it related to either a preference for alignment with the UK Government's promotions restrictions in England or ensuring a fair and level playing field across businesses. 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) or that the approach would not align with restrictions in England.
 - **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 (viewing it as inappropriate for the Government to influence people's purchasing behaviour) or hold concerns about how restrictions may affect the public financially.
8. Further to the consultation, we have undertaken extensive engagement with key stakeholders over the past six months to discuss the proposals. Overall, the findings from the analysis align with the feedback we received during our discussions with stakeholders. The findings also broadly echo the feedback to our [previous consultation](#) (Oct 2018 – Jan 2019).

[Redacted – out of scope]

Options Considered and Advice

9. [\[Redacted\]](#)

Publication and handling

10. We have engaged Comms colleagues on handling and suggest publishing the independent analysis reports for both promotions and MCL jointly at the end of January/early February. Both policies relate to actions in our [2018 Diet and Healthy Weight Delivery Plan](#) to improve the food environment and support people to make healthier choices. The responses received to the consultations will be published on Citizen Space to coincide with the publication of the analysis reports. Once the handling plan is agreed, we will liaise with Comms to identify a suitable date.

11. Should you agree with our recommended handling plan (option 2 – paragraphs 19-20), we propose a GIQ to announce the publication on the independent analysis reports and to communicate our policy response to the consultations.
12. We also propose that you write to the convener of the Health, Social Care and Sport Committee to inform them of the publication and policy response, as was done when the consultations were launched.
13. A draft GIQ and a draft letter to the Committee convener are at Annex C and D respectively for your consideration. Given that the Bill is not scheduled to be introduced until April, we are limited in what we are able to say publicly in our policy response at this time. The proposed drafts reflect this position.
14. Should you agree with our proposed handling plan, we will return with a date for publication and to ask you to nominate an MSP for the GIQ.

Bute House Agreement Implications

15. There are no Bute House implications in respect of publishing the consultation analysis reports. [Redacted]

Financial and Legal Considerations

16. [Redacted]
17. There are no immediate financial considerations in respect of the publication of these consultation analysis reports. [Redacted]

Quality Assurance

18. This submission has been approved by Karen MacNee, Deputy Director of Health Improvement Division and Richard Foggo, Director of Population Health.

Conclusions and next Steps

19. You are invited to:
 - a) Note the findings of the promotions consultation analysis report (Annex A)
 - b) Note the final independent analysis reports of the promotions and MCL consultations (attached separately to this submission)
 - c) Approve the recommended handling plan (option 2 – paras 19-20, 23-27) for publication, including:
 - I. Consider and, if content, approve the draft GIQ (Annex C)
 - II. Consider and, if content, approve the draft letter to the convener of the Health, Social Care and Sport Committee (Annex D)
 - III. Note that we will return to advise on a specific date for publication (to be agreed with Comms) and to ask you to nominate an MSP for the GIQ.

[Redacted]
Population Health/ Health Improvement

[Redacted]

[Redacted]
Population Health/ Health Improvement

[Redacted – Out of scope]

CONSULTATION ON RESTRICTING PROMOTIONS OF FOODS HIGH IN FAT, SUGAR OR SALT – EXECUTIVE SUMMARY

Overview of findings

1. Typically, different respondent types held distinct views for each of the proposals. Non-industry respondents were generally supportive of restrictions but less supportive of some exemptions. They generally favoured restrictions being comprehensive and avoiding the possibility of ‘loopholes’ that could undermine the overall effectiveness of the approach. Industry respondents were supportive of some aspects of the approach but typically to a lesser degree than non-industry respondents. Generally, where support existed among industry respondents it related either to preferring alignment with the UK Government regulations for restrictions in England or to attaining fairness across businesses. There were some aspects of the approach that industry respondents disagreed with, typically due to a view that there is insufficient evidence to justify them, or that they would create disadvantages for certain types of businesses (such as smaller companies) or that they would not align with the approach being adopted in England.

2. Among individual respondents there was some tendency towards agreement with the proposals, but also some divergence in views. Those that were supportive generally demonstrated a similar viewpoint to those expressed by non-industry respondents. Those that were against the proposals tended either to disagree with the need for restrictions at all (viewing it to be inappropriate for the Government to influence people’s purchasing behaviour), or to hold concerns about how the restrictions on promotions may affect the public financially.

Headline findings for each question group

Foods that would be subject to restrictions (Questions 1-3)

3. While numbers were somewhat dispersed across the answer options, non-industry respondents tended to favour the inclusion of the full scope of products being considered – option 4 (i.e. discretionary foods, plus ice-cream and dairy desserts, plus all categories included in the UK-wide reformulation programmes) as a more comprehensive approach. Industry respondents tended to favour alignment with the categories subject to restrictions in England in order to minimise confusion, disruption and the cost burden of making changes – option 3 (i.e. discretionary foods, plus ice-cream and dairy desserts, plus additional categories that are of most concern to childhood obesity according to the UK-wide reformulation programmes). Some preferred that option due to a variety of concerns with option 4. Individuals did not show a clear preference. Regardless of respondent type, some exclusions (such as foods that have nutritional benefits despite having high levels of sugar) were proposed by respondents.

4. All three respondent types tended to support the use of nutrient profiling to define whether a product is HFSS and therefore within scope of the restrictions. This was viewed as an appropriate tool and one that provided consistency with England. Non-industry respondents were a bit more muted with some preferring the perceived

simplicity of a whole category approach. Industry respondents specifically favoured the 2004/2005 nutrient profile model (NPM). They held concerns about the suitability of the updated draft (2018) model (still to be published), primarily that this would diverge from England, widen the range of products to be restricted and disincentive reformulation.

5. Views were mixed in respect of the proposal (if nutrient profiling were used) to only target pre-packed products and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge. Industry respondents tended to support the proposal primarily on the basis that they viewed this to be an appropriate approach and that it would align with England. Non-industry respondents tended to disagree primarily due to concerns that this would undermine the overall effectiveness of the legislation by introducing loopholes. Individuals were mixed between agreement (viewing the approach as sensible) and disagreement (sharing the concerns held by non-industry respondents).

Price promotions (Questions 4-8)

6. 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 also showed a level of preference for including extra free although this tended to be due to the desire for alignment with England. Those that disagreed with the inclusion of extra free primarily suggested they 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, either because this would not align with restrictions in England, or the view that meal deals are distinct from other multi-buy offers, and are cost effective, convenient and do not drive over-consumption.

7. 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 (some noted this type of promotion was not relevant to the type of business(es) they represented). However, there was a level of support among industry on the basis that this approach would align with regulations in England.

8. Non-industry and individual respondents suggested some other foods to be included in restrictions on unlimited amounts for a fixed charge (all targeted HFSS foods, 'all you can eat'/buffet style options, 'diet' soft drinks, and ice-cream desserts). However, overall individuals' views were split as to whether other foods should be included or not. Many industry respondents did not express a view on this issue (again as this type of promotion was often not relevant to the type of business(es) they represent).

9. Non-industry respondents tended to support restricting temporary price reductions (TPRs) primarily on the basis that they are used to promote unhealthy products or encourage unintended purchase. Industry respondents were opposed, primarily on the basis of insufficient evidence to justify their inclusion or a desire for alignment with regulation in England. Individuals were mixed between agreement

(for the same reasons expressed by non-industry) and disagreement, primarily due to concern for the potential impact on low-income households.

10. Non-industry respondents offered some suggestions for additional forms of price promotion for inclusion in restrictions. Industry respondents tended to oppose including other price promotions either because this would not align with regulations for England or because they were against the introduction of any forms of price promotion. Individuals did not show a clear view. Suggestions for inclusion included loyalty schemes/pricing, multipacks, price marked packs, upselling, shelf-edge labels, money off vouchers, offering a discount on an HFSS product when another item is purchased, family sized items, reductions on fresh items (reaching the end of their shelf life), yellow label items, free or discounted side orders and discounts on larger portions in the out of home sector.

Location and other non-price promotions (Questions 9-13)

11. Non-industry respondents typically agreed with the location of HFSS products being restricted at all four in-store locations proposed (checkout areas, including self-service; end of aisle; front of store, including store entrances and covered outside areas connected to the main shopping area; island/bin displays). This was because they believed that these locations encourage customers to purchase HFSS goods that they did not intend to buy. Individuals also tended more towards agreement than disagreement. Responses from industry organisations were more mixed. There was some concern about a disproportionate impact of location restrictions on small stores (that have limited space/layout, that would struggle to meet the costs of redesigning the store layout in order to comply and that may find complying would limit the products they can stock and/or services they can provide). However there was general support that if restrictions are introduced these should align with restrictions in England. Consequently, industry respondents thought 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.

12. Non-industry respondents suggested some additional locations to include in restrictions (seasonal/promotional aisles, designated/extended queuing areas, branded chillers, the full extent of 'non-price promotions' described in the 2018 consultation on restrictions on promotion of HFSS products, HFSS items should only be displayed in their 'normal' area/aisle, temporary stands, HFSS products should not be displayed in the 'eye line' of children). Although not a specific 'location', restricting images of HFSS goods was also suggested. Industry respondents opposed the inclusion of additional locations, primarily because this would not align with regulations in England or because they do not support location (or any) restrictions. Individuals were split between disagreement and uncertainty but typically did not provide a comment to explain why.

13. Non-industry respondents supported the proposal to apply location restrictions online, in all five locations (home page, favourite products page, pop ups and similar pages not intentionally opened by the user, shopping basket, checkout page). This was on the basis that these encourage unintended purchases of HFSS items. Individuals shared a similar view but were more muted in respect of the shopping basket and were split in respect of favourites. This was due in part to concerns that

restrictions may result in products not being displayed at all in those areas (even when purposely selected by the customer). 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. Where industry and individual respondents disagreed with the online locations this typically reflected general disagreement with the rationale for restricting the promotion of HFSS foods.

14. Non-industry respondents suggested some other online locations to include in restrictions. Industry respondents tended to disagree with including other online locations either because this would not align with restrictions in England or they did not support location (or any) restrictions. Individuals were mainly mixed between disagreement and uncertainty but did not typically explain their response. Suggestions for other online locations included apps/supermarket apps, social media, online adverts that pop up when using the internet, promotions via email, all pages that customers see on websites and loyalty card scheme apps.

15. Industry respondents tended to disagree with including any other types of promotion (in-store or online) not already covered by the proposals, on the basis that proposals are already comprehensive or that additional restrictions would not be consistent with the approach in England. A proportion of non-industry respondents suggested additional promotions to include. Individuals tended towards uncertainty. Suggestions that had not already been made in response to previous questions included coupons, cinema advertising for snack outlets, vending machines and promotions that include a toy.

Places that would be subject to restrictions (Questions 14-16)

16. Non-industry respondents tended to support promotion restrictions applying to all four places explored in the consultation (retail, out of home, wholesale – where sales are also made to the public, other outlets) to ensure consistency across the locations where HFSS products are sold to the public so that the restrictions are effective. Individual respondents answered in a similar fashion although support for restrictions applying to ‘other outlets’ was more muted (but with no clear explanation why). 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. There were also some specific concerns about the inclusion of the out of home sector that meant that overall there was a level of preference among industry not to include the out of home sector.

17. Having indicated that restrictions would not apply to other wholesale outlets (where sales are only to trade) nor to places where sales are not in the course of business (such as charitable food and bake sales) the consultation explored whether there are any other places/types of business which should and also which should not be within the scope of restrictions.

18. Non-industry respondents made suggestions for other places/types of business that restrictions should apply to. Industry respondents tended to disagree either because this would not align with restrictions in England or they did not support location (or any) restrictions. Individuals were evenly split between

disagreement and uncertainty but typically did not provide a reason to explain their response. Suggestions for other places restrictions should apply included transport and transport hubs, education settings, places visited by children, entertainment venues, attractions and museums, delivery companies/takeaways, and 'everywhere'.

19. Around half of each respondent type (industry, non-industry and individuals) did not express a view in respect of whether there are any other places/types of business that restrictions should not apply. Among those that did: non-industry and individual respondents tended not to indicate any other exclusions (preferring consistency across places that sell HFSS products); industry respondents were mixed. Some indicated there should be other exclusions (small businesses, places where other regulation already applies to food such as healthcare, out of home sector, 'airside' stores¹, economically vulnerable locations on the high street and workplace canteens). Others felt there should not be other exclusions in order to ensure a level playing field among businesses.

Exemptions to restrictions (Questions 17-21)

20. All three respondent types (non-industry, individual and industry) tended to support the proposal to exempt specialist businesses that 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, although industry respondents also noted that the exemption would align with restrictions in England.

21. Non-industry respondents tended to disagree with using 'number of employees' and/or 'floor space' as a basis for determining exemption (should exemptions from location restrictions be extended beyond specialist businesses). Their primary concern was that allowing further exemptions would reduce the overall impact of the restrictions. Individuals tended to be split between agreement (primarily due to opposing the restrictions) and disagreement (for the same reason as non-industry respondents). 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. Notably however, it was not always clear whether respondents had made the distinction between restrictions on 'price promotion' and restrictions on 'location' and that the exemption being explored in Scotland is only proposed to apply to location restrictions.

22. Specific responses and comments were relatively low for the question on the size of business that should be exempt from location restrictions if number of employees is used as the basis for exemption. Industry respondents indicated a preference for the exemption to be applied to businesses with fewer than 50 employees primarily because this would align with England. Non-industry respondents did not indicate a preference. Individual respondents mostly did not express a view, but those that did showed a very slight preference for exempting businesses with fewer than 10 employees (but with no clear view why). Some considerations were noted by respondents in respect of how the exemption should

¹ Located in airports having gone through security checks.

be calculated such as including staff based at each shop or on the shop floor but not the wider business.

23. Specific responses and comments were also relatively low for the question on the size of business that should be exempt from location restrictions if floor space is used as the basis for exemption. Industry respondents indicated a preference for the exemption to be applied to businesses of less than 186 square metres, again because this would align with England. Non-industry respondents did not indicate a preference. Individual respondents mostly did not express a view, but those that did showed a level of preference for exempting businesses less than 93 square metres. This was primarily on the basis that by only exempting the smallest businesses the restrictions could still have a large impact. Some considerations were noted by respondents in respect of how the exemption should be calculated such as only considering the floor space where food is displayed (and not areas where other services are provided or other types of products are sold).

24. Very few respondents thought there were any other types of exemptions (beyond those already explored) that should apply. Suggestions that were made included exempting the advertising of company names even where that company produces HFSS products, point-of-sale advertising online, and shops that are in a remote location.

Enforcement and implementation (Questions 22-25)

25. Individuals and non-industry respondents tended to support the proposal for local authorities (LAs) to enforce the policy. Industry respondents did so to a lesser extent. Those agreeing tended to acknowledge that LAs are well placed based on their existing knowledge and relationship with relevant businesses. Some industry respondents proposed the use of the 'Primary Authority' model². However, a substantial proportion of industry and non-industry respondents did not indicate a preference. Disagreement, although low overall, tended to relate to a concern that LAs do not have sufficient capacity to undertake enforcement. A small number of industry respondents questioned whether LAs would be able to assess the accuracy of the NPM claims made by manufacturers.

26. There was a view across respondent types that to support enforcement LAs would need appropriate funding in order to: ensure sufficient staff are in place; provide training to staff on the requirements; put appropriate systems in place; and to create resources and clear guidance to assist LA staff, businesses and the public. Some industry and non-industry respondents noted the importance of ensuring a consistent approach to enforcement across LAs.

27. Industry respondents tended to favour 24 months as the lead-in time that would be appropriate to allow preparation for enforcement and implementation of the policy. This was on the basis that time would be needed to re-design store layout and train staff but also to allow time for businesses and LAs to recover from the impacts of the pandemic, and also give the public time to adapt to the cost of living crisis. Notably some industry respondents, that did not indicate a specific timeframe, suggested the time would depend on the final scope of the restrictions and/or the

² See <https://www.gov.uk/guidance/local-regulation-primary-authority>

extent to which they align with England. Individuals were mainly split between 12 months and 24 months with no clear distinction as to why (although generally views overlapped with those expressed by industry respondents). Non-industry respondents were split across the options and a relatively high proportion did not express a view (some noted this issue was outside of their expertise).

28. In respect of whether any further considerations needed to be taken into account in relation to enforcement (such as resulting from the coronavirus pandemic, EU exit or rise in cost of living) a consistent theme among respondents was concern about the current cost of living pressures and how the restrictions may impact on the costs of shopping at a time when people were already struggling financially. A smaller number of respondents suggested that the restrictions may have a positive impact by reducing unintended purchases and therefore overall expenditure. Industry respondents held concerns about the challenges for businesses in adapting to the changes, having already gone through considerable disruption due to recent events and the introduction of other regulation. There was a view among industry respondents that a 'light touch' approach to enforcement would be appropriate to recognise these challenges. Respondents also highlighted that enforcement would pose challenges to LAs, which were thought to have limited resources and to already be carrying a number of burdens.

Legislative framework (Question 26)

29. Non-industry and individual respondents tended to support the proposed legislative framework – that Scottish Ministers should be able to make provision in secondary legislation, following consultation, to regulate in relation to specified less healthy food and drink to arrange for enforcement (including the setting of offences and the issuing of compliance notices and fixed penalty notices). Generally, they viewed this approach as appropriate to ensure restrictions are implemented effectively and that allowing flexibility would enable the approach to adapt to reflect changes to the food environment over time. Industry respondents were much more mixed but with a slight tendency towards disagreement. They were primarily concerned that the approach would mean changes could be made to the legislation without sufficient scrutiny, and there was also some objection to the use of fixed penalty notices. Undertaking further consultation before making changes to the legislation was generally favoured by respondents.

Impact assessments (Questions 27-30)

30. In respect to how the restrictions may impact specific communities or groups, there was a view that there may be positive impacts to health (by addressing one of the causes of over-consumption of HFSS products) and also financially (if people no longer purchase more than intended). However, there was also concern that there may be a negative impact on people living with socio-economic disadvantage who may experience reduced affordability of shopping. To a lesser extent it was noted there could be negative impacts (for health or financially) for a variety of groups such as those that have a specific reason or need to depend on certain HFSS foods (such as for specific health conditions or religious reasons).

31. Comments were also received in respect of potential unintended impacts on businesses. A few responses suggested restrictions could have positive impacts such as aiding smaller shops to compete with larger supermarkets, and that both

manufacturers and retailers may make more money since customers will pay higher prices. However, a number of respondents held concerns that the restrictions would reduce income and increase costs to businesses, some of which suggested this may lead to business closures. There was also concern that the restrictions may impact most on small and independent businesses which are an important local service. Concerns were reiterated that diverging with restrictions in England would create a number of problems for businesses such as confusion and implementation errors, increased financial burden, and further complexity at a time where a number of challenges are already faced.

ANNEX B

[Redacted – Out of Scope]

GOVERNMENT INITIATED QUESTION - DRAFT QUESTION AND ANSWER

Draft question:

'To ask the Scottish Government when it will publish the results of its consultations on *Restricting Promotions of Foods High in Fat, Sugar or Salt* and *Mandatory Calorie Labelling in the Out of Home Sector*?'

Draft answer:

The independent analysis reports for our consultations on *Restricting promotions of foods high in fat, sugar or salt* and *Mandatory calorie labelling in the out of home sector* were published at [x time] today, X January/ February 2023.

The consultation analysis reports are available at: [XXXXXX]

The [Restricting promotions of foods high in fat, sugar or salt](#) consultation ran from 1 July to 23 September 2022. 110 responses were received, from food and drink businesses, food industry bodies, local authorities and professional, regulatory, public health and third sector bodies as well as from individuals.

The Scottish Government announced in its [Programme for Government 2022-23](#) on 6 September 2022 that a Public Health (Restriction of Promotions) Bill will be introduced during the 2022/23 legislative session. The Bill will be the first step towards implementing restrictions on the promotion of less healthy food and drink, supporting people to make healthier food choices. The feedback we received to the consultation will inform the development of the Bill and potential plans for any subsequent legislation that may arise from it.

The [Out of Home mandatory calorie labelling](#) consultation ran from 8 April to 1 July 2022. Over 650 responses were received from public and third sector bodies, individuals, food and drink businesses and industry representative bodies. The feedback we received to the consultation will further inform the evidence base and the development of policy proposals, and potentially in due course legislation, required to progress mandatory calorie labelling should Scottish Ministers decide to proceed.

SCOTTISH GOVERNMENT

DRAFT LETTER TO THE CONVENER OF THE HEALTH, SOCIAL CARE AND SPORT COMMITTEE

I am writing to advise that the independent analysis reports for our consultations on *Restricting promotions of foods high in fat, sugar or salt* and *Mandatory calorie labelling in the out of home sector* were published at [x time] today, X January/ February 2023.

The consultation analysis reports are available at: [XXXXX]

The [Restricting promotions of foods high in fat, sugar or salt](#) consultation ran from 1 July to 23 September 2022. 110 responses were received, from food and drink businesses, food industry bodies, local authorities and professional, regulatory, public health and third sector bodies as well as from individuals.

The Scottish Government announced in its [Programme for Government 2022-23](#) on 6 September 2022 that a Public Health (Restriction of Promotions) Bill will be introduced during the 2022/23 legislative session. The Bill will be the first step towards implementing restrictions on the promotion of less healthy food and drink, supporting people to make healthier food choices. The feedback we received to the consultation will inform the development of the Bill and potential plans for any subsequent legislation that may arise from it.

The [Out of Home mandatory calorie labelling](#) consultation ran from 8 April to 1 July 2022. Over 650 responses were received from public and third sector bodies, individuals, food and drink businesses and industry representative bodies. The feedback we received to the consultation will further inform the evidence base and the development of policy proposals, and potentially in due course legislation, required to progress mandatory calorie labelling should Scottish Ministers decide to proceed.

Evidence gathering and stakeholder engagement remains ongoing to support the continued development of these policies.

Background

- Previous plans to introduce legislation on restricting promotions in 2020 were paused to take into account the long-term impact of the pandemic on businesses and consumers.
- In this year's Programme for Government, we committed to introducing a Public Health (Restriction of Promotions) Bill in the 2022/23 parliamentary year.
- [Redacted]
- We consulted on our proposals over the summer and are currently analysing responses. An external analysis report will be published early in 2023.
- UK Government location restrictions for HFSS food come into force in England on 1 October 2022. Volume price restrictions have been delayed for 12 months, due to the cost-of-living crisis.
- Officials have met with Industry Representative Bodies including, Scottish Retail Consortium, Scottish Grocers Federation, Food and Drink Federation Scotland, Scotland Food and Drink, Association of Convenience Stores and individual businesses to discuss our proposals.
- Businesses are generally not supportive of promotions restrictions. Given the implementation of similar proposals in England, the central point that businesses have made in engagement is that restrictions in Scotland should deviate as little as possible from the Regulations in force in England. Stakeholders have also raised concerns about the cumulative burden of new legislation on businesses, and the ability of smaller stores to implement the proposals.
- In September 2022, Ms Todd met with Cancer Research UK and British Heart Foundation and then separately with members of the NCD Alliance.
- Generally, public health stakeholders are supportive, however would have preferred to see legislation with a wider scope including alcohol and tobacco. Public health stakeholders would like the restrictions to include more promotion types than we proposed in the consultation.

Top Lines

Promotions Policy

- We will introduce legislation to restrict promotions of less healthy food and drink to make it easier for people to spend less and make healthier choices.
- We recognise that the food environment is often skewed towards the promotion of less healthy food and drink, which is often positioned to encourage impulse spend.
- Promotions don't necessarily represent good value, they can encourage us to spend more and consume more calories, whilst overlooking cheaper, healthier alternatives.
- This policy will support our public health priority to create a Scotland where everyone eats well and has a healthy weight.
- We have consulted on proposals to restrict promotions of less healthy food and drink where they are sold to the public. Responses are being analysed to help inform the development of this policy.

- Subject to the outcomes of our consultation and impact assessments, we are proposing to restrict,
 - **price promotions**, including multi-buy offers and unlimited refills
 - **location promotions** where items are displayed in prominent places, such as end of aisles and checkout areas.
- We know people living in poverty have poorer health outcomes and improving diet and healthy weight is important in changing that.
- We have committed to publishing the consultation responses and independent consultation analysis. No date has yet been agreed for publication.

Business Impact and enforcement of restrictions

- I recognise the challenges that businesses are experiencing in the current economic climate.
- We have engaged with stakeholders to consider how promotions restrictions will interact with existing and proposed regulations.
- I am grateful to everyone who completed the promotions consultation and engaged with officials to support the development of our Business and Regulatory Impact Assessment.
- I take the views of all stakeholders seriously and we will continue to fully engage with business stakeholders and consider views as the policy develops.
- Officials are working closely with COSLA and other key partners to consider the enforcement of this policy.
- This includes what resourcing, training and guidance would be required to support effective and consistent implementation of promotions restrictions.

Alignment with English Regulations / Final scope of the policy

- I recognise that businesses would like restrictions to be consistent with the Regulations in force in England.
- However, I also recognise that public health organisations would like the restrictions to be as wide reaching as possible.
- No decisions on the final scope of the policy have been made yet. Please be assured that all views expressed in the consultation and engagement will be fully considered in the decision-making process.
- An evidence-based approach is central to the development of our policy to restrict promotions on less healthy food and drink.
- We are using a wide range of evidence and data sources to consider the potential impacts of restricting promotions, ensuring we have a robust and balanced evidence base to inform policy making.
- We are developing impact assessments to assess whether the proposed measures are proportionate, as well as their impact on health inequalities.

Mandatory Calorie Labelling

[Redacted – out of scope]

Defensive Lines on PfG commitment

Q: Does the SG remain committed to a Public Health (Restriction of Promotions) Bill

- The Scottish Government is committed to action to improve healthy weight in Scotland.
- This includes mandatory measures to restricting food and drink promotions to protect public health.
- Our consultation closed on 23 September 2022.
- Responses are now being analysed to help inform the development of this policy. External analysis of responses will be published shortly.

If pushed:

- SG remains committed to progressing the legislation necessary to restrict less healthy food and drink promotions to protect public health

From: [Redacted]
Public Health (Restriction of Promotions) Bill Team
Diet and Health Weight Unit
16 February 2023

Cabinet Secretary for Health and Social Care
Minister for Public Health, Women's Health and Sport

PUBLIC HEALTH (RESTRICTION OF PROMOTIONS) BILL: FURTHER INFORMATION

Priority and Purpose

1. **Urgent** – this paper provides further information following your meeting with officials on 6 February about not introducing a Public Health (Restriction of Promotions) Bill (the Bill). This paper provides the requested information, namely:
 - a plan for Parliamentary handling and stakeholder engagement (**Annex A**) and suggested media lines (**Annex B**)
 - [Redacted]

Context and Issues

Summary of the meeting with officials on 6 February 2023

[Redacted]

Bute House Agreement

2. In line with requirement under the Bute House Agreement, the Scottish Green Party must be engaged before a final decision on the future of the Bill is reached.
3. [Redacted]

Quality Assurance

4. This additional advice has been approved by Karen MacNee (Deputy Director of Health Improvement).

Conclusions

[Redacted]

5. I recommend as outlined in **Annex A** that we:
 - a) No longer aim to publish MCL and HFSS promotions consultation analysis reports together alongside respective policy statements. As there was no commitment to legislate on MCL nor any public suggestion the Bill would

- be the legislative vehicle if Ministers were to legislate, publishing both together may confuse our messaging.
- b) Publish the MCL consultation analysis in parallel with consultation analysis on energy drinks. I recommend this is done after a final decision on the Bill has been made but **before** Parliament is notified about the Bill.
 - c) We move quickly to notifying Parliament of a decision not to proceed with the Bill (**Option 1 of Annex A**) potentially in March 2023. At the same time, we would publish the HFSS promotions consultation analysis report and accompanying high level policy statement. This will allow early communication of the decision in line with our ambitions of openness and transparency. It also permits early and open engagement with stakeholders.
 - d) Explore the potential and appetite to align with Welsh Government on aspects of policy to restrict promotions of food and drink high in fat, sugar or salt (HFSS promotions) where these are sold to the public

Next Steps

6. You are asked to note this update and are invited to:
- a) confirm if you are content with the information provided in relation to:
 - i. a plan for Parliamentary handling and stakeholder engagement (**Annex A**) and suggested media lines (**Annex B**)
 - ii. [Redacted]
 - iii. indicative timelines for developing secondary legislation (**Annex C**)
 - iv. details of the substantive aspects of the policy that could not be delivered through secondary legislation (**Annex D**).
 - b) Meet with the Minister for Parliamentary Business to discuss handling at 10am on 23 February.
 - c) If content with the proposed plan for Parliamentary and stakeholder engagement policy officials will:
 - i. [Redacted]
 - ii. take forward work to publish MCL and energy drink consultation analysis reports and accompanying policy statements
 - iii. develop lines in conjunction with Communications Healthier and special advisers in case of media enquiries. **Annex B** outlines suggested media lines
 - iv. lodge an GIQ in early course and in parallel with publication of HFSS consultation analysis and accompanying policy statement. This would be after a decision on the Bill has been taken (potentially March 2023) and the MCL and Energy Drink consultation analysis have been published.
 - v. Explore the potential and appetite to align with Welsh Government on aspects of HFSS promotions and provide advice on same.

[Redacted]

Diet & Heathy Weight Unit
16 February 2023

| Cabinet Secretaries and Ministers Copy List | For Action | For Information Portfolio interest | For Information Constituency interest | For Information General awareness |
|--|-------------------|---|--|--|
| First Minister | | | | X |
| Cabinet Secretary for Rural Affairs and Islands | | X | | X |
| Minister for Business, Trade, Tourism and Enterprise | | X | | |
| Minister for Public Finance, Planning and Community Wealth | | X | | |
| Minister for Mental Health and Wellbeing | | | | |
| Minister for Parliamentary Business | | X | | |

| Officials Copy List |
|--|
| Lord Advocate |
| Solicitor General |
| Legal Secretariat to the Lord Advocate |
| [Redacted] |
| DG Health & Social Care |
| Director of Population Health |
| [Redacted] |
| John Paterson, SGLD |
| [Redacted] |
| Karen MacNee |
| [Redacted] |
| George Burgess |
| [Redacted] |
| Head of HSCA |
| [Redacted] |
| Communications Healthier |
| [Redacted] |
| David Hutchison, Special Adviser |
| John McFarlane |
| DL Spads Admin |

[Redacted]

Context and Issues

1. The Bill was most recently announced in [PfG 2022/23](#), published in September 2022, as part of the 2022/23 Legislative Programme. The Health, Social Care and Sport Committee is anticipating it being introduced this session and are planning on this basis. [Redacted]

Stakeholder Engagement

2. We are unable to engage with stakeholders on plans to deliver HFSS promotions policy aims through regulations until Parliament has been notified that the Bill has been removed from the Parliamentary Timetable.
3. Any move away from repeated public commitments and statements on HFSS promotions will be extremely tricky. We are likely to encounter significant political, stakeholder and media criticism. We may receive accusations of lack of action to improve healthy weight in Scotland. This is why it is critical that we engage at official level and politically as soon as Parliament has been made aware of a decision not to proceed with the Bill.

Business

4. As part of the handling strategy, we have and continue to engage closely with Economy colleagues. This includes work with the Joint Taskforce on Regulations in line with Scotland's approach of better regulations.
5. Based on previous engagement with business, we anticipate the key concerns of business will likely be timing of future regulations, financial implications and regulatory burden. Businesses have consistently raised concerns on the burden of several regulations in development, and there has recently been negative industry reaction in response to the recent Alcohol advertising consultation. Any announcement will also be coming in the context of the ongoing cost crisis, energy crisis and COVID-19 recovery placing significant challenges on businesses.
6. Officials have engaged extensively with business on promotions proposals. Meetings and roundtables have been held with industry stakeholder bodies and their members, including Food and Drink Federation Scotland, Scottish Grocers' Federation, Scottish Retail Consortium, Scotland Food and Drink, Association of Convenience Stores, Scottish Wholesale Association, as well as meetings with individual businesses. The key theme raised by businesses through this engagement has been a desire for alignment with proposals in the rest of the UK.
7. [Redacted] However, we will consult on the appropriate lead-in time for business before regulations come into force. This means that we can offer

assurances to businesses that despite this change in approach, restrictions would not come into force before 2025, as we have previously advised them and will consult on the appropriate lead in time.

Enforcement Authorities

8. Officials will engage further with the Financial and Delivery Considerations Group (comprising of representatives from COSLA, Food Standards Scotland (FSS), the Society of Chief Officers of Trading Standards in Scotland, the Society of Chief Officers in Environmental Health in Scotland and Scottish Government). The Group was established to:
 - a) help inform estimates of potential resource and costing implications arising from the Bill
 - b) facilitate engagement between Scottish Government, Food Standards Scotland, local government and enforcement professionals to support the effective enforcement arising from the Bill.
9. Through engagement with the Group we were made aware that resourcing demands are recognised as a strategic risk by FSS. In seeking to address this issue, FSS has developed the Scottish Authority Food Enforcement Re-Build (SAFER) programme. This seeks to implement a new approach to Food Law delivery in Scotland that will:
 - a) Continue to deliver public health protection & assurance in Scotland
 - b) Ensure LA resources are sufficient, sustainable and dynamic to meet local and national requirements
 - c) Expand professional pathways and officer competencies framework, ensuring an adequate and diverse workforce
 - d) Re-build the Food Law delivery model to focus on high risk businesses and target non-compliance, which allows for flexibilities to enable local decision making
 - e) Ensure adequate, targeted and sustained support to LAs and Food Businesses with the provision of competency training and practical guidance
 - f) Develop technological and digital solutions improving accessibility, minimising administrative burden and increasing efficiencies for Food Law delivery.

[Redacted]

Public Health Stakeholders

10. The NCD Alliance Scotland is a coalition of health organisations who are working together to reduce the health burden of non-communicable diseases (NCD). The NCD Alliance Scotland is comprised of number of Scotland's leading health charities: British Heart Foundation Scotland (BHF), Alcohol Focus Scotland, ASH Scotland, Obesity Action Scotland, Scottish Health Action on Alcohol Problems (SHAAP), Asthma and Lung UK Scotland, Diabetes Scotland and Stroke Association.

11. The NCD Alliance is calling for a number of policies to be enacted through legislation urgently. This includes:

“calling on the Scottish Government to implement restriction on price and locations promotions on high, fat sugar and salt products following its most recent 2022 consultation”.

To that end we anticipate the NCD Alliance is likely to be supportive of action set to accelerate the delivery of policy aims. This however is likely to be attached to criticism for not consulting on the detail of regulations earlier.

12. To counter this point we will outline the programme of work that has been taken forward in recent years to develop the policy proposals and provide a clearer picture of what is required for legislation **Appendix 1** details. This includes:

- consultations in 2018, 2022; and
- further consideration of the evidence base underpinning proposed restrictions.

13. The Minister has a good working relationship with NCD Alliance and met with them a number of times in 2022. [Redacted]

14. Officials will also engage with BHF, Cancer Research UK and Obesity Alliance Scotland directly as a courtesy as they have been involved in helping to develop the evidence base to underpin the development of our proposals to restrict HFSS promotions. BHF is leading the work of the NCD Alliance and will be key to public stakeholder engagement. We would expect CRUK and OAS will welcome the opportunity for consultation on the detail of regulations to be brought forward. However, as outlined in paragraph 20 this is likely to be caveated by criticism of a lack of action to date. Paragraph 21 outlines a proposed response to counter that criticism.

15. We propose the Minister proactively engages with a number of people immediately after Parliament has been updated. [Redacted]

Parliament
[Redacted]

Appendix 1

DEVELOPMENT OF EVIDENCE TO SUPPORT RESTRICTING HFSS PROMOTIONS

1. The policy was first suggested in the [2017/18 Programme for Government](#) (PfG). In October 2017, the [Action and ambitions on diet, activity, and healthy weight: consultation](#) sought views on two high level questions on promotions, which informed a [detailed consultation paper](#), published in October 2018.
2. The first commitment to a Bill was given in the [2019/20 PfG](#). The development of the Bill was [paused in June 2020](#) to take account of the impact of the COVID-19 pandemic on businesses and on consumer behaviour. The [2021/22 PfG](#) later set out that a Bill would be introduced in this Parliament. A further [consultation paper](#) was published in July 2022 and a commitment to a year 2 Bill was given in the [2022/23 PfG](#).
3. Key evidence that was available in 2020 to support the introduction of a Bill is detailed in table 1. In addition, there was evidence gathered from the 2018 consultation and business engagement.
4. Since the Bill planned for introduction in 2020 was paused, further research to support and inform the policy has been undertaken and published. Key recent publications and research activity is detailed below in table 2. This research provides insight on the changes to the food environment and people's eating behaviour in light of the COVID-19 pandemic.
5. In addition, further research has also been undertaken independently by academia and some public and third sector organisations which has further built the evidence base.
6. The most recent [consultation paper](#) was published in July 2022. This consultation sought views on updated proposals, recognising the impact that the COVID-19 pandemic and EU exit, amongst other things, has had on businesses and consumers. The consultation also reflected that promotions restrictions would come into force in England on 1 October 2022. Respondents were asked for their views on aligning our policy with England.
7. Businesses have been impacted by the pandemic, EU Exit, rising inflation and increased fuel costs. To inform the Business and Regulatory Impact Assessment (BRIA), officials have undertaken extensive engagement with businesses and industry representative bodies to understand the potential impacts of the policy.
8. The additional evidence since 2020, including the 2022 consultation and recent BRIA engagement, has provided a more developed evidence base to inform and refine our revised proposals for the 2022 consultation. Specifically, it has provided us with further information on:

- a) the impact Covid has had on consumers purchasing behaviours, and the impact this has had on industry in both OOH and retail settings,
- b) the impact of location restrictions,
- c) the evidence around use of price and location promotions in the online environment which is an emerging area of research activity
- d) more extensive evidence on the use of price and placement promotions in OOH setting in Scotland,
- e) industry response to promotion restrictions in terms of how they adapt their marketing approach in store. This is important for consideration of regulation design and future proofing.
- f) the range of stakeholder views expressed by public health and business stakeholders on more detailed proposals and in light of Covid and other recent changes in context.

Table 1 – Key evidence available in 2020

| | | |
|--------------------------------------|-------|--|
| Public Health England | 2015 | Sugar Reduction: The evidence for action, Annexe 4: an analysis of the role of price promotions on the household purchase of foods and drinks high in sugar |
| Food Standards Scotland | 2016 | Food and drinks purchased into the home |
| Food Standards Scotland | 2017 | Marketing strategies used within premises by out of home businesses |
| NHS Scotland | 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 |
| Department of Health and Social Care | 2018 | The UK Government (2018) Restricting checkout, end of aisle and store entrance sales of HFSS products: impact assessment. GOV.UK |
| Food Standards Scotland | 2018 | Monitoring retail purchase and price promotions in Scotland (2010-2016) |
| Food Standards Scotland | 2019 | Food in Scotland Consumer Tracking Survey 2019 (wave 8) |
| Food Standards Scotland | 2019 | The Out of Home Environment in Scotland: June 2015 – June 2018 |
| Food Standards Scotland | 2020 | The out of home environment in Scotland (2019) |
| Food Standards Scotland | 2020 | Monitoring retail purchase and price promotions in Scotland (2014-2018) |
| Public Health England | 2020 | An analysis of the role of price promotions on the household purchases of food and drinks high in sugar, and purchases of food and drinks for out of home consumption |
| Scottish Government | 2022* | Reducing health harms of foods high in fat, sugar or salt: economic modelling – final report |
| Scottish Government | 2022* | Restricting multi-buy price promotions on high fat, sugar or salt discretionary foods: analysis summary – briefing |

* Data was available in 2020, publication was delayed

Table 2 – Further key evidence available since 2020

| | | |
|--|------|--|
| Whitehead et al (Public Health Scotland) | 2021 | The Impact of Non-Price In-premise Marketing on Food and Beverage Purchasing and Consumer Behaviour: A Systematic Review. |
| Food Standards Scotland | 2021 | The impact of Covid-19 on the out of home sector in Scotland |
| Food Standards Scotland | 2022 | Exploring the impact of COVID-19 on retail purchase and price promotion in Scotland: 2019-2020 |
| Food Standards Scotland | 2022 | Overview of the Total Food and Drink Landscape in Scotland 2021 |
| Food Standards Scotland | 2022 | The out of Home Environment in Scotland: June (2021) |
| Food Standards Scotland | 2022 | Monitoring retail purchase and price promotions in Scotland 2021 |
| Food Standards Scotland | 2022 | Kantar 2019 Out of Home unpublished data - equalities analysis |
| Public Health Scotland | 2022 | Trade responses to restrictions on the marketing of unhealthy commodities: A rapid review of reactions of the producers and sellers of unhealthy food, alcohol, tobacco and e-cigarettes |
| Scottish Government | 2023 | Research to understand price and placement marketing strategies used within premises and online by out of home businesses in Scotland |
| PHS and SG | 2023 | Literature search Jan 2020 to Sep 2022 to update the rationale evidence |

MEDIA LINES

Top Lines

- The Scottish Government is committed to action to improve diet.
- It takes time to gather evidence, consult widely and develop proposals to restrict the promotion of less healthy food and drink.
- Building on our previous consultation, we further consulted last summer, seeking views on our proposals in the current context, which has enabled us to consider the impact of the COVID-19 pandemic, action in other parts of the UK, EU exit and cost of living pressures.
- An independent, external analysis of consultation responses was published on [*Date to be confirmed*]
- Having done this necessary and important work, we are now in a position to determine that there is a more efficient route to delivery of our policy aims and we will consult on the detail of proposed regulations in autumn 2023.

FAQs:

The Scottish Government has previously said that a Bill is required before there can be regulations. What has changed?

- We are alive to recent changes in the wider context, such as the impact of the COVID-19 pandemic, further action including legislation in other parts of the UK, EU exit and cost of living pressures.
- We have gathered evidence, consulted widely and developed policy proposals to restrict the promotion of less healthy food and drink.
- Building on previous consultation we further consulted last summer, seeking views on proposals in the current context.
- Having done this important and necessary work, we are now in a position to determine that there is a more efficient route to delivery of our policy aims and we will consult on the detail of proposed regulations in autumn 2023.

[Redacted]

Has legal advice changed concerning Scottish Ministers powers to regulate on these proposals?

- We keep policy and consideration of the delivery of policy aims under regular review.
- We are alive to recent changes in the wider context, including legislation in other parts of the UK.
- We are clear that action must be proportionate to deliver beneficial outcomes for public health.
- We have taken time to gather evidence, consult widely and develop proposals to restrict the promotion of less healthy food and drink.
- Having done this important and necessary work, we are now in a position to determine that there is a more direct route to delivery of policy aims and will consult on the detail of proposed regulations in autumn 2023.

The Scottish Government first suggested this policy in the 2017. If a Bill is not required, why has so much time been wasted?

- We asked two questions in 2017, as part of a wider consultation. It was never intended, nor would it have been possible, to legislate on the back of that consultation.
- We consulted in more detail in late 2018/19 to inform impact assessments and the consideration of legislation.
- The development of legislation was paused in 2020 to take into account the impact of the ongoing COVID-19 pandemic.
- We have taken time to gather evidence, consult widely and develop proposals to restrict the promotion of less healthy food and drink.
- This has involved consideration of new evidence, including research looking at how the COVID-19 pandemic has changed the food environment and peoples eating behaviour to ensure a robust and balanced evidence base to inform and refine policy development.
- Building on previous consultation we further consulted last summer seeking views on proposals in the current context, considering the COVID-19 pandemic, action in other parts of the UK, EU exit and cost of living pressures.
- We have engaged extensively with public health stakeholders and industry and will continue to fully engage and consider views as the policy is refined.
- Having done this important and necessary work, we are now in a position to determine that there is a more direct route to delivery of policy aims and will consult on the detail of proposed regulations in autumn 2023

Why was the July 2022 consultation not on the detail of regulations?

- The development of legislation was paused in 2020 to take into account the impact of the ongoing COVID-19 pandemic.
- It was important to re-consult and to gather further evidence on our proposals in the current context, considering the COVID-19 pandemic, action in other parts of the UK, EU exit and cost of living pressures, prior to consulting on the detail of regulations.
- This has involved consideration of new evidence, including research looking at how the COVID-19 pandemic has changed the food environment and peoples eating behaviour to ensure a robust and balanced evidence base to inform and refine policy development.
- This will inform further consultation on the detail of regulations in autumn 2023.

Will restrictions come in to force immediately? /Will businesses have sufficient time to prepare for restrictions?

- Restrictions will not come into force before 2025 at the earliest.
- We plan to consult on the detail of proposed regulations in autumn 2023. This will include consulting on the length of implementation required ahead of regulations coming into force.

- Following this consultation, it is likely that we will be required to notify the detail of regulations to other World Trade Organisation members, given our international obligations as a WTO member.
- There will then be an implementation period between regulations being laid and requirements coming into force.
- We will continue to engage with businesses fully on impacts of these policy proposals, including on the timing of restrictions coming into force and on guidance for industry.
- This will include engagement with the Joint Taskforce on Regulations.

Why is the Scottish Government not laying regulations immediately?

- We plan to consult on the detail of proposed regulations in autumn 2023 in line with our obligation to consult on the detail of changes to food law.
- Following this consultation, it is likely that we will be required to notify the detail of regulations to other World Trade organisation members, given our international obligations as a WTO member. We can then proceed to introduce regulations.

Is this Bill being shelved because the Scottish Government isn't committed to action to improve public health?

- We are fully committed to take action to improve public health, including improving Scotland's diet.
- Following our recent consultation and further consideration of the proposals, we are now satisfied that we can implement the policy proposals without a Bill.
- This means we can proceed to consult on the detail of proposed regulations faster than we would otherwise be able to do.

Why is there so little detail on what you are going to regulate? Will convenience stores be exempt as they will be in England?

- Our 2022 consultation provided a chance for us to hear views on our proposals in the context of the UK Government regulations for England and the proposals for Wales set out in the recent Welsh Government consultation paper. We are giving detailed consideration to the potential for policy consistency where that is in Scotland's best interests.
- An independent, external analysis of consultation responses was published on [*Date to be confirmed*]
- We plan to consult on the detail of proposed regulations in autumn 2023 in line with our obligation to consult on the detail of changes to food law.

[Redacted]

ANNEX C

[Redacted]

ANNEX D

[Redacted]

ANNEX E

[Redacted]

ANNEX F

PUBLIC HEALTH BILL - DRAFT MEDIA LINES FOR PROCEEDING TO REGULATIONS - 22 FEBRUARY 2023

Top Lines

- The Scottish Government is firmly committed to improving diet and supporting individuals to have a healthy weight.
- We will progress legislation to restrict the promotion of less healthy food and drink to make it easier for people to spend less and make healthier choices.
- Following consultation last summer and the further development of policy proposals, we are now in a position to determine that there is a more efficient route to delivering this policy – it can be delivered by regulations. We will therefore no longer progress a Bill.
- We will proceed to consult in the autumn on the detail of these regulations with a view to laying them next year.

FAQs:

The Scottish Government has previously said that a Bill is required before there can be regulations. What has changed?

- Following the 2022 consultation and the gathering of evidence, we have further developed our policy proposals.
- Having done this important and necessary work, we have determined that there is a more efficient route to delivery of our policy aims.

[Redacted]

Has legal advice changed concerning Scottish Ministers powers to regulate on these proposals?

- We do not generally disclose the contents of legal advice. We keep policy proposals and consideration of the delivery of policy aims under regular review.
- We recognise that there has been recent changes in the policy and legislative context, including legislation that has been introduced in England.
- We have gathered further evidence, consulted widely and developed proposals to restrict the promotion of less healthy food and drink.
- Having done this important and necessary work, we are now in a position to determine that there is a more direct route to delivery of policy aims. We will consult on the detail of proposed regulations this autumn.

What is the timetable for regulations/Will businesses have sufficient time to prepare for restrictions?

- We plan to consult on the detail of proposed regulations this autumn with a view to laying regulations next year.
- There will be a period between regulations being laid and regulations coming into force to enable industry to fully prepare.
- The consultation will seek views on the length of implementation required ahead of regulations coming into force.
- The restrictions will not come into force before 2025 at the earliest.

Is this Bill being shelved because the Scottish Government isn't committed to action to improve public health?

- Following our recent consultation and further consideration of the proposals, we are now satisfied that we can implement restriction of less healthy food and drink promotions without a Bill.
- This means we can proceed to consult on the detail of proposed regulations faster than we would otherwise be able to do.
- We are fully committed to take action to improve public health, including improving Scotland's diet.

Will you align with regulations in the rest of the UK?

- Our 2022 consultation provided an opportunity to hear views on our proposals in the context of the UK Government regulations coming into force for England from October 2022 and the proposals for Wales set out in the recent Welsh Government consultation paper.
- We are giving detailed consideration to the potential for policy consistency where that is in Scotland's best interests.
- We will consult this autumn on the detail of regulations, including setting out where we propose to align with policies in other parts of the UK.

Why is the earliest implementation date of 2025 the same for regulations as it was for a Bill?

- Our prior engagement with stakeholders has been on the basis that these restrictions would not come into force before 2025 at the earliest.
- This date was subject to Bill passage and to further Ministerial decisions on factors including implementation periods, meaning that measures under a Bill would likely have come in later than 2025.
- We recognise the challenges that businesses are experiencing in the current economic climate.
- We maintain our prior assurance that despite consulting on the detail of regulations in autumn 2023, these restrictions will not come into force before 2025 at the earliest.
- Our consultation this autumn will include consulting on an appropriate lead in time for businesses.

The Scottish Government first suggested this policy in 2017. If a Bill is not required, why has so much time been wasted?

- The time has not been wasted – the work that has taken place has been important, necessary work and essential to getting us here.
- We asked two questions in 2017, as part of a wider consultation. It was never intended, nor would it have been possible, to legislate on the back of that consultation.
- We consulted in more detail in late 2018/19.
- The development of legislation was paused in 2020 to take into account the impact of the ongoing COVID-19 pandemic.
- Building on a previous consultation we further consulted last summer, seeking views on proposals in the current context to inform our final proposals.

- Having done this important and necessary work, we are now in a position to determine that there is a more direct route to delivery of policy aims and will consult on the detail of proposed regulations this autumn.

Why was the July 2022 consultation not on the detail of regulations?

- As the development of legislation was paused in 2020 to take into account the impact of the COVID-19 pandemic, it was important to consult again and to gather further evidence on our proposals, considering the pandemic, action in other parts of the UK, EU exit and cost of living pressures.
- We have also considered new evidence, including research looking at how the COVID-19 pandemic has changed the food environment and peoples eating behaviour.

Why is the Scottish Government not laying regulations immediately?

- We plan to consult on the detail of proposed regulations this autumn in line with our legal obligation to consult on the detail of changes to food law.

Why is there so little detail on what you are going to regulate? Will convenience stores be exempt as they will be in England?

- Our 2022 consultation provided a chance for us to hear views on our proposals in the context of the UK Government regulations coming into force for England from October 2022 and the proposals for Wales set out in the recent Welsh Government consultation paper.
- We are giving detailed consideration to the potential for policy consistency where that is in Scotland's best interests.
- An independent, external analysis of consultation responses was published on [*Date to be confirmed*]
- We plan to consult on the detail of proposed regulations this autumn in line with our obligation to consult on the detail of changes to food law.

First Minister

PUBLIC HEALTH (RESTRICTION OF PROMOTIONS) BILL

1. The Cabinet Secretary for Health and Sport, the Minister for Parliamentary Business and I have reluctantly concluded that the Public Health (Restriction of Promotions) Bill should not be introduced. This is because the policy to be contained in the Bill can be pursued more efficiently through secondary legislation and there would be material risks in pursuing it through a Bill.

2. The policy to restrict less healthy food and drink promotions was originally suggested in the [2017/18 PfG](#). The first commitment to a Bill to restrict such promotions where they are sold to the public (HFSS promotions policy) was set out in the [2019/20 PfG](#). Its development was [paused in June 2020](#) to take account of the impact of the COVID-19 pandemic on businesses and on consumer behaviour. The [2021/22 PfG](#) later set out that a Bill would be introduced in this Parliament, ahead of the 2022/23 PfG confirming it as a Year 2 Bill.

3. [Redacted]

4. [Redacted]

[Redacted – out of scope]

5. While there are obvious reputational challenges associated with a decision not to introduce a Bill, in my view these do not justify the risks of proceeding with one. [Redacted]

6. A decision not to proceed with a Bill provides opportunities. Consistent feedback, particularly from business stakeholders, has been a desire for alignment with the approach to restrictions in England and Wales. Officials have been informed that Welsh Government intend to consult on regulations in the coming months. Timescales for regulations would allow for more meaningful engagement with Welsh Government on scope for alignment. Additionally, we could consult on the detail of regulations on an accelerated timetable: this autumn rather than autumn 2024.

7. Officials expect public health stakeholders to be reassured that the Government remains committed to delivery of the policy aims. They are likely to be supportive of consultation on the detail of regulations being brought forward. This however is likely to be attached to criticism that the policy could have been progressed more quickly with pressure to accelerate timescales for regulations being laid and coming into force.

8. In contrast, business stakeholders are likely to have significant concerns around accelerated timescales and cumulative regulatory burden. Any announcement will be coming in the context of the ongoing cost crisis, energy crisis and COVID-19 recovery placing significant challenges on businesses. Although we will be able to consult more quickly on the detail of regulations, we have committed to businesses that we will consult on the appropriate timescales of implementation

and such questions will be included in the consultation this autumn. The consultation responses will inform considerations of the appropriate lead-in time before regulations come into force. Officials are engaging with their economy colleagues and the Joint Business Regulations Taskforce to assess what steps can be taken to co-ordinate with timings of other regulations and other potential steps to mitigate impact to businesses.

9. There may be concerns from opposition parties and Parliament that moving from a Bill to secondary legislation for this policy will afford Parliament a more limited scrutiny role. I have discussed Parliamentary handling with the Minister for Parliamentary Business and we are in agreement that the use of secondary legislation for these policy proposals is appropriate. The proposed handling strategy as set out below have been agreed with Mr Adam, Mr Yousaf and special advisers. Engagement with the Green Group has taken place as per the Bute House agreement. Ms Mackay has noted that she is content on the basis that the promotion restrictions policy proposed for the Bill will still be progressed through a different legislative vehicle.

10. Should you be content that this Bill is not brought forward, I would make a statement to Parliament to announce this decision and the publication of the consultation policy response and report on HFSS promotions. I will work with the Minister for Parliamentary Business to agree a suitable date for this. My statement would highlight the benefits of an accelerated move to consult on the detail of proposed HFSS promotions regulations and planned Parliamentary engagement on these proposals. It would highlight the significant work that has taken place to develop and refine HFSS policy, including recent consultations and further consideration of the evidence base. It will confirm our intention to consult on the detail of proposed HFSS promotions regulations this autumn.

[Redacted – out of scope]

11. I would be grateful for confirmation that you are content that the Public Health (Restriction of Promotions) Bill is not introduced and that instead HFSS promotions policy is instead progressed through secondary legislation. If you are content, I will inform CSCL ahead of a statement to Parliament.

Background

- Previous plans to introduce legislation on restricting promotions in 2020 were paused due to the impact of the pandemic on businesses and consumers.
- In this year's Programme for Government, we committed to introducing a Public Health (Restriction of Promotions) Bill in the 2022/23 parliamentary year.
- As part of the instruction process for the Bill, changes in the legislative context have been identified. [Redacted]
- This information should not be shared publicly at this stage. If a decision not to proceed with the Bill is made by the First Minister, parliament will be informed via a statement.
- UK Government location restrictions for HFSS food come into force in England on 1 October 2022. Volume price restrictions have been delayed for 12 months, due to the cost-of-living crisis.
- Officials have met with Industry Representative Bodies including, Scottish Retail Consortium, Scottish Grocers Federation, Food and Drink Federation Scotland, Scotland Food and Drink, Association of Convenience Stores and individual businesses to discuss our proposals.
- Businesses are generally not supportive of promotions restrictions. Given the implementation of similar proposals in England, the central point that businesses have made in engagement is that restrictions in Scotland should align with the Regulations in force in England. Stakeholders have also raised concerns about the cumulative burden of new legislation on businesses, and the ability of smaller stores to implement the proposals.

Top Lines

Promotions Policy

We will introduce legislation to restrict promotions of less healthy food and drink to make it easier for people to spend less and make healthier choices.

- We recognise that the food environment is often skewed towards the promotion of less healthy food and drink, which is often positioned to encourage impulse spend.
- Promotions don't necessarily represent good value, they can encourage us to spend more and consume more calories, whilst overlooking cheaper, healthier alternatives.
- This policy will support our public health priority to create a Scotland where everyone eats well and has a healthy weight.
- We know people living in poverty have poorer health outcomes and improving diet and healthy weight is important in changing that.

Consultation

We have consulted on proposals to restrict promotions of less healthy food and drink where they are sold to the public. Responses are being analysed to help inform the development of this policy.

- Subject to the outcomes of our consultation and impact assessments, we are proposing to restrict,
 - **price promotions**, including multi-buy offers and unlimited refills
 - **location promotions** where items are displayed in prominent places, such as end of aisles and checkout areas.
- We have committed to publishing the consultation responses and independent consultation analysis. No date has yet been agreed for publication.

Business Impact

I recognise the challenges that businesses are experiencing in the current economic climate.

- We have engaged with stakeholders to consider how promotions restrictions will interact with existing and proposed regulations.
- I am grateful to everyone who completed the promotions consultation and engaged with officials to support the development of our Business and Regulatory Impact Assessment.
- I take the views of all stakeholders seriously and we will continue to fully engage with business stakeholders and consider views as the policy develops.

Enforcement of restrictions

Officials are working closely with COSLA and other key partners to consider the enforcement of this policy.

- This includes what resourcing, training and guidance would be required to support effective and consistent implementation of promotions restrictions.

Alignment with English Regulations / Final scope of the policy

I recognise that businesses would like restrictions to be consistent with the Regulations in force in England.

- No decisions on the final scope of the policy have been made yet. Please be assured that all views expressed in the consultation and engagement will be fully considered in the decision-making process.
- An evidence-based approach is central to the development of our policy to restrict promotions on less healthy food and drink.

Evidence base for the policy

We are using a wide range of evidence and data sources to consider the potential impacts of restricting promotions, ensuring we have a robust and balanced evidence base to inform policy making.

- [Economic modelling](#) has estimated that removal of price promotions such as temporary price reductions, multi-buy and 'Y for £X', just on discretionary foods such as cakes, biscuits, confectionary, crisps, etc., has the potential to reduce calorie intake by 613 calories per person per week.
- This modelling was carried out by SRUC in 2019 using data from the Kantar Worldpanel dataset for Scotland from 2013 to 2018, which provides information

about purchases at the level of products by households and whether they were made under a price promotion (e.g., x GBP pounds less).

- A 5 year period was used for the modelling to ensure that as many possible households could be included in the estimation and to avoid the effects of specific annual fluctuations.
- We are using a wide range of evidence and data sources to consider the potential impacts of restricting promotions, ensuring we have a robust and balanced evidence base to inform policy making.
- We are also developing impact assessments to assess whether the proposed measures are proportionate, as well as their impact on health inequalities.

[Redacted – out of scope]

Defensive Lines on PfG commitment

Q: Does the SG remain committed to a Public Health (Restriction of Promotions) Bill

- The Scottish Government is committed to action to improve healthy weight in Scotland.
- This includes mandatory measures to restricting food and drink promotions to protect public health.
- Our consultation closed on 23 September 2022.
- Responses are now being analysed to help inform the development of this policy. External analysis of responses will be published shortly.

If pushed:

- SG remains committed to progressing the legislation necessary to restrict less healthy food and drink promotions to protect public health.

Public Health (Restriction of Promotions) Bill

Background:

- The policy to restrict less healthy food and drink promotions has been a PfG commitment since 2017. Previous work on a Bill was paused due to the COVID-19 pandemic, and the 22/23 PfG committed to introducing a year 2 Bill.

Current status:

- [Redacted]
- It is now recommended that Ministers do not proceed with a Bill, and instead consult on proposed regulations in autumn 2023.
- Ms Todd, Mr Yousaf, Mr Adam and the Green Party agree that the policy aims can be delivered more efficiently through secondary legislation.
- A note was submitted from Ms Todd to the FM on 2 March 2023 seeking a final decision.

Next steps:

- Subject to FM decision, an update will be provided to Cabinet Sub-Committee on Legislation.
- Parliament would be informed via an oral statement, which would coincide with the publication of the promotions, mandatory calorie labelling and energy drinks consultation analysis and policy statements.
- Officials would then communicate the decision to key stakeholders.

Media lines

- We are committed to progressing the legislation necessary to restrict promotions of less healthy food and drink to make it easier for people to spend less and make healthier choices.

DIET AND HEALTHY WEIGHT PRIORITY ISSUES

Public Health (Restriction of Promotions) Bill

The policy to restrict less healthy food and drink promotions has been a PfG commitment since 2017. Previous work on a Bill was paused due to the COVID-19 pandemic and the 22/23 PfG committed to introducing a year 2 Bill. [Redacted] It is now recommended that Ministers do not proceed with a Bill, and instead consult on the detail of proposed regulations in autumn 2023. We will shortly provide advice on this with an updated note from the Minister to the FM seeking his approval not to introduce a Bill. Mr Yousaf agreed this approach when he was Health Secretary. We are working with SPADs and colleagues to identify suitable handling of any announcement. A consultation analysis report and policy response to a further consultation carried last year have yet to issue. It was previously considered desirable to issue them alongside the responses and reports to the calorie labelling and energy drinks consultations.

[Redacted – out of scope]

Cabinet Secretary for NHS Recovery, Health and Social Care
Minister for Public Health and Women's Health

PUBLIC HEALTH (RESTRICTION OF PROMOTIONS) BILL: MINISTERIAL CLEARANCE OF FM NOTE FOR RE-ISSUE

Priority and Purpose

1. **Urgent** – Mr Yousaf as Cabinet Secretary for Health and Social Care and Ms Todd as Minister for Public Health, Women's Health and Sport agreed not to introduce the Public Health (Restriction of Promotions) Bill (the Bill).
2. We require written confirmation of this decision from the First Minister. Therefore, I recommend that the note at **Annex A** (attached separately) is sent from Ms Minto to the First Minister seeking written confirmation that he is content not to introduce the Bill.
3. Following confirmation from the First Minister, Parliament will need to be informed of this decision before the end of this Parliamentary year in June, as the Bill was due to be introduced in Year 2.
4. This submission provides a summary of discussions regarding the Bill and the following information is also provided:
 - Submission of 3 February with advice on options to deliver the policy aims of the proposed Public Health Bill (**Annex B** - attached separately to this submission)
 - Submission of 16 February providing further advice on handling and timescales for secondary legislation (**Annex C** - attached separately to this submission)
 - Background information on the policy to restrict promotions of less healthy food and drink (**Annex D**)
 - Note of the meeting on 23 February between Mr Yousaf, Ms Todd and Mr Adam (**Annex E**).

Context and Issue

5. Restricting the promotion of food and drink high in fat, sugar or salt (HFSS) was first suggested in the [2017/18 Programme for Government](#) (PfG). The aim of the policy is to reduce the public health harms associated with the excess consumption of calories, fat, sugar and salt. We [consulted](#) on the policy in 2018 and the first commitment to a Bill was given in the [2019/20 PfG](#).
6. The development of the Bill was [paused in June 2020](#) due to the impact of the COVID-19 pandemic. We [consulted](#) again in July 2022 and a commitment to a

year 2 Bill was given in the [2022/23 PfG](#). Further details on our proposals are at **Annex D**. The Bill was scheduled to be introduced to Parliament this month.

7.

[Redacted]

8. Officials met with Ms Todd and Mr Yousaf on the 6 February to discuss whether a Bill remained desirable. The former Public Health Minister and former Cabinet Secretary agreed that the Bill should not be introduced. This decision reflected a change in the way we propose to deliver the policy aims, it was considered to be more efficient to progress the policy through secondary legislation.
9. On the 23 February, Ms Todd and Mr Yousaf met the Minister for Parliamentary Business, Mr Adam, to discuss Parliamentary handling. The note of this meeting is at **Annex E**.
10. At this meeting, it was agreed that policy officials should prepare a note for Ms Todd (as the former Minister for Public Health, Women's Health and Sport Minister) to send to the former First Minister recommending that the Bill should not be introduced to Parliament and that the promotions policy should instead be progressed through secondary legislation, following further consultation. This note was cleared by Ms Todd and sent to Ms Sturgeon on 2 March. However, no reply was received.
11. It was also agreed at the meeting on 23 February that a Ministerial Statement would be the most appropriate way to inform Parliament that the Bill would not be introduced. Following the FM transition and changes in Ministerial portfolios, SPADs have advised that a Ministerial statement remains the preferred option for informing Parliament that the Bill will not be introduced.

[Redacted]

12. Although the understanding is that the First Minister is content not to proceed with the Bill, Mr Yousaf's Private Office have asked that a brief note is sent to him from Ms Minto. The note seeks specific confirmation that he is content not to proceed with this Bill and that the HFSS promotions policy is instead progressed through secondary legislation.
13. Our consultation in summer 2022 allowed respondents to share their views on the potential scope of the policy, taking into account the impact of the pandemic, EU Exit and the cost-of-living crisis. Decisions will be required on the final scope of the policy, and I will provide you with further advice in due course. We are required by law to consult in relation to changes to food law and a further consultation on the detail of proposed regulations will allow individuals and stakeholders to comment on more detailed policy proposals.

Bute House Agreement Implications

14. Engagement with the Green Group has taken place as per the Bute House agreement. Ms Mackay noted that she was content on the basis that the promotions restrictions policy proposed for the Bill would still be progressed through secondary legislation.

15. Ms MacKay has lodged the following PQ in relation to the Bill:

- S6W-16890 - To ask the Scottish Government when it plans to confirm its timeline for the introduction of the proposed Public Health (Restriction of Promotions) Bill.
- SPADs have advised that we issue a holding answer to this question.

Financial and Legal Considerations

16. Financial and legal considerations for the proposed approach were considered and set out in full in the submission of 3 February (**Annex B**).

Sensitivities

17. There are sensitivities associated with progressing the policy through secondary legislation rather than introducing a Bill that would give Ministers bespoke powers to regulate promotions. In summary:

- a) public health stakeholders, whilst supportive, may be critical that the policy could have been progressed more quickly and there may be pressure to further accelerate timescales
- b) business stakeholders will have concerns about the implications on the timing for implementation, particularly amid wider industry concerns about cumulative regulatory burden
- c) local authorities have raised concerns regarding the funding and staffing required to enforce this policy
- d) opposition parties and Parliament may have concerns that secondary legislation will not allow Parliament to have the same amount of scrutiny as they would have had with primary legislation.

18. Further detail on anticipated stakeholder views and plans for handling these are set out in the submission of 16 February (**Annex C**). It should be noted that timescales set out in the February submission will need to be revisited to take account of the impact of the First Minister's transition period on this decision point. As noted at paragraph 13 above, SPADs have advised that a Ministerial statement remains the preferred option for informing Parliament that the Bill will not be introduced.

Quality Assurance

19. This submission has been approved by John Nicholson, Deputy Director and Richard Foggo, Director of Population Health.

Recommendation

20. I recommend that the Cabinet Secretary for NHS Recovery, Health and Social Care and the Minister for Public Health and Women’s Health note this update and provide any comments as appropriate.
21. I recommend that the Minister for Public Health and Women’s Health sends the note at **Annex A** to the First Minister to seek final confirmation that the Bill can be removed from the Year 2 legislative programme.

Next Steps

22. Should the First Minister confirm that he is content that the Bill should not be introduced, officials will then engage with PLU colleagues to inform CSCL of the First Minister’s decision.
23. If the Bill is not introduced, Parliament must be informed of this before the end of this Parliamentary Year (June 2023). It was previously proposed that Parliament would be informed by a Ministerial Statement, which would coincide with the publication of the 2022 promotions consultation analysis report and a policy statement.
24. SPADs have confirmed that a Ministerial Statement remains the most appropriate way to inform Parliament, and officials will return with further advice on the statement.
25. Once Parliament has been informed, officials would communicate the decision to key stakeholders and progress work to draft a consultation paper on the detail of proposed regulations for issue this autumn. This consultation would inform the further development of regulations and impact assessments.

[Redacted]
 Diet and Healthy Weight Division
 Directorate for Population Health
 [Redacted]

| Cabinet Secretaries and Ministers Copy List | For Action | For Information Portfolio interest | For Information Constituency interest | For Information General awareness |
|--|------------|------------------------------------|---------------------------------------|-----------------------------------|
| Cabinet Secretary for NHS Recovery, Health and Social Care | X | | | |
| Minister for Public Health and Women’s Health | X | X | | |

| Cabinet Secretaries and Ministers Copy List | For Action | For Information Portfolio interest | For Information Constituency interest | For Information General awareness |
|--|-------------------|---|--|--|
| Minister for Parliamentary Business | | X | | |
| Lord Advocate | | X | | |
| Solicitor General | | | | |

| Officials Copy List |
|--|
| DG Health and Social Care Director of Population Health Legal Secretariat to the Lord Advocate Niamh O'Connor John Nicholson [Redacted] |

RESTRICTING PROMOTIONS OF LESS HEALTHY FOOD AND DRINK: BACKGROUND

- In our most [recent consultation](#):
 - We sought views on which **food categories** should be within scope of promotions restrictions.
 - We proposed to use the **2004/05 Nutrition Profiling Model**, which is a scoring model developed to identify HFSS products, to all targeted food categories.
 - We proposed that **only pre-packed foods** within targeted food categories would be within scope of the restrictions as nutrition and ingredients information is more readily available to support calculation of a NPM score.
 - We proposed to restrict the following types of **price promotions** on targeted foods, multi-buys of pre-packed HFSS foods and unlimited refills for a fixed charge on HFSS soft drinks with added sugar.
 - We proposed to restrict the **location of targeted foods** in prominent places in physical premises. This would include the following locations: checkout areas, end of aisles, front of store and island/ bin displays.
 - We proposed that these restrictions would apply to the **equivalent locations online**, for example home and checkout pages.
 - We proposed to apply the restrictions to any **place** where pre-packed targeted foods, and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge, are sold to the public in the course of business. This would include retail, out of home, wholesale and other outlets.
 - We proposed, as a minimum, that specialist businesses with a limited product range, such as chocolatiers and sweet shops, would be **exempt** from location restrictions. Restrictions on price promotions would still apply to specialist businesses.
 - We proposed to give local authorities the role of **enforcing** the proposed policy.
 - We proposed to give Ministers powers to issue **guidance to local authorities** to support effective enforcement of the proposed policy.
 - We proposed to develop materials for industry to support effective **implementation**.

- The consultation responses have been independently analysed and the analysis report is ready for publication. Further advice on the consultation analysis and our proposals to progress this policy will follow shortly.

UK Government Regulations

- As of 1 October 2022, regulations came into force to restrict less healthy food and drink promotions at prominent locations in stores. Restrictions on price promotions in England have been delayed until 1 October 2023 due to cost-of-living pressures. In our consultation we sought views on to what extent alignment with the English regulations would be in Scotland's best interests.

Wales

- The Welsh Government consulted on its proposals to restrict HFSS promotions last summer. These broadly align with the UK Government regulations, but Wales also propose to target meal deals and temporary price reductions, as well as multi-buy deals. We understand that that Wales will set out their policy response by the summer.

Public Health (Restriction of Promotions) Bill

Note of Meeting with Mr Yousaf, Ms Todd, Mr Adam on Parliamentary handling of potential decision to proceed to consultation on regulations.

Thursday 23 February 2023 – 10-10:30am

Attendees

Cabinet Secretary for Health and Social Care
Minister for Public Health, Women's Health and Sport
Minister for Parliamentary Business
[Redacted]

Background

Mr Yousaf, Ms Todd and Mr Adam were meeting to discuss handling of potential decision to move directly to consultation on regulations for policies to be covered in the Public Health (Restriction of Promotions) Bill, which is due to be introduced to parliament in April 2023. This follows a prior meeting with Mr Yousaf and Ms Todd on 6 February, submissions to Ministers on 3 February, 16 February and updated draft media lines provided 22 February. The discussion was contingent on a decision by the First Minister that Public Health (Restriction of Promotions) Bill ("the Bill") is not introduced to Parliament.

Summary of discussion

Informing Parliament

Ms Todd sought advice from Mr Adam on the most appropriate way to inform Parliament of a potential decision, subject to FM, not to introduce a Bill and instead move to consult on regulations to deliver promotions policy. Ms Todd noted that the decision and change of approach would be of significant interest to both parliamentarians and stakeholders.

[Redact]

Action: All agreed that a statement to Parliament would be the most appropriate route to announce the move to consult on regulations without a Bill.

Timing

Timing of a statement was discussed. [Redacted]

Action: [Redacted] and Mr Adam's office to consider timing of a statement by the Minister to Parliament after the Easter recess and to confirm with Ms Todd and policy officials.

Note to First Minister

It was agreed that policy officials should now prepare a note from Ms Todd to the First Minister recommending that the Bill should not be introduced to Parliament and the promotions policy due to be included in the Bill should instead be progressed via secondary legislation.

Action: Policy to prepare draft note to FM on decision for Ministerial sign off.

First Minister

PUBLIC HEALTH (RESTRICTION OF PROMOTIONS) BILL

1. In late February 2023, Ms Todd as Minister for Public Health, Women's Health and Sport, yourself as Cabinet Secretary for Health and Social Care and the Minister for Parliamentary Business concluded that the Public Health (Restriction of Promotions) Bill should not be introduced.
2. [Redacted]
3. I would welcome your confirmation that you remain content that the Public Health (Restriction of Promotions) Bill is not introduced and that the policy to restrict the promotion of less healthy food and drink is instead progressed through secondary legislation.
4. Should you be content that this Bill is not brought forward, officials will work with Ministers and special advisers to agree suitable handling and communication. Special Advisers have advised that a Ministerial Statement before summer recess remains the preferred option for informing Parliament that the Bill will not be introduced. I will ensure that you are copied into subsequent advice on handling plans for the announcement of this decision.

Scottish Bakers Conference – 6 May 2023 – Briefing contribution – Promotions, MCL, Reformulation

Promotions DN: This may need to be updated ahead of the conference depending on how things develop over the next couple of weeks.

Issue

- We remain committed to the policy to restrict promotions on less healthy foods, but decisions need to be taken regarding the type of legislation required to deliver the policy.

Background

- Previous plans to introduce legislation on restricting promotions in 2020 were paused due to the impact of the pandemic on businesses and consumers.
- In this year's Programme for Government, we committed to introducing a Public Health (Restriction of Promotions) Bill in the 2022/23 parliamentary year.
- We consulted on our proposals, from 1 July – 23 September 2022. The consultation responses and analysis report will be published shortly.
- Following further advice from officials, in February 2023, then Health Ministers and the Minister for Parliamentary Business provisionally agreed that a Bill is not required as the policy aims can be delivered through regulations.
- A final decision to proceed directly to regulations was delayed pending appointment of a new FM. Advice will go to the new FM imminently to seek final agreement.
- This information should not be shared publicly at this stage. If a decision not to proceed with the Bill is made by FM, Parliament will be informed via a statement.
- UK Government location restrictions for HFSS food came into force in England on 1 October 2022. Volume price restrictions were delayed for 12 months, due to the cost-of-living crisis.
- Officials have met with industry representative bodies including, Scottish Retail Consortium, Scottish Grocers Federation, Food and Drink Federation Scotland and individual businesses to discuss our proposals to restrict promotions.
- Businesses are generally not supportive of promotions restrictions. Given the implementation of similar proposals in England, the central point that businesses have made in engagement is that restrictions in Scotland should align as closely as possible with the regulations for England. Stakeholders have also raised concerns about the cumulative regulatory burden on businesses, and the ability of smaller stores to implement the proposals.

Top Lines

We will introduce legislation to restrict promotions of less healthy food and drink to make it easier for people to spend less and make healthier choices.

- Promotions don't necessarily represent good value, they can encourage us to spend more and consume more calories, whilst overlooking cheaper, healthier alternatives.
- This policy will support our public health priority to create a Scotland where everyone eats well and has a healthy weight.

Last summer, we consulted on proposals to restrict promotions of less healthy food and drink where they are sold to the public.

- We will publish the consultation responses and independent consultation analysis soon.

I recognise the challenges that businesses are experiencing in the current economic climate.

- We have engaged with stakeholders to consider how promotions restrictions will interact with existing and proposed regulations.
- I take the views of all stakeholders seriously and we will continue to fully engage with business stakeholders and consider views as the policy develops.

I recognise that businesses would like restrictions to be consistent with the equivalent regulations for England.

- We are considering the opportunities for policy consistency where that is in Scotland's best interests and supports improvements in public health.
- We recognise that there are challenges for smaller businesses and have consulted on whether there should be exemptions from location restrictions based on factors such as employee numbers and/or floor space.
- The business impact of any proposed exemptions will need to be considered alongside the potential health impacts.
- No decisions on the final scope of the policy have been made yet. Please be assured that all views expressed in the consultation and engagement will be fully considered in the decision-making process.

[Redacted – out of scope]

BACKGROUND NOTE FOR S6W-18133

1. Carol Mochan is a Scottish Labour Party member for the **South Scotland region**.
2. This is one of five parliamentary questions Carol Mochan MSP has asked related to diet and healthy weight policy.
3. In April, Gillian Mackay, Scottish Green MSP, asked the following:

S6W-16890: To ask the Scottish Government when it plans to confirm its timeline for the introduction of the proposed Public Health (Restriction of Promotions) Bill).

4. A holding reply was issued to Ms Mackay on 5th May with a final answer to be provided following your statement on 30th May. A draft reply is also with PO for your consideration and is identical to that proposed for Ms Mochan.

Public Health (Restriction of Promotions) Bill

5. The [2022/23 PfG](#) set out that the Public Health (Restriction of Promotions) Bill would be introduced in Year 2 (2022/23).

[Redacted]

6. On 30 May, you made a statement informing Parliament that the Bill would not now be introduced and that instead we plan to consult on the detail of regulations in the autumn.
7. The proposed reply to Ms Cohan reflects this position and directs her to your full Parliamentary Statement.

Contact Name: [Redacted]

BACKGROUND NOTE FOR S6W-16890

1. Gillian Mackay is a Scottish Green Party member for the Central Scotland region.
2. Ms Mackay lodged the following PQ in April (S6W-16890: To ask the Scottish Government when it plans to confirm its timeline for the introduction of the proposed Public Health (Restriction of Promotions) Bill).
3. A holding reply was issued to Ms Mackay on 5 May so as not to pre-disclose your oral statement to Parliament, which you gave on 30 May.
4. A similar question has been received from Carol Mochan, MSP (S6W-18133: To ask the Scottish Government when the Public Health (Restriction of Promotions) Bill will be introduced.

Public Health (Restriction of Promotions) Bill

5. The [2022/23 PfG](#) set out that the Public Health (Restriction of Promotions) Bill would be introduced in Year 2 (2022/23).

[Redacted]

6. On 30 May, you made a statement informing Parliament that the Bill would not be introduced and that instead we plan to consult on the detail of regulations in the autumn.
7. Now that you have updated Parliament on the status of the Bill, we are able to provide a final reply to Ms Mackay. The proposed reply reflects the current position and directs Ms Mackay to your statement.
8. An identical reply is proposed for Ms Mochan and is due for answer by 6 June 2023. The draft replies to both PQs are with PO for your consideration.

Contact Name: [Redacted]

Restricting promotions of less healthy food and drink

Background and sensitivities on restricting HFSS promotions:

- **Information on the status of the Bill should not be shared publicly at this stage. Parliament will be informed of the decision not to proceed with the Bill via a ministerial statement on 30th May (date tbc).**
- Restricting the promotion of food and drink high in fat, sugar or salt (HFSS) has been a long-standing commitment since the 2017/18 Programme for Government (PfG).
- The development of a previous Bill was [paused in June 2020](#) due to the impact of the COVID-19 pandemic.
- We [consulted](#) again in July 2022 and a commitment to a year 2 Bill was given in the [2022/23 PfG](#). [Redacted]
- The foods we are considering targeting would include, among other things, confectionery, cakes, crisps and soft drinks with added sugar.
- The restrictions we are considering would include, among other things, multi-buys and positioning restrictions, such as at checkouts and front of store.
- [Redacted]
- On the 3 May, the First Minister, provided written confirmation that he is content not to proceed with the Public Health (Restriction of Promotions) Bill.
- Equivalent UK Government location restrictions for HFSS food came into force in England on 1 October 2022. Volume price restrictions were delayed for 12 months, due to the cost-of-living crisis and are due to come into force on 1 October 2023.
- Officials have met with industry representative bodies including, Scottish Retail Consortium, Scottish Grocers Federation, Food and Drink Federation Scotland and individual businesses to discuss our proposals to restrict promotions.
- Businesses are generally not supportive of promotions restrictions. The main ask from business is for restrictions in Scotland to align as closely as possible with the equivalent regulations in England. Stakeholders have also raised concerns about the cumulative regulatory burden on businesses, and the ability of smaller stores to implement the proposals.

Top Lines

The overall food environment, and promotion and marketing in particular, can significantly influence our dietary choices.

- The food environment is often skewed toward the promotion of less healthy food and drink, encouraging extra spend and higher calorie intake.
- By restricting the promotion of less healthy food and drink we want to make it easier for people to make healthier choices and to reduce the health harm caused by poor diet and excess weight.
- This can support our public health priority to create a Scotland where everyone eats well and has a healthy weight.

We are committed to progressing the legislation necessary to restrict less healthy food and drink promotions to make it easier for people to spend less and make healthier choices.

- Promotions don't necessarily represent good value. They can encourage us to buy things we don't need, overlooking cheaper, healthier alternatives.

We have consulted on our proposals to further inform the evidence base and development of this policy.

- Our consultation closed on 23 September 2022. Responses have been analysed and we will publish an independent analysis report of the consultation by the summer.

[Redacted – out of scope]

Parliamentary Statement on Diet and Health Weight Consultations

| | | |
|------------------------------|----------------|--|
| Date and Engagement | Time of | 30 May 2023 @ 14:20 – 14:50 |
| Where | | Scottish Parliament, Chamber |
| Who | | A statement will be delivered to members of the Scottish Parliament. |
| Key Purpose / Message | | <p>To provide Parliament with an update on the following Diet and Healthy Weight policies:</p> <ul style="list-style-type: none"> • Energy drinks • Mandatory calorie labelling (MCL) • Restricting promotions of less healthy food and drink, including the Public Health (Restriction of Promotions) Bill <p>To inform Parliament of the publication of the consultation analysis reports for restricting promotions, mandatory calorie labelling. and energy drinks</p> <p>There will be 10 minutes to deliver the statement (without interventions) followed by 20 minutes of questions.</p> <p>An embargoed copy of the consultation analysis reports, and text of the statement will be circulated in confidence to opposition parties one hour before the statement.</p> |
| Sensitivities | | <p>[Redacted] [Redacted – out of scope]</p> <p>[Redacted – Out of Scope] Public Health (Restriction of Promotions) Bill</p> <ul style="list-style-type: none"> • The announcement that the Bill will not be introduced is likely to draw significant interest from across all stakeholder groups. This is the first time the decision will be publicly communicated – although the change in legislative vehicle does not change the planned policy outcomes. <p>[Redacted – out of scope] Annex B and J provides detailed list of sensitivities.</p> |

| | |
|-------------------------|-------------------------------|
| | |
| Official Support | In the Chamber: [Redacted] |

| Cabinet Secretaries and Ministers Copy List | For Action | For Information Portfolio interest | For Information Constituency interest | For Information General awareness |
|--|-------------------|---|--|--|
| First Minister | | | | X |
| Cabinet Secretary for NHS Recover, Health & Social Care | X | | | |
| Minister for Social Care, Mental Wellbeing and Sport | | X | | |
| Minister for Small Business, Innovation and Trade | | X | | |
| Minister for Parliamentary Business | | X | | |
| Minster for Drugs and Alcohol Policy | | X | | |
| Cabinet Secretary for Wellbeing, Economy, Fair Work and Energy | | X | | |

| Officials Copy List |
|--|
| Lord Advocate Solicitor General Legal Secretariat to the Lord Advocate [Redacted]DG Health & Social Care Director of Population Health [Redacted] |

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ANNEX A – PARLIAMENTARY STATEMENT

Attached separately to this briefing pack.

ANNEX B – SENSITIVITIES

[Redacted – Out of scope]

RESTRICTION OF PROMOTIONS

10. Given our long standing commitment to legislate to restrict promotions, and the fact we will now move directly to develop regulations without the need for a Bill, some may challenge that we have wasted time and the policy could have been implemented much sooner. We may therefore come under pressure to accelerate our timescales for implementation.
11. There is a tension with business here, who want SG to postpone implementation of new regulations more generally citing the impact of cumulative regulatory burden on the sector amidst other challenges such as the cost of living pressures. In view of the FM's recent statement committing to resetting the relationship with business, we are likely to come under pressure to be very clear about timescales and not accelerate implementation and use the additional time we will gain from proceeding with regulations to allow more time for industry to implement the changes needed. We expect timescales for implementation to be no sooner than 2025 as originally intended.

[Redacted]

ENFORCEMENT OF REGULATION

12. The current food law delivery model is resource intensive and essentially an outdated model that needs to be modernised.

[Redacted – Legal]

13. The SAFER programme of work will aim to provide efficiencies and modernise the current framework. **Annex DD** provides further detail on Scottish Authority Food Enforcement Re-Build (SAFER).

ANNEX C – KEY MESSAGES / LINES TO TAKE

GENERAL

- It is a public health priority to create a Scotland where everyone eats well and has a healthy weight.
- We are taking wide-ranging action to support healthier choices, as set out in our 2018 Diet and Healthy Weight Delivery Plan.
- We want everyone in Scotland to eat well and have a healthy weight, yet we know people living in poverty have poorer health outcomes.
- We are focusing on transforming the food environment because this is more likely to help improve diet and weight and be more effective in reducing health inequality than only encouraging individual behaviour change.
- An evidence-based approach is central to the development of policy.

[Redacted – out of scope]

RESTRICTION OF PROMOTIONS

- We recognise that the food environment is often skewed towards the promotion of less healthy food and drink, which is often positioned to encourage impulse spend.
- Promotions don't necessarily represent good value, they can encourage us to spend more and consume more calories, whilst overlooking cheaper, healthier alternatives.
- We will progress the legislation necessary to restrict the promotion of less healthy food and drink to make it easier for people to spend less and make healthier choices.
- This can better support people to make healthier choices in line with our public health priority to create a Scotland where everyone eats well and has a healthy weight.
- Following our consultation last summer and the further development of policy proposals, we are now in a position to determine that there is a more efficient route to delivering this policy – and that it can be delivered by regulations. We will therefore no longer progress a Bill.
- We will proceed to consult in the autumn on the detail of these regulations with a view to laying them next year.
- We have published the responses we received and an independent analysis report of the consultation feedback today.

[ANNEXES D, E, F, G, redacted - out of scope]

RESTRICTION OF PROMOTIONS

ANNEX H – RESTRICTING PROMOTIONS – Q&A

JUSTIFICATION OF POLICY

Why are you targeting promotions?

- Promotions don't necessarily represent good value. They can encourage us to buy things we don't need, overlooking cheaper, healthier alternatives.
- We will only restrict promotions on less healthy food and drink.

Will alcoholic drinks be included in the scope of the restrictions?

- Our intention is that the proposed restrictions would not apply to alcohol. This was reflected in our consultation proposals.
- There are separate requirements and restrictions already in place for alcohol.

Why are you bringing in restrictions on promotions of less healthy food and drink?

- Approximately two out of three adults in Scotland are living with overweight and obesity [Scottish Health Survey 2021].
- The impacts of poor diet and overweight can be profound, particularly on our health and well-being.
- Addressing this is a clear public health priority for this government, and we remain firmly committed to preventative public health actions to help create a Scotland where everyone eats well and has a healthy weight.
- We are taking wide-ranging action to support healthier choices, as set out in our 2018 Diet and Healthy Weight Delivery Plan.
- Population-wide measures to transform the food environment are likely to be more effective than only encouraging individual behaviour change.

MOVE TO REGULATIONS

The Scottish Government has previously said that a Bill is required before there can be regulations. What has changed?

- Following the 2022 consultation and the gathering of evidence, we have further developed our policy proposals.
- Throughout that process we have kept open the possibility of delivering this policy in a Bill, in case that was required.
- Having done that important and necessary work, we have reviewed whether primary legislation is necessary.
- We are now in a position to determine that a Bill is not required and there is a more direct and efficient route to delivery of our policy aims.
- This means we can proceed to consult on the detail of proposed regulations and plans for their implementation faster than we would otherwise be able to do.

**[If pressed specifically on whether there has been a change to legal advice]
Has legal advice changed concerning Scottish Ministers powers to regulate on these proposals?**

- We do not generally disclose the contents of legal advice. We keep policy proposals and consideration of the delivery of policy aims under regular review.
- We recognise that there has been recent changes in the policy and legislative context, including legislation that has been introduced in England.
- We have gathered further evidence, consulted widely and developed proposals to restrict the promotion of less healthy food and drink.
- Having done this important and necessary work, we are now in a position to determine that there is a more direct route to delivery of policy aims.
- We will consult in the autumn on the detail of proposed regulations and plans for implementation of the policy.

Is this Bill being shelved because the Scottish Government isn't committed to action to improve public health?

- Protecting and improving the public health of people living in Scotland is a key priority for this Government.
- Following our recent consultation and further consideration of the proposals, we are now satisfied that we can implement restriction of less healthy food and drink promotions without a Bill.
- This means we can proceed to consult on the detail of proposed regulations and plans for their implementation faster than we would otherwise be able to do.
- We are fully committed to take action to improve public health, including improving Scotland's diet.

Is shelving the Bill and moving straight to regulations an attempt to avoid Parliamentary scrutiny?

- I can assure you that is not our intention.
- Following our recent consultation and further consideration of the proposals, we are now in a position to determine that there is a more direct and efficient route to delivery of our policy aims, without the need for a Bill.
- I am sure you will agree that it would not be a good use of Parliamentary time to proceed with a Bill that is not required to deliver the proposed policy.
- Any regulations made will comply with the procedures applicable and allow Parliament and its Committees time to consider the regulations.
- Regulations on food promotion have been introduced in England using equivalent powers under the 1990 Act.

What powers are you relying on to do this? What procedure would they be subject to?

- The proposals in our consultation will be to make Regulations using powers in the Food Safety Act 1990 and the Food (Scotland) Act 2015.
- Any regulations made will comply with the procedures applicable and we will ensure Parliament and its Committees has time to consider the regulations fully.
- Regulations on food promotion have been introduced in England using equivalent powers under the 1990 Act.

Why do you need to consult again ahead of regulations?

- There is a statutory requirement to consult on the detail of changes to food law and therefore we will consult again ahead of regulations.
- This will provide an opportunity for stakeholders to comment on the detail of proposed regulations to restrict promotions, including with regards to implementation, including the lead-in time for any regulations.

What will you consult on in the autumn?

- As set out in our consultation, the foods we are considering targeting include, amongst other things, crisps, confectionary, cakes and sugary soft drinks. The restrictions we are considering would include, among other things, multi-buys and unlimited refills and positioning restrictions, such as at checkouts and front of store.
- We received extensive feedback to our consultation and through our engagement with stakeholders, which we are considering carefully to help inform the final scope of the policy.
- We will consult on the detail of the proposed restrictions in the autumn, including plans for their enforcement and implementation.
- This will include seeking further views on timescales for implementation.

ENFORCEMENT

Does the move to regulations have an impact on the enforcement of the policy?

- We are working closely with the Convention of Scottish Local Authorities and other key partners to consider the enforcement of this policy.
- This includes what resourcing, training and guidance would be required to support effective and consistent implementation of restrictions.
- Ministers will consider carefully the appropriate time to implement promotions restrictions.
- We have consulted on timescales for implementation and will consult on the detail of this in autumn 2023 and will consider the impact of implementation timescales on businesses and enforcement authorities.

Enforcement authorities are already stretched. Can this policy be effectively enforced?

- Food Standards Scotland and Scottish Government recognised the increase in challenge with the provision of professional staff resource and a lack of a sustainable supply of qualified Environmental Health and Food Safety Officers.
- In seeking to address this issue, FSS has developed the Scottish Authority Food Enforcement Re-Build (SAFER) programme. This seeks to implement a new approach to Food Law delivery in Scotland.
- Officials will continue to engage with COSLA, Food Standards Scotland and others to consider the enforcement of the policy and ensure these considerations are factored into the SAFER Programme.

TIMESCALES

What is the timetable for regulations/Will businesses have sufficient time to prepare for restrictions?

- We plan to consult on the detail of proposed regulations this autumn with a plan to lay regulations before Parliament next year, subject to the outcomes of that consultation.
- There will be a period between regulations being laid before Parliament and regulations coming into force to enable industry to fully prepare.
- The consultation will seek views on the length of implementation required ahead of regulations coming into force.
- The restrictions will not come into force before 2025 at the earliest.

Why is the earliest implementation date of 2025 the same for regulations as it was for a Bill?

- Our prior engagement with stakeholders has been on the basis that these restrictions would not come into force before 2025 at the earliest.
- This date was subject to Bill passage and to further Ministerial decisions on factors including implementation periods, meaning that measures under a Bill would likely have come in later than 2025.
- We maintain our prior assurance that despite consulting on the detail of regulations in autumn 2023, these restrictions will not come into force before 2025 at the earliest.
- Our consultation this autumn will include consulting on an appropriate lead in time for businesses.
- We recognise the challenges that businesses are experiencing in the current economic climate.

The Scottish Government first suggested this policy in 2017. If a Bill is not required, why has so much time been wasted?

- The time has not been wasted – the work that has taken place has been important, necessary work and essential to getting us here.
- We asked two questions in 2017, as part of a wider consultation. It was never intended, nor would it have been possible, to legislate on the back of that consultation.
- We consulted in more detail in late 2018/19.
- The development of legislation was paused in 2020 to take into account the impact of the ongoing COVID-19 pandemic.
- Building on a previous consultation we further consulted last summer, seeking views on proposals in the current context to inform our final proposals.
- Having done this important and necessary work, we are now in a position to determine that there is a more direct route to delivery of policy aims and will consult on proposed regulations and their implementation this autumn.

Why was the July 2022 consultation not on more detailed proposals?

- As the development of legislation was paused in 2020 to take into account the impact of the COVID-19 pandemic, it was important to consult again and to

gather further evidence on our proposals, considering the pandemic, action in other parts of the UK, EU exit and cost of living pressures.

- We have also considered new evidence, including research looking at how the COVID-19 pandemic has changed the food environment and peoples eating behaviour.

Why is the Scottish Government not laying regulations immediately?

- We plan to consult on the detail of proposed regulations this autumn in line with our statutory obligation to consult on the detail of changes to food law.

ALIGNMENT WITH REST OF UK

Will you align with regulations in the rest of the UK?

- Our 2022 consultation provided an opportunity to hear views on our proposals in the context of the UK Government regulations coming into force for England in part from October 2022 and the proposals for Wales set out in the recent Welsh Government consultation paper.
- We are giving detailed consideration to the potential for policy consistency where that is in Scotland's best interests to do so.
- We will consult this autumn on the detail of proposed regulations, including setting out where we propose to align with policies in other parts of the UK.

Why is there so little detail on what you are going to regulate? Will convenience stores be exempt as they will be in England?

- Our 2022 consultation provided a chance for us to hear views on our proposals in the context of the UK Government regulations coming into force for England from October 2022 and the proposals for Wales set out in the recent Welsh Government consultation paper.
- We are giving detailed consideration to the potential for policy consistency where that is in Scotland's best interests to do so.
- An independent, external analysis of consultation responses have been published and can be accessed on the Scottish Government website.
- We plan to consult this autumn on the detail of proposed regulations and plans for their implementation in line with our obligation to consult on the detail of changes to food law.

Does the Internal Market Act have a bearing on implementation of the policy?

- As the proposals are further developed and further consultation is undertaken, we will consider any potential impacts of the UK Internal Market Act 2020 on the detail of the policy proposals.
- The consultation will also set out where we propose to be consistent with policies in other parts of the UK.

COST OF FOOD/ COST CRISIS

Why are you bringing in restrictions on promotions of less healthy food and drink during the cost crisis?

- I am deeply concerned about the rising cost of food and drink, and the impact that this is having on household finances.
- We know people living in poverty have poorer health outcomes. Improving diet and healthy weight is important in changing that.
- Additionally, promoted products tend to be more expensive than products not on promotion and are often positioned to encourage impulse spend.
- In 2021 the spend per kilo of food and drink purchased on promotion was £2.01, compared to £1.57 per kilo of food and drink purchased without a promotion.
- There will be further consultation prior to the introduction of regulations.
- This would include consideration on when would be an appropriate time to bring restrictions into force.
- It is likely that the implementation of these restrictions will not happen before at least 2025.

What is the Scottish Government doing to support people to afford food?

- We have maintained funding levels for community food networks so that they can continue to support people struggling to access healthier food options.
- Community Food Networks help promote healthier diets in disadvantaged groups, whether that is due to lack of income, cultural barriers or poor skills.
- They provide a broad range of activities including: cooking classes, benefit checks, 'grow-your-own' groups, cafés and food pantries.
- I commend the way in which they respond swiftly and compassionately to need, such as in response to the cost of living crisis and assisting Ukrainian refugees.

Why aren't you focusing on making healthy food more affordable?

- We are helping convenience stores to provide access to affordable healthier food options, especially in lower income areas.
- In the last five years we have invested over £1.5 million in the Healthy Living Programme, to help convenience stores offer healthier choices.
- We are providing a further £352,000 to the Programme in 2022/23.

EVIDENCE

Do you have sufficient evidence to bring in these restrictions?

- An evidence-based approach is central to the development of our policy to restrict promotions on less healthy food and drink.
- We are using a wide range of evidence and data sources to consider the potential impacts of restricting promotions, ensuring we have a robust and balanced evidence base to inform the policy proposals.
- We are developing impact assessments to assess whether the proposed measures are proportionate, as well as assessing their impact on health inequalities.

Is the modelling on calorie reduction based on Public Health England data/Is the modelling on calorie reduction based on 10 year old data?

- [Economic modelling](#) carried out by SRUC in 2019 has estimated that removal of price promotions such as temporary price reductions, multi-buy and 'Y for £X', just on discretionary foods such as cakes, biscuits, confectionary, crisps, etc., has the potential to reduce calorie intake by 613 calories per person per week.
- The data used for this analysis is from the Kantar Worldpanel dataset for Scotland from 2013 to 2018, which provides information about purchases at the level of products by households and whether they were made under a price promotion (e.g., x GBP pounds less).
- A 5 year period was used for the modelling to ensure that as many possible households could be included in the estimation and to avoid the effects of specific annual fluctuations.

Is the Scottish Government planning to restrict Temporary Price Reductions?

- We received significant feedback on the issue of Temporary Price Reductions from stakeholders, which we are considering very carefully alongside the current evidence base to inform our final policy position.
- We are undertaking a range of impact assessments to support consideration of the public health and business impacts of the policy, and will consult on the detail of draft regulations and plans for their implementation in the autumn.

Is the Scottish Government planning to restrict meal deals?

- We received significant feedback on the issue of meal deals from stakeholders, which we are considering very carefully alongside the current evidence base to inform our final policy position.
- We are undertaking a range of impact assessments to support consideration of the public health and business impacts of the policy, and will consult on the detail of regulations and plans for their implementation in the autumn.

Can you tell us what foods/ promotion types/ businesses will be in scope of the regulations?

- As set out in our consultation, the foods we are considering targeting include, amongst other things, crisps, confectionary, cakes and sugary soft drinks. The restrictions we are considering would include, among other things, multi-buys and unlimited refills and positioning restrictions, such as at checkouts and front of store.
- We received extensive feedback to our consultation and through our engagement with stakeholders, which we are considering carefully to help inform the final scope of the policy.
- We will consult on the detail of the draft regulations including plans for their implementation in the autumn.

Will a Bill be needed to progress legislation on tobacco and alcohol?

- Our legislative programmes for future years will be announced in the normal way, as part of the annual Programme for Government cycle.
- Beyond this, the content of a Bill, as is customary, won't be announced until it is laid before Parliament.
- It is crucial that we prevent and reduce alcohol-related harms, particularly to young people, but that aim has to be balanced with careful consideration of the impact restrictions may have on business.
- We are currently reflecting on the wide-ranging feedback we received from stakeholders during the recent Ministerial roundtables and are working with an independent contractor to analyse the public consultation responses to understand the views and perspectives of those that responded.
- We will publish both the roundtables and the consultation findings later this year, which will inform the potential content and scope of any policy proposals and our consideration of appropriate next steps with this work.
- Further consultation and engagement with public health stakeholders and businesses will take place as our work progresses.

ANNEX I – RESTRICTION OF PROMOTIONS – BACKGROUND

AIM

1. 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. To progress these aims, we propose to restrict the promotion of HFSS foods where these are sold to the public including across retail and out of home settings.

TIMELINE

2. Restricting HFSS promotions has been a long-standing commitment since the publication of the 2017/18 Programme for Government (PfG).
3. In 2018/19, following a commitment in our Diet and Healthy Weight Delivery Plan, we [consulted on proposals to restrict the promotion and marketing of targeted food and drink \('food'\) high in fat, sugar or salt \(HFSS\)](#) where they are sold to the public. The consultation ran from 2 October 2018 to 9 January 2019. [An analysis of the consultation](#) was published in September 2019. A previous [consultation in 2017/18](#) included questions on restricting promotions. [An analysis](#) of this was published in April 2018.
4. The first commitment to a Bill to progress the policy was given in the [2019/20 Programme for Government \(PfG\)](#). The development of legislation was [paused in June 2020](#) due to the impact of the COVID-19 pandemic.
5. Ministers re-committed to the policy in the 2021/22 PfG and following that, we [consulted](#) again in July 2022 on our proposals to restrict HFSS promotions in store and online. A commitment to a year 2 Bill was given in the [2022/23 PfG](#).
[Redacted]

2022 CONSULTATION

6. Our most recent [consultation](#) ran from 1 July – 23 September 2022 to inform further development and impact assessment of the policy. It provided an opportunity to take account of developments since the 2018/19 consultation, including EU exit and the introduction of equivalent promotions regulations in England.
7. We sought views on what should be included within scope of the policy, including:
 - **Types of foods:** categories that are high in fat, sugar or salt (HFSS), such as confectionery, sweet biscuits, crisps, cakes, and soft drinks with added sugar.

- **Types of promotions:** price, including multi-buys (e.g. buy one get one free, 3 for 2, meal deals), extra free, temporary price reductions and unlimited refills; location, including displays at checkouts, end of aisle, front of store and island/bin displays; online equivalent promotions and locations.
 - **Places:** Retail, out of home settings, wholesale where sales are also made to the public, and other outlets such as pharmacies and clothes shops. Also equivalent outlets online.
8. In summary, the feedback to the consultation found:
- **Non-industry** respondents were generally supportive of restrictions but less supportive of some exemptions (for example for small businesses).
 - **Industry** respondents' views 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.
9. Further to the consultation, we have undertaken extensive engagement with key stakeholders, including individual businesses and industry representative bodies, to discuss the proposals. Overall, the findings from the analysis align with the feedback we received during our discussions with stakeholders. The findings also broadly echo the feedback to our [previous consultation](#) (Oct 2018 – Jan 2019).

UK GOVERNMENT AND WALES

10. The UK Government put in place regulations in England to restrict the promotion of targeted HFSS food and drink by location and volume price - [The Food \(Promotion and Placement\) \(England\) Regulations 2021 \(SI 2021/1368\)](#).
11. 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, by 12 months, citing rising cost of living pressures. Volume price restrictions are now due to come into force in England on 1 October 2023.
12. Last summer, the Welsh Government consulted on similar proposals to restrict less healthy promotions in its [Healthy Food Environment consultation](#). The promotions proposals included restricting value promotions, including multi-buy, temporary price reductions and meal deals, and location promotions, including at checkouts and end of aisles, on less healthy foods. We expect the Welsh Government to set out its policy position and next steps in a statement on 6 June.

STAKEHOLDER VIEWS ON NOT PROCEEDING WITH A BILL

14. **Public health** stakeholders are expected to be reassured that we remain committed to delivery of the policy aims and supportive of consultation on regulations being brought forward. There may however be criticism that the policy could have been progressed more quickly and pressure to accelerate timescales for regulations.
15. **Business** stakeholders are likely to have significant concerns around accelerated timescales and cumulative regulatory burden.
16. **Parliament:** In general, there is cross-chamber support for tackling poor diet and obesity. The Scottish Conservatives are expected to remain supportive of the policy given UKG has already introduced regulations in England. UK Labour party have supported pausing promotions restrictions in England due to cost of living crisis. This may impact the views of the Scottish Labour Party, though this may be mitigated against to some extent due to the time before implementation of these measures in Scotland. The Liberal Democrats are also expected to remain supportive of the policy. The Green Party remain supportive of the policy. Despite this, opposition parties may have concerns that moving from a Bill to secondary legislation for this policy will allow parliament less scrutiny.

ENFORCEMENT

13. We anticipate that the policy will be enforced by Environmental Health or Trading Standards officers in local authorities.
14. In 2022, we established a Financial Considerations and Delivery group to help inform the cost to implement the policy and assess the impact on local authorities and regulators. The group had representation from COSLA, Food Standards Scotland, the Society of Chief Officers of Trading Standards in Scotland and the Society of Chief Officers of Environmental Health.

[Redacted]

15. Food Standards Scotland are leading on the SAFER programme which will redesign the way food law is delivered in Scotland. [Redacted] Further information is available at **Annex DD**.

[ANNEXES J-DD redacted -out of scope]

ANNEX DD – ENFORCEMENT – LINES TO TAKE / BACKGROUND

[Redacted – out of scope]

Financial and Delivery Considerations Group

1. The Financial and Delivery Considerations Group was established to:
 - a) help inform estimates of potential resource and costing implications arising from the Bill.
 - b) facilitate engagement between Scottish Government, Food Standards Scotland, local government and enforcement professionals to support the effective enforcement arising from the Bill.

2. The group brings together representatives from COSLA, Food Standards Scotland, the Society of Chief Officers of Trading Standards in Scotland, the Society Chief Officers in Environmental Health in Scotland and the Scottish Government.

ANNEX EE – HANDLING AND STAKEHOLDER ENGAGEMENT

Statement

1. Following confirmation of FM's decision not to introduce the Bill colleagues in Parliament Liaison Unit updated CSCL that the Bill will not be introduced.
2. On 16 May Cabinet confirmed that a statement date of 30 May. The Business Bulletin was updated on 23 May to include - Ministerial Statement: Diet and Health Weight Consultations.
3. Following confirmation of the statement date MfPB Office provided details of requirements ahead of the statement as outlined in the Appendix.
4. The pack and briefing have been cleared at DD level. SPADs have been provided early sight of the pack. We await SPADs comment. It was agreed with Private Office that FM clearance was not necessary.

Publication

5. Officials have taken steps to ensure that the consultation analysis reports will be published in parallel with the statement. As instructed (see Appendix) an embargoed electronic version will be available for circulation 60 minutes before the statement. This will be provided to MfPB 90 minutes beforehand.
6. Officials will write the convener of the Health and Social Care Committee to inform them of the publication and policy response, of each of the consultation, as was done when the consultation were launched. [Redacted] Officials will provide drafted letters for the Minister's clearance in early course.
7. Ms MacKay lodged PQ S6W-16809:
 - To ask the Scottish Government when it plans to confirm its timeline for the introduction of the proposed Public Health (Restriction of Promotions) Bill.
8. [Redacted]
9. Officials will issue a final response following the statement. A final response will be provided for clearance in early course.

Background

8. Initial handling advice was provided on 16 February 2023 to help inform discussions with the former Public Health Minister, former Cabinet Secretary and Minister for Parliamentary Business. This meeting took place on 23 February 2023.
9. It was agreed at the meeting of the 23 February that a Ministerial Statement would be the most appropriate way to inform Parliament that the Bill would not be introduced and that this should be communicated as part of a wider update on work to

improve the food environment namely the publication of three diet related consultation analysis reports and associated policy statement.

10. Following FM transition and changes in Ministerial portfolios SpAds confirmed a Ministerial statement remains the preferred option. MfPB Office and Comms colleagues have been engaged and are content.

Stakeholder Engagement – Next Steps

Stakeholder Engagement

11. Parliamentary protocol means we have been unable to engage with stakeholders on plans to deliver HFSS promotions policy aims through regulation until Parliament has been notified that the Bill has been removed from the Parliamentary Timetable.

12. [Redacted] To that end we are keen to engage with stakeholders in early course following the Parliamentary statement. A stakeholder engagement plan will be provided shortly. In the meantime Paragraph 15, 16 and 20 detail opportunities for timely engagement with stakeholders.

Public Health Stakeholders

13. [Redacted] As a collation of health organisation who are working together to reduce the health burden of non-communicable diseases, we recommended early engagement with The NCD Alliance.

14. The NCD Alliance is calling for a number of policies to be enacted through legislation urgently. This includes:

- “calling on the Scottish Government to implement restriction on price and locations promotions on high, fat sugar and salt products following its most recent 2022 consultation”.

15. The former Minister for Public Health had a good working relationship with NCD Alliance and met with them a number of times in 2022. We recommend the incoming Minister build on that relationship and note Ms Minto is scheduled to meet with the NCD Alliance on 31 May (the day after the statement). Officials are preparing briefing which will be with PO shortly which will largely mirror what is in this pack.

16. We propose the Minister proactively engages with a number of key organisations immediately after Parliament has been updated. This includes an emailed letter to the chief executives of FSS and Public Health Scotland (PHS) reaffirming what has been said in the statement and offering a further discussion. This will build on the introductory meetings Ms Minto had the Chief Executive of FSS and with the new Chief Executive of PHS. It is noted Ms Minto is scheduled to meet with PHS and FSS in September to discuss the Diet and Healthy Weight Delivery Plan more broadly.

17. Officials will engage directly with other key public health stakeholders, including Obesity Action Scotland and Cancer Research UK to update them on our plans for promotions. Officials are attending an event hosted by OAS on 8th June which will provide an opportunity to discuss our plans.

Business Engagement

18. We have and continue to engage closely with Economy colleagues and are actively seeking advice on the most effective routes for engagement given FM's commitment to reset the relationship with business. This includes work with the Joint Taskforce on Regulations in line with Scotland's approach of better regulations and plans to engage with the Regulatory Review Group which is in the process of being re-established in line with our commitment to better regulation.

19. Officials have engaged extensively with business on promotions proposals and will continue to do so. Meetings and roundtables have been held with industry stakeholder bodies and their members, including Food and Drink Federation Scotland, Scottish Grocers' Federation, Scottish Retail Consortium, Scotland Food and Drink, Association of Convenience Stores, Scottish Wholesale Association, as well as meetings with individual businesses.

20. A Diary Case has been received from Scotland Food and Drink (Ref 2023/00354259). Officials have provided advice recommending an accept on the basis this will provide an opportunity for early engagement on the content of the statement.

21. Officials will engage with key business stakeholders immediately following the statement. As part of that, we will offer to meet them to discuss the content of the statement and what that means for them.

22. As outlined at Paragraph 12 a more detailed stakeholder engagement plan will be provided in early course.

[Redacted – Out of Scope]

Statement Parliament – 30 May 2023 – Additional questions

[Redacted – Out of Scope]

1. **Clare Haughey:** Can the Minister provide more detail about the timescale for the implementation of regulations on restricting promotions of unhealthy food and drinks and how the SG will ensure that businesses have sufficient time to prepare for restrictions?

We plan to consult on the detail of proposed regulations this autumn with a plan to lay regulations before Parliament next year, subject to the outcomes of that consultation.

- There will be a period between regulations being laid before Parliament and regulations coming into force to enable industry to fully prepare.
- Our consultation this autumn will include consulting on an appropriate lead in time for businesses ahead of regulations coming into force.
- Our prior engagement with stakeholders has been on the basis that these restrictions would not come into force before 2025 at the earliest. This still remains the case.
- We recognise the challenges that businesses are experiencing in the current economic climate.
- We have and will continue to engage widely with business stakeholders on business impacts and are developing a suite of impact assessments for the policy, including a business regulatory impact assessment.

2. **Jackie Dunbar:** Can the Minister outline what the Scottish Government considers could be the broad benefits of restricting promotions on unhealthy food and drink and how this fits in with the SG's focus on improving health and reducing health inequalities?

I want 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.

- I also want to reduce diet-related health inequalities, including in relation to socioeconomic disadvantage.

The food environment is often skewed toward the promotion of less healthy food and drink, encouraging extra spend and higher calorie intake.

- Promotions don't necessarily represent good value. They can encourage us to buy things we don't need, overlooking cheaper, healthier alternatives.
- By restricting the promotion of less healthy food and drink we will make it easier for people to spend less and make healthier food choices.

Changes to the food environment, such as restricting promotions, are likely to be more effective in reducing health inequality.

- Steps relying solely on individuals taking their own action can widen inequalities.
- We know people living in poverty have poorer health outcomes. Improving diet and healthy weight is important in changing that.
- This is part of wide-ranging action we are taking to support healthier choices, as set out in our 2018 Diet and Healthy Weight Delivery Plan.

[Redacted – Out of scope]

SPARE Qs

Q. LEGISLATIVE APPROACH: Can the Minister confirm that although a change in the legislative approach, this does not mean a change to the planned policy outcomes in relation to restricting promotion on unhealthy food and drinks?

I can indeed confirm that our change in legislative approach in no way changes the aim and intended outcome for the policy.

- By restricting the promotion of less healthy food and drink, we will make it easier for people to spend less and make healthier food choices.
 - Following the 2022 consultation and the gathering of evidence, we have further developed our policy proposals.
 - We have reviewed whether primary legislation is required to deliver our policy aims and are now in a position to determine that a Bill is not required and there is a more direct and efficient route to delivery of our policy aims.
 - This means we can proceed to consult on the detail of proposed regulations and plans for their implementation faster than we would otherwise be able to do.
-
- **[Redacted – Out of Scope]**

ISSUE: RESTRICTING PROMOTIONS

Daily Mail 31 May SNP'S U-TURN OVER NANNY STATE PLANS: SG accused of making a 'screeching' U-turn on plans to ban junk food promotions, ban energy drink sales and introduce mandatory calorie labelling.

[Redacted - Out of Scope]

On 30 May, the Minister for Public Health made a **Parliamentary Statement** on the outcome of consultations on: energy drinks, mandatory calorie labelling (MCL) and promotions restrictions. Some criticism from Conservative and Labour MSPs on lack of progress and tackling obesity challenge.

Stakeholder reaction Business: Broadly welcomed and reassured by the announcement. Some seeking clarity on implications on timings for promotions restrictions. **Public health:** Some concern on announcement, in particular perception of involvement of business in setting of public health policy, and want to see greater action on diet and obesity.

UK Government: [Redacted – Out of Scope]

Promotions: Regulations for location restrictions (e.g. at checkouts) came into force on 1 Oct 2022; volume price restrictions (e.g. multi-buys) due to come into force on 1 Oct 2023.

[Redacted]

I am committed to legislating to restrict the promotion of less healthy food and drink where they are sold to the public.

- Rather than introduce the Public Health (Restriction of Promotions) Bill, we will instead proceed directly to consult in the autumn on the detail of proposed regulations with a view to laying them next year.
- This is a more direct and efficient route to delivering promotions policy.
- It would not be a good use of Parliamentary time to proceed with a Bill that is not required to deliver the proposed policy.
- I can confirm that our change in legislative approach in no way changes the aim and intended outcome for the policy.

PROMOTIONS, ENERGY DRINKS AND MANDATORY CALORIE LABELLING

- Our forthcoming consultation will provide an opportunity to provide views on the detail of proposed regulations.
- In line with the principles of the New Deal for Business, this will be done in parallel with an extensive programme of engagement to ensure everyone has an opportunity to engage and have their voice heard, in order to support the most effective implementation of the policy.

[Redacted – Out of Scope]

As the Minister for Public Health set out to Parliament on Tuesday, we are progressing measures to restrict promotions of less healthy food and drink where they are sold to the public to support people to make healthier choices.

MINISTER FOR PUBLIC HEALTH AND WOMEN'S HEALTH MEETING WITH NCD ALLIANCE TO DISCUSS PUBLIC HEALTH PRIORITIES

| | |
|---|---|
| <i>Date and Time of Engagement</i> | 31 May 2023, 10.00 -10.45 |
| <i>Where</i> | Scottish Parliament, Room Q1.03 |
| <i>Who</i> | Attendees at the meeting will include: [Redacted] Annex S provides background on the NCD Alliance |
| <i>Key Purpose / Message</i> | To welcome early engagement following the Ministerial Statement: Diet & Healthy Weight Consultations which confirmed: <ul style="list-style-type: none"> • Restriction of Promotions – consultation in autumn on the detail of proposed regulations. A move away from the Public Health (Restriction of Promotions) Bill <p><u>NCD Alliance interest is anticipated to focus on the MCL and promotions element of the statement.</u></p> <p>To reassure the NCD Alliance that we remain committed to restriction of promotions policy aims and these can be deliver through regulation.</p> <p>Welcome a discussion on how we can continue to work in partnership to improve the health of the nation.</p> |
| <i>Top Facts / Figures</i> | [Redacted – out of scope] The NCD Alliance advocate that to effectively reduce the impact of health harming products, the commercial drivers that influence people’s health choices should be tackled. This includes action on products’ availability, marketing, price and promotion. |
| <i>Sensitivities</i> | [Redacted – out of scope] Pace of public health legislation Public health stakeholders are generally disappointed at the pace of proposed legislation. Some are concerned that the proposed Year 2 Bill did not include alcohol and tobacco measures and were worried that a year 2 Bill would make it more difficult to secure a further Bill on public health later in this Parliament. Public Health (Restriction of Promotions) Bill The announcement that the Bill will not be introduced is likely to draw significant interest. The statement on 30 May 2023 is |

| | |
|-------------------------|---|
| | <p>the first time the decision was publicly communicated – <u>although the change in legislative vehicle does not change the planned policy outcomes.</u></p> <p>[Redacted – Out of scope] Further sensitivities are detailed at Annex C</p> |
| Official Support | [Redacted] |

Briefing Contents

| | |
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| Agenda for the Meeting | Annex A |
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| Restriction of Promotions Q&A Background | Annex E Annex F |
| Mandatory Calorie Labelling Q&A Background | Annex G Annex H |
| Tobacco & Vaping Q&A Top lines | Annex I Annex J |
| Top Lines on: <ul style="list-style-type: none"> • Alcohol • Diet and Healthy Weight • Cancer • Cardiovascular disease • Health Inequalities • Sport and Physical Activity | Annex K Annex L Annex M Annex N Annex O Annex P |
| NCD Alliance <ul style="list-style-type: none"> • 10 year vision for public health prevention in Scotland • Cross Party Inquiry into commercial determinants of health • Background Information | Annex Q Annex R Annex S |

[Redacted – out of scope]

ANNEX A

NCD ALLIANCE SCOTLAND’S 8 POLICY CALLS

Background: The NCD Alliance [published](#) on 6 September a list of policies to be enacted through legislation urgently. They set out where the Alliance believes that the Scottish Government should take urgent action to reduce the impact of health-harming products such as alcohol and tobacco.

| NCD Alliance Policy | Lines to take |
|--|--|
| <p>1. Restrict price and location promotions on high, fat, sugar and salt (HFSS) products</p> | <ul style="list-style-type: none"> • Following our consultation last summer, and the further development of policy proposals, we are now in a position to determine that there is a more efficient route to delivering this policy • Therefore rather than introduce the Public Health (Restriction of Promotions) Bill we will instead consult in the autumn on the detail of proposed regulations with a view to laying them next year. • <u>The change in legislative vehicle does not change the planned policy outcomes.</u> |
| | [Redacted – out of scope] |
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SENSITIVITIES - SCOTTISH GOVERNMENT'S PRIORITIES AND PLANS

[Redacted – out of scope]

RESTRICTION OF PROMOTIONS

[Redacted]

LINES TO TAKE - SCOTTISH GOVERNMENT'S PRIORITIES AND PLANS

[Redacted – out of scope]

RESTRICTION OF PROMOTIONS

- We recognise that the food environment is often skewed towards the promotion of less healthy food and drink, which is often positioned to encourage impulse spend.
- Promotions don't necessarily represent good value, they can encourage us to spend more and consume more calories, whilst overlooking cheaper, healthier alternatives.
- We will progress the legislation necessary to restrict the promotion of less healthy food and drink to make it easier for people to spend less and make healthier choices.
- This can better support people to make healthier choices in line with our public health priority to create a Scotland where everyone eats well and has a healthy weight.
- Following our consultation last summer and the further development of policy proposals, we are now in a position to determine that there is a more efficient route to delivering this policy – and that it can be delivered by regulations. We will therefore no longer progress a Bill.
- We will proceed to consult in the autumn on the detail of these regulations with a view to laying them next year.
- We have published the responses we received and an independent analysis report of the consultation feedback today.

[Redacted – out of scope]

RESTRICTION OF PROMOTIONS

Q&A

MOVE TO REGULATIONS

The Scottish Government has previously said that a Bill is required before there can be regulations. What has changed?

- Following the 2022 consultation and the gathering of evidence, we have further developed our policy proposals.
- Throughout that process we have kept open the possibility of delivering this policy in a Bill, in case that was required.
- Having done that important and necessary work, we have reviewed whether primary legislation is necessary.
- We are now in a position to determine that a Bill is not required and there is a more efficient route to delivery of our policy aims.
- This means we can proceed to consult on the detail of proposed regulations and plans for their implementation faster than we would otherwise be able to do.

[Redacted]

Has legal advice changed concerning Scottish Ministers powers to regulate on these proposals?

- We do not generally disclose the contents of legal advice. We keep policy proposals and consideration of the delivery of policy aims under regular review.
- We recognise that there has been recent changes in the policy and legislative context, including legislation that has been introduced in England.
- We have gathered further evidence, consulted widely and developed proposals to restrict the promotion of less healthy food and drink.
- Having done this important and necessary work, we are now in a position to determine that there is a more direct route to delivery of policy aims.
- We will consult in the autumn on the detail of proposed regulations and plans for implementation of the policy.

Is this Bill being shelved because the Scottish Government isn't committed to action to improve public health?

- Protecting and improving the public health of people living in Scotland is a key priority for this Government.
- Following our recent consultation and further consideration of the proposals, we are now satisfied that we can implement restriction of less healthy food and drink promotions without a Bill.
- This means we can proceed to consult on the detail of proposed regulations and plans for their implementation faster than we would otherwise be able to do.
- We are fully committed to take action to improve public health, including improving Scotland's diet.

Why do you need to consult again ahead of regulations?

- There is a statutory requirement to consult on the detail of changes to food law and therefore we will consult again ahead of regulations.
- This will provide an opportunity for stakeholders to comment on the detail of proposed regulations to restrict promotions, including with regards to implementation.

What will you consult on in the autumn?

- As set out in our consultation, the foods we are considering targeting include, amongst other things, crisps, confectionary, cakes and sugary soft drinks. The

restrictions we are considering would include, among other things, multi-buys and unlimited refills and positioning restrictions, such as at checkouts and front of store.

- We received extensive feedback to our consultation and through our engagement with stakeholders, which we are considering carefully to help inform the final scope of the policy.
- We will consult on the detail of the proposed restrictions in the autumn, including plans for their enforcement and implementation.
- This will include seeking further views on timescales for implementation.

TIMESCALES

What is the timetable for regulations/Will businesses have sufficient time to prepare for restrictions?

- We plan to consult on the detail of proposed regulations this autumn with a plan to lay regulations before Parliament next year, subject to the outcomes of that consultation.
- There will be a period between regulations being laid before Parliament and regulations coming into force to enable industry to fully prepare.
- The consultation will seek views on the length of implementation required ahead of regulations coming into force.
- The restrictions will not come into force before 2025 at the earliest.

Why is the earliest implementation date of 2025 the same for regulations as it was for a Bill?

- Our prior engagement with stakeholders has been on the basis that these restrictions would not come into force before 2025 at the earliest.
- This date was subject to Bill passage and to further Ministerial decisions on factors including implementation periods, meaning that measures under a Bill would likely have come in later than 2025.
- We maintain our prior assurance that despite consulting on the detail of regulations in autumn 2023, these restrictions will not come into force before 2025 at the earliest.
- Our consultation this autumn will include consulting on an appropriate lead in time for businesses.
- We recognise the challenges that businesses are experiencing in the current economic climate.

The Scottish Government first suggested this policy in 2017. If a Bill is not required, why has so much time been wasted?

- The time has not been wasted – the work that has taken place has been important, necessary work and essential to getting us here.
- We asked two questions in 2017, as part of a wider consultation. It was never intended, nor would it have been possible, to legislate on the back of that consultation.
- We consulted in more detail in late 2018/19.
- The development of legislation was paused in 2020 to take into account the impact of the ongoing COVID-19 pandemic.

- Building on a previous consultation we further consulted last summer, seeking views on proposals in the current context to inform our final proposals.
- Having done this important and necessary work, we are now in a position to determine that there is a more direct route to delivery of policy aims and will consult on proposed regulations and their implementation this autumn.

Why was the July 2022 consultation not on more detailed proposals?

- As the development of legislation was paused in 2020 to take into account the impact of the COVID-19 pandemic, it was important to consult again and to gather further evidence on our proposals, considering the pandemic, action in other parts of the UK, EU exit and cost of living pressures.
- We have also considered new evidence, including research looking at how the COVID-19 pandemic has changed the food environment and peoples eating behaviour.

Why is the Scottish Government not laying regulations immediately?

- We plan to consult on the detail of proposed regulations this autumn in line with our statutory obligation to consult on the detail of changes to food law.

ALIGNMENT WITH REST OF UK

Will you align with regulations in the rest of the UK?

- Our 2022 consultation provided an opportunity to hear views on our proposals in the context of the UK Government regulations coming into force for England in part from October 2022 and the proposals for Wales set out in the recent Welsh Government consultation paper.
- We are giving detailed consideration to the potential for policy consistency where that is in Scotland’s best interests to do so.
- We will consult this autumn on the detail of proposed regulations, including setting out where we propose to align with policies in other parts of the UK.

Why is there so little detail on what you are going to regulate? Will convenience stores be exempt as they will be in England?

- Our 2022 consultation provided a chance for us to hear views on our proposals in the context of the UK Government regulations coming into force for England from October 2022 and the proposals for Wales set out in the recent Welsh Government consultation paper.
- We are giving detailed consideration to the potential for policy consistency where that is in Scotland’s best interests to do so.
- An independent, external analysis of consultation responses have been published and can be accessed on the Scottish Government website.
- We plan to consult this autumn on the detail of proposed regulations and plans for their implementation in line with our obligation to consult on the detail of changes to food law.

Can you tell us what foods/ promotion types/ businesses will be in scope of the regulations?

- As set out in our consultation, the foods we are considering targeting include, amongst other things, crisps, confectionary, cakes and sugary soft drinks. The

restrictions we are considering would include, among other things, multi-buys and unlimited refills and positioning restrictions, such as at checkouts and front of store.

- We received extensive feedback to our consultation and through our engagement with stakeholders, which we are considering carefully to help inform the final scope of the policy.
- We will consult on the detail of the draft regulations including plans for their implementation in the autumn.

RESTRICTION OF PROMOTIONS

BACKGROUND

AIM

1. 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. To progress these aims, we propose to restrict the promotion of HFSS foods where these are sold to the public including across retail and out of home settings.

TIMELINE

2. Restricting HFSS promotions has been a long-standing commitment since the publication of the 2017/18 Programme for Government (PfG).
3. In 2018/19, following a commitment in our Diet and Healthy Weight Delivery Plan, we [consulted on proposals to restrict the promotion and marketing of targeted food and drink \('food'\) high in fat, sugar or salt \(HFSS\)](#) where they are sold to the public. The consultation ran from 2 October 2018 to 9 January 2019. [An analysis of the consultation](#) was published in September 2019. A previous [consultation in 2017/18](#) included questions on restricting promotions. [An analysis](#) of this was published in April 2018.
4. The first commitment to a Bill to progress the policy was given in the [2019/20 Programme for Government \(PfG\)](#). The development of legislation was [paused in June 2020](#) due to the impact of the COVID-19 pandemic.
5. Ministers re-committed to the policy in the 2021/22 PfG and following that, we [consulted](#) again in July 2022 on our proposals to restrict HFSS promotions in store and online

[Redacted]

2022 CONSULTATION

6. Our most recent [consultation](#) ran from 1 July – 23 September 2022 to inform further development and impact assessment of the policy. It provided an opportunity to take account of developments since the 2018/19 consultation, including EU exit and the introduction of equivalent promotions regulations in England.

7. We sought views on what should be included within scope of the policy, including:
 - **Types of foods:** categories that are high in fat, sugar or salt (HFSS), such as confectionery, sweet biscuits, crisps, cakes, and soft drinks with added sugar.
 - **Types of promotions:** price, including multi-buys (e.g. buy one get one free, 3 for 2, meal deals), extra free, temporary price reductions and unlimited refills; location, including displays at checkouts, end of aisle, front of store and island/bin displays; online equivalent promotions and locations.
 - **Places:** Retail, out of home settings, wholesale where sales are also made to the public, and other outlets such as pharmacies and clothes shops. Also equivalent outlets online.
8. In summary, the feedback to the consultation found:
 - **Non-industry** respondents were generally supportive of restrictions but less supportive of some exemptions (for example for small businesses).
 - **Industry** respondents' views 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.
9. Further to the consultation, we have undertaken extensive engagement with key stakeholders, including individual businesses and industry representative bodies, to discuss the proposals. Overall, the findings from the analysis align with the feedback we received during our discussions with stakeholders. The findings also broadly echo the feedback to our [previous consultation](#) (Oct 2018 – Jan 2019).

UK GOVERNMENT AND WALES

10. The UK Government put in place regulations in England to restrict the promotion of targeted HFSS food and drink by location and volume price - [The Food \(Promotion and Placement\) \(England\) Regulations 2021 \(SI 2021/1368\)](#).
11. 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, by 12 months, citing rising cost of living pressures. Volume price restrictions are now due to come into force in England on 1 October 2023.
12. Last summer, the Welsh Government consulted on similar proposals to restrict less healthy promotions in its [Healthy Food Environment consultation](#). The promotions proposals included restricting value promotions, including multi-buy, temporary price reductions and meal deals, and location promotions, including at checkouts and end of aisles, on less healthy foods. We expect the Welsh Government to set out its policy position and next steps in a statement on 6 June.

STAKEHOLDER VIEWS ON NOT PROCEEDING WITH A BILL

14. **Public health** stakeholders are expected to be reassured that we remain committed to delivery of the policy aims and supportive of consultation on regulations being brought forward. There may however be criticism that the policy could have been progressed more quickly and pressure to accelerate timescales for regulations.

[Annexes G-S redacted -out of scope]

BACKGROUND INFORMATION ON THE NCD ALLIANCE

[Redacted – out of scope]

Restriction of Promotions Consultation Response

As of the 23 September, we have received consultation responses from the NCD Alliance, British Heart Foundation, Diabetes Scotland and Alcohol Focus Scotland.

Key asks from the NCD Alliance consultation response:

- Restrictions on promotions should apply to as many types of price and location promotions as possible, including temporary price reductions, multi-buys, loyalty pricing, checkouts and end of aisles displays, and apply both in-store and online.
- Temporary Price Reduction promotions must be included in any price promotion restrictions.
- Promotion of value restrictions should be included in any price promotion restrictions.
- The focus of the proposals in the consultation should not be on delivering reformulation but on improving the diet of the population.
- Restrictions on promotions must apply to all out of home settings and must include pre-packed products.
- We support the Scottish Government to be bold and ambitious in tackling promotions and encourage them to include more elements of price and location than have been considered elsewhere in the UK.

CABINET SECRETARY FOR RURAL AFFAIRS AND ISLANDS
Briefing for Meeting David Thompson, Food and Drink Federation Scotland

| | |
|----------------------------|---|
| What | A meeting with David Thompson, CEO of the Food and Drink Federation Scotland (FDF) |
| Where | <i>Microsoft Teams Meeting</i> |
| When | <i>Tuesday 20 June 15.00 – 15.45</i> |
| Key Message(s) | Private meeting to discuss the priorities for the Food and Drink Sector in Scotland following the Cabinet Reshuffle. |
| Who | David Thompson, CEO of Food and Drink Federation Scotland |
| Why | [Redacted] |
| Supporting official | [Redacted] |
| Briefing contents | Annex A: Summary Page / Top Brief Annex B: Lines to take Annex C: Attendees including Biography Annex D: Background on Agenda Items Annex E: FDF Scotland Background |
| Media Handling | No Comms are planned for this meeting |
| Social Media | No Social Media required. This is a private Meeting |

Summary Page / Top Brief

[Redacted – out of scope]

Agenda

1. **[Redacted-out of scope]Restricting promotions of food and drink high in fat, sugar or salt upcoming consultation on regulations:** Latest developments.

[Redacted – out of scope]

ANNEX B

[Redacted – out of scope]

6. Restricting promotions of food and drink high in fat, sugar or salt upcoming consultation on regulations

We are committed to legislating to restrict the promotion of less healthy food and drink where they are sold to the public.

- Rather than introduce the Public Health (Restriction of Promotions) Bill, we will instead proceed directly to consult in the autumn on the detail of proposed regulations with a view to laying them next year.
- This is a more direct and efficient route to delivering promotions policy.
- I can confirm that our change in legislative approach in no way changes the aim and intended outcome for the policy.
- Our forthcoming consultation will provide an opportunity to provide views on the detail of proposed regulations.
- In line with the principles of the New Deal for Business, this will be done in parallel with an extensive programme of engagement to ensure everyone has an opportunity to engage and have their voice heard, in order to support the most effective implementation of the policy.

CABINET SECRETARY FOR RURAL AFFAIRS AND ISLANDS
Briefing for Meeting David Thompson, Food and Drink Federation Scotland

The overall food environment, and promotion and marketing in particular, can significantly influence our dietary choices.

- The food environment is often skewed toward the promotion of less healthy food and drink, encouraging extra spend and higher calorie intake.
- By restricting the promotion of less healthy food and drink we will make it easier for people to spend less and make healthier food choices.
- This can better support people to make healthier choices in line with our public health priority to create a Scotland where everyone eats well and has a healthy weight.

[Annexes redacted – out of scope]

6. Restricting promotions of food and drink high in fat, sugar or salt upcoming consultation on regulations

Background Restricting Promotions:

- Restricting promotions of food and drink high in fat, sugar or salt (HFSS) was first suggested in the [2017/18 Programme for Government](#) (PfG). We [consulted](#) on the policy in 2018 and the first commitment to a Bill was given in the [2019/20 PfG](#). The development of the Bill was [paused in June 2020](#) due to the impact of the COVID-19 pandemic. We [consulted](#) again in July 2022 and a commitment to a year 2 Bill was given in the [2022/23 PfG](#). [Redacted]
- Earlier this year it was agreed that a Bill was not required as the policy aims can be delivered through regulations.
- There was some criticism from Conservative and Labour MSPs on lack of progress and tackling obesity challenge. Industry stakeholders broadly welcomed the statement whilst public health stakeholders expressed disappointment at the perceived dilution of commitments to public health.
- Our most recent consultation (summer 2022) proposed to restrict, among other things:
 - **Food categories** including, among other things, confectionery, crisps, cakes, sweet biscuits and soft drinks with added sugar,
 - **price promotions**, including multi-buy offers and unlimited refills,
 - **location promotions** where items are displayed in prominent places, such as end of aisles and checkout areas.
- An independent consultation analysis report was published on 30th May.
- A final decision on the scope of the policy has not yet been made. UK Government location restrictions for HFSS food came into force in England on 1 October 2022. Volume price restrictions were delayed for 12 months, due to the cost-of-living crisis.

FDFS position: In our 2022 consultation, we sought views on restricting temporary price reductions (TPRs). FDFS are not supportive of restricting promotions in general and have been publicly critical of the proposal to restrict TPRs, questioning the evidence base and suggesting that restricting TPRs would increase costs for both businesses and consumers, who are already facing significant cost of living pressures. FDFS has also expressed concerns about the timing of implementation in

CABINET SECRETARY FOR RURAL AFFAIRS AND ISLANDS
Briefing for Meeting David Thompson, Food and Drink Federation Scotland

terms of cumulative regulatory burden on businesses. If restrictions go ahead, FDFS would prefer to see Scotland align with the regulations for England.

FDFS engagement: We continue to engage with FDFS and its members on our proposals to inform development of the policy and associated impact assessments. On 30 May 2023, **Chief Executive Officer, David Thomson**, said:

[Redacted]

Minister for Public Health and Women's Health

RESTRICTING PROMOTIONS OF FOOD AND DRINK HIGH IN FAT, SUGAR OR SALT (HFSS PROMOTIONS) – ADVICE ON THE SCOPE OF THE POLICY

Priority and Purpose

1. The purpose of this submission is to:
[Redacted]

Recommendation

[Redacted]

Context and Issues

2. Last summer we [consulted](#) to inform further development and impact assessment of our policy to restrict HFSS promotions. This 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.
3. An analysis of the feedback to the consultation was published on 30 May 2023. A high level summary of the feedback we received is at **Annex A**, alongside details of additional stakeholder engagement and impact assessment. Detailed feedback in relation to specific aspects of the policy is included in **Annex B**.
6. A high level summary of evidence underpinning our proposals and further planned research is set out at **Annex C**. This provides further context for our advice and recommendations on the detailed scope of the policy to inform framing of the autumn consultation.
7. In your update to Parliament on 30 May, you set out that we would not introduce the Public Health (Restriction of Promotions) Bill and instead proceed directly to consult on the detail of proposed regulations this autumn. [Redacted]

Impact Assessments

8. [Redacted]
9. We will ensure that our approach and engagement with business to inform the development of our impact assessments takes into account the [New Deal for Business Group Progress Report and Recommendations published on 29 June](#). As part of that, we are exploring with officials opportunities to engage with

businesses through the work of the Joint Regulation Taskforce, and once re-established, the Regulatory Review Group.

UK Government and Wales

10. The UK Government 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 this October but UKG recently announced that implementation would be delayed by a further two years, until 1 October 2025.
11. Last summer, 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.
12. The Welsh Government provided an [Update on the healthy food environment legislation](#) on 27 June. The statement set out the intention to “consider consistency with definitions set out within England’s locations and volume-based restrictions legislation to ensure operability across borders”. The statement also confirmed the Welsh Government is “minded to include temporary price promotions and meal deals within scope” which goes further than the regulation in England.

Options Considered and Advice

[Redacted]

Scope of the policy

[Redacted]

Bute House Agreement Implications

13. Engagement with the Green Group took place ahead of publication of the previous consultation on HFSS promotions restrictions and also in relation to the decision to not to proceed with the Public Health (Restriction of Promotions) Bill, as per the Bute House agreement.

Legal Considerations

14. [Redacted]
15. [Redacted]
16. As set out earlier, this means that we will be required to set out in detail our proposed position on, among other things, targeted foods, types of price promotions (including whether meal deals and TPRs are in scope), location restrictions, exemptions (including any based on business size and floor space), and enforcement.

Financial considerations

17. [Redacted]
18. The financial implications of the policy on business will also be considered as part of the BRIA process. We plan to publish a partial BRIA alongside the consultation in autumn in line with [New Deal for Business Group Progress Report and Recommendations](#)

Sensitivities

[Redacted]

Quality Assurance

19. This submission has been approved by John Nicholson, Deputy Director Population Health Strategy and Improvement Division.

Conclusions and next steps

[Redacted]

Population Health Strategy and Improvement

RESTRICTING PROMOTIONS - FURTHER BACKGROUND

ANNEX A

Previous commitments to promotions legislation

1. Restricting HFSS promotions has been a long-standing commitment since the publication of the [2017/18 Programme for Government](#) (PfG).
2. In 2018/19, following a commitment in our Diet and Healthy Weight Delivery Plan, we [consulted on proposals to restrict the promotion and marketing of targeted HFSS foods](#) 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.
3. The first commitment to a Bill to progress the policy was given in the [2019/20 PfG](#). The development of legislation was [paused in June 2020](#) due to the impact of the COVID-19 pandemic.
4. Ministers re-committed to the policy in the [2021/22 PfG](#) and following that, we [consulted](#) again in July 2022 on our proposals to restrict HFSS promotions in store and online. A commitment to a year 2 Bill was given in the [2022/23 PfG](#). This was superseded by a [Ministerial Statement : Diet and Healthy Weight Consultations](#) on 30 May confirming that The Public Health (Restriction of Promotions) Bill would not be introduced and that the policy would be implemented via regulations.

Summary of feedback to 2022 consultation on restricting HFSS promotions

5. An analysis of the respondent feedback to the 2022 consultation was published on 30 May 2023. In summary:
 - **Non-industry** respondents, including public health stakeholders, were generally supportive of restrictions but less supportive of some exemptions (for example for small businesses). Comprehensive restrictions were generally favoured and avoiding the possibility of loopholes that could undermine the overall effectiveness of the approach.
 - **Industry** respondents' views were mixed. Where there was support, it related to either a preference for alignment with the UK Government's promotions restrictions in England or ensuring a fair and level playing field across businesses. 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) or that the approach would not align with restrictions in England.
 - **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 (viewing it as inappropriate for the Government to influence people's purchasing behaviour) or hold concerns about how restrictions may affect the public financially.

Other stakeholder engagement

6. Further to the consultation, we have undertaken extensive engagement with key stakeholders, including individual businesses and industry representative bodies, to discuss the proposals. Overall, the findings from the consultation analysis align with the feedback we received during our discussions with stakeholders. The findings also broadly echo the feedback to our [previous consultation](#) (Oct 2018 – Jan 2019).
7. We also commissioned the Poverty Alliance to facilitate two workshops in December 2022 to consider the impact of the proposals to restrict promotions on less healthy food items on people living on low incomes in urban and rural areas. Overall, participants welcomed the aim of the policy but had mixed views on how effective it would be, alongside concerns about timing of implementation and unintended consequences. More specifically, there was concern that ending promotions may compound the difficulties faced by those already struggling to afford food due to current cost of living pressures. Most participants stated that they only used promotions on items they were already planning on buying or planned their shopping around what promotions were on offer. Further, it was suggested that healthier food needed to be more affordable alongside restricting promotions to avoid compounding financial difficulties faced by those on a low-income without necessarily encouraging healthier dietary choices.

RESTRICTING PROMOTIONS – SUMMARY OF POLICY RECOMMENDATIONS

[Redacted]

Summary of current evidence

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

1. Improving the nation's diet and promoting healthy weight is important to improve people's overall health and reduce the risk of diet and weight-related ill health.
2. The [association between poor diet, excess weight and health outcomes](#) such as heart disease, type 2 diabetes and certain cancers has been established for some time. The COVID-19 pandemic has further emphasised the risks associated with being overweight. Evidence indicates [excess weight is associated with an increased risk of serious COVID-19 outcomes](#).
3. There is also evidence that there has been a [widening of inequalities with respect to dietary health outcomes as a result of the COVID-19 pandemic](#). For example, recent data found that the proportion of [primary 1 children at risk of overweight or obesity](#) increased by 8.4% among children living in the most deprived areas between 2019/20 and 2020/21, compared to a 3.6% increase in the least deprived areas.
4. Approximately [two out of three adults in Scotland are living with overweight or obesity, and around 30% of children are at risk of overweight \(including obesity\)](#). A range of inequalities exist, for example, in 2021, 67% of adults in the most deprived areas of Scotland were living with overweight or obesity, compared to 60% of adults in the least [deprived areas](#); 20% of children in the least deprived areas were at risk of overweight or obesity compared to 44% in the most [deprived areas](#). A higher [prevalence of excess weight is also seen in some minority ethnic groups](#), with the [health risks of obesity arising at a lower BMI in these groups](#).
5. The [Scottish diet is too low in fruit, vegetables and fibre and too high in calories, saturated fat, salt and sugar](#)¹. For example, in 2021, the average energy density of the diet in Scotland was 160 calories per 100g of food compared to the population level goal of 125 calories per 100g of food. The average intake of fruit and vegetables was around 3.4 portions per person per day compared to the dietary goal of five. Additionally, discretionary foods (foods not required for a healthy balanced diet, such as confectionery, sweet biscuits, savoury snacks, cakes, pastries, puddings and sugar containing soft drinks) accounted for around 20% of calories and fat in our diet in 2018, and more than half of free sugars^[12] intake.

Challenge of the food environment and promotions activity

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

¹ Shown again in the 2021 Scottish Health Survey using INTAKE24 - [The Scottish Health Survey 2021 - volume 1: main report - gov.scot \(www.gov.scot\)](#)

food environment heavily incentivises and promotes low cost [foods which contribute disproportionately to energy, fat, saturated fat, free sugar and salt intakes](#).

7. In Scotland, [in 2021, around 27% of the food and drink we bought from shops and supermarkets was on price promotion](#). The majority of these (>20%) were on temporary price reductions and around 6% on Y for £X style offers. In the out of home environment, 2.6% of the share of spend included a price promotion in 2021, the majority being meal deals or multi-buys. It should be noted that there is less certainty around purchase on promotions in the out of home environment due to the self-report nature of the methodology.
8. [Marketing of food that contributes to unhealthy diets is persuasive](#). Promotions encourage us to buy more than we would otherwise have done, encouraging increased intake of calories^{[14],[15],[16]}. This [increase in calories remains even when storing purchases to consume at a later date or swapping to other brands or products is taken into account](#).
9. [Research has also shown that less healthy food and drink is more likely to be promoted](#) and with a [greater discount or cost saving compared to 'healthier' ones](#). Other evidence shows that [as food prices increase, shoppers adapt their behaviour by purchasing more products on promotion](#). This is concerning in light of the current context of the rising cost of living, including rising food prices and further underpins the need to regulate promotion of HFSS products. [Addressing our exposure to promotions of unhealthy food is one way to help support diet, healthy weight and overall health improvement](#) as part of wide ranging actions.
10. [Economic modelling](#) has estimated that removal of price promotions such as temporary price reductions, multi-buy and 'Y for £X', just on discretionary foods such as cakes, biscuits, confectionary, crisps, etc., has the potential to reduce calorie intake by 613 calories per person per week. The impact is expected to be even greater if a wider range of high fat, sugar and salt food categories is included.
11. The likely cost, benefits and risk of regulations will be assessed within a suite of impact assessments, including a business and regulatory impact assessment. The BRIA will consider the financial and wider impacts on industry.
12. [Restricting promotions is also regarded as more effective to help reduce inequalities than other approaches](#) such as education and reliance on individual behaviour change.

Ongoing and future planned research

[Redacted]

[Redacted]

Consultation 2022

1. In our consultation, we proposed that meal deals would be within scope of restrictions because they are a form of "Y for £X" multi-buy promotion and could encourage consumers to purchase more in order to obtain a discount.
2. We proposed that if one or more components of a meal deal were a targeted food or drink that was HFSS or 'less healthy' (as defined by the NPM) then the products could not be sold at less than the sum of their individual prices. Meal deals that do not contain targeted foods (or contain targeted foods that pass the NPM) would not be subject to the restrictions. This would provide the opportunity for consumers to take advantage of meal deals that are healthier and would support our aim to improve dietary health and encourage healthier choices. In our consultation, we did not distinguish between lunchtime (e.g. sandwich, snack, drink) and evening (e.g. starter/ dessert, main, side, drink) meal deals.

Context/ evidence

3. There is good evidence to indicate that [multi-buys, including Y for £X and buy one get one free, encourage overconsumption](#) and are [more likely to be promoted](#) and with a [greater discount or cost saving](#) compared to 'healthier' ones.. There is less evidence specifically focussed on meal deals, however we consider meal deals to be a form of Y for £X promotion. Meal deals are also a key form of price promotion in out of home settings. In a recent study², 54% of 86 out of home outlets visited offered meal deal promotions, and of these, 25% did not offer a healthy choice as part of the deal.

Stakeholder views

4. Non-industry and individual respondents tended to support the inclusion of 'meal deal' offers in multi-buy restrictions on the basis that these offers result in additional unplanned purchases and over-consumption in order to obtain the discount or 'get the deal'.
5. Overall industry respondents disagreed with the inclusion of meal deals, either because this would not align with restrictions in England, or the view that meal deals are distinct from other multi-buy offers, and are cost effective, convenient and do not drive over-consumption.
6. During workshops facilitated by Poverty Alliance, people on low incomes had mixed views on proposals to restrict meal deals. Some who bought meal deals suggested they were convenient and could offer significant savings. Others were less concerned as they did not rely on meal deals so would not be impacted.

Alignment with UK Government and Welsh Government

² Ipsos Mori (2022) Research to understand price and placement marketing strategies used within premises and online by out of home businesses in Scotland.

7. Meal deals are not currently within scope for the equivalent regulations for England. Further to the specific focus on childhood obesity, the rationale given for not including meal deals was that they are generally targeted as lunchtime options for adults to consume on the go that day rather than being stockpiled at home; and they aim to reduce the cost of a single meal.
8. Similar to Scotland, the Welsh Government consulted on restricting meals deals as part of its plans to restrict value-based promotions..

Options

[Redacted]

Consultation 2022

1. 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.
2. In our 2018/19 consultation, we did not propose to restrict TPRs specifically. Feedback found industry respondents mostly in favour of the proposal. Non-industry respondents had mixed views, with similar proportions agreeing, disagreeing or not offering a view. Individuals typically agreed with the proposal not to restrict TPRs.
3. However, the scale of the diet and obesity challenge we currently face, alongside our aim to halve childhood obesity by 2030, led us to consider the inclusion of other forms of price promotions within scope of this policy, such as TPRs. With this in mind, we specifically sought views on restricting TPRs on targeted foods in our 2022 consultation.

Context/ evidence

4. Since 2014, the overall balance of different types of price promotions has not changed. Food purchases have consistently been greater on TPRs than for other price promotion types. In 2021, around 27% of the food and drink we bought from shops including supermarkets was on price promotion: breaking this down, 21.1% were purchased through retail TPRs, 5.9% from multi-buys and a small percentage from other forms of price promotion.
5. Economic modelling³ 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.⁴

Stakeholder views

6. Non-industry respondents to the consultation tended to support restricting TPRs on targeted foods primarily on the basis that they are used to promote less healthy foods or encourage unintended purchases. Some also suggested that prevalence of TPRs meant that it is important that they come under the scope of the legislation or there was a risk of creating a loophole which could undermined the overall effectiveness of the policy.

³ May 2022 Economic modelling: reducing health harms of foods high in fat, sugar or salt, SRUC/University of Aberdeen

⁴ October 2015 Sugar Reduction: The evidence for action, Public Health England

7. Individuals held more mixed views. Agreement with restricting TPRs tended to be for the same reasons expressed by non-industry. For those that disagreed, this was primarily due to concern for the potential impact on low-income households.
8. Industry stakeholders have been robust in their feedback on the inclusion of TPRs, both in their consultation responses and in subsequent discussions. Industry respondents were generally opposed to TPRs being within scope of the policy, primarily on the basis of insufficient evidence to justify their inclusion or a desire for alignment with regulation in England. Further, some suggested that TPRs do not drive overconsumption in the same way as multibuys but rather drive a switch from one brand to another within the same category. It was also noted that TPRs are often used by manufacturers, including small producers, to launch new products to market, including reformulated products, and gain brand visibility. In addition, small businesses were highlighted by some as being more dependent on TPRs to attract customers and therefore may be unfairly disadvantaged. Industry has also suggested that restricting TPRs could lead to foods becoming more expensive for consumers at a time when household budgets are already being squeezed.
9. Business opposition to restriction of TPRs has been reiterated regularly by both industry umbrella bodies, including Scottish Retail Consortium and Food and Drink Federation Scotland, as well as individual businesses.

Alignment with UK Government and Wales

10. TPRs are not within scope of the equivalent promotions restrictions for England. The UK Government did not consult on the inclusion of TPRs as these are not considered a volume promotion on the basis that they do not encourage consumers to purchase more to obtain the discount..
11. The Welsh Government consulted on targeting TPRs as part of its plans to restrict value-based promotions on targeted foods. Similar to our own rationale, Wales point to the prevalence of TPRs and suggest that the promise of a bargain often entices customers to partake in these deals..

Options

**A.
EXEMPTIONS FOR BUSINESSES**

ANNEX G

Consultation 2022

1. We proposed, as a minimum, that specialist businesses with a limited product range, such as chocolatiers and sweet shops, would be exempt from location restrictions. This is on the basis that it would be impractical for these businesses to comply with such restrictions. Price restrictions would, however, still apply both in store and online on the same basis as any other retailer selling targeted foods within scope of the policy.
2. We also sought views on extending exemptions from location restrictions beyond specialist businesses, recognising that some smaller businesses may have limited

scope to comply, due to practical reasons such limited floor space. We sought views on using floor space and/ or number of employees as a basis for determining which businesses would be eligible for an exemption from location restrictions.

3. To note that we did not propose or specifically seek views on exempting small businesses from price promotion restrictions. We did, however, invite views on whether there were other types of exemption that should be considered.

Context/ evidence

4. The food business landscape is incredibly diverse and location restrictions would apply to many different outlets of various sizes and layouts. This could affect the ability of some businesses from complying with some location restrictions (at checkouts, end-of-aisle etc.).
5. Scotland has a high proportion of small and micro businesses. The issue of exemptions for small businesses is therefore a particularly important consideration.

[Redacted]

6. We know that [individuals living in remote and rural areas tend to be more reliant on local smaller shops](#), with larger stores often some distance away. We also know that people living in poverty may be less likely to take advantage of promotions due to limited income⁵. [Redacted]

Alignment with UK Government and Wales

7. The UK Government has set out in its regulations exemptions for certain businesses within scope of the restrictions. In summary, these are as follows:
 - a) Micro and small businesses (fewer than 50 employees⁶) are exempt from volume price restrictions (multi-buy, "extra free", unlimited refills)
 - b) Micro and small businesses (fewer than 50 employees) are exempt from location restrictions
 - c) 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
 - d) Specialist retailers that sell one type of food product category (e.g. chocolatiers or sweet shops) are exempt from location restrictions.
8. In England, the restrictions also apply to franchises or arrangements (like symbol groups) where multiple businesses operate under the same name. For the purpose of determining how many employees a business has, and therefore whether the regulations apply, a franchise agreement is treated as part of the business of the franchisor and not as a separate business carried on by the franchisee.

⁵ 2022 Get Heard Scotland – Report of Public Health Lived Experience Workshops, The Poverty Alliance

⁶ Employee is defined in the UKG regulations an individual who has entered into, or works under, a contract of employment, whether that contract is for full-time or part-time employment. Further, the number of employees is not restricted to England – it is the total number of employees a business has in its entirety.

9. Following consultation, we understand the Welsh Government intend to follow the approach taken in UK Government regulations as outlined above.

Stakeholder views

10. Non-industry respondents, including public health stakeholders, tended to disagree with the additional exemptions explored in the consultation primarily due to concern that allowing exemptions would reduce the overall impact of the restrictions. Individuals tended to be split between agreement (primarily due to opposing the restrictions in general) and disagreement (for the same reason as non-industry respondents).
11. Industry respondents tended to support the exemptions either due to a preference for alignment with the regulations in England or a view that it would not be practical for smaller businesses to comply with restrictions. However, it was not always clear whether respondents had made the distinction between price promotion and location restrictions. In further engagement with industry, particularly convenience store industry bodies, there was a clear preference for alignment with the regulations for England – that smaller businesses should be exempt from both price and location restrictions. In contrast, members of the Scottish Retail Consortium did not hold a consensus view on whether small format stores should be excluded from location restrictions although it was recognised that implementation in smaller stores could be very challenging. Members did not however believe that number of employees was not a relevant reason to exclude a business from a public health requirement.
12. Overall, there was a preference for alignment with the regulations for England in terms of provisions in respect of floor space and employee number. Convenience store representative bodies expressed a preference for the floor space exemption to cover stores to be less than 3,000 sq ft rather than 2,000 sq ft. This was on the basis that the accepted definition within the convenience sector that a convenience store is typically under 3,000 sq ft.
13. In addition, convenience store representative bodies noted strong concerns about eligibility rules that may apply to the exemptions if they are introduced, specifically in relation to franchises. They did not favour alignment with the UK Government approach in this area, suggesting that it was not appropriate to treat a small independent business which partners with a larger group as part of that larger group when applying exemption criteria.

Outcome 2: The Food Environment Supports Healthier Choices

Changing the food environment is more likely to be effective in reducing health inequalities than encouraging behaviour change. This is why measures to transform the food environment underpin Outcome 2 of the Plan.

Restriction of Promotions

Background

- Restricting promotions of food and drink high in fat, sugar or salt (HFSS) has been a long-standing commitment for this Government. We consulted on the policy in 2018 which fulfilled a commitment in our Diet and Healthy Weight Delivery Plan.
- The first commitment to legislation was given in the 2019/20 PfG however the development of the Bill was paused in June 2020 due to the impact of the COVID-19 pandemic.
- We consulted again in July 2022 and following a commitment in the 2022/23 PfG,
- Earlier this year, it was determined that a Bill was not required as the policy aims can be delivered through regulations. You updated Parliament in a Ministerial Statement on 30 May confirming that the Scottish Government planned to consult on the detail of regulations to restrict HFSS promotions in the autumn.
- You wrote to both PHS and FSS CEOs following your statement reaffirming your commitment to progressing legislation to restrict HFSS promotions and action to support diet and healthy weight more broadly.
- Following the statement, some public health stakeholders expressed concerns that the change in legislative approach signalled a dilution in policy ambition and that policy was being increasingly influenced by economic rather than public health considerations.

Working with PHS and FSS

- PHS and FSS consider action to restrict promotions a priority and are committed to working with us on the development and delivery of the policy. We continue to work closely with FSS and PHS on a range of work to inform promotions policy, including evidence gathering, research, and development of a monitoring and evaluation framework for the policy.

Top lines

- I can assure you that I remain fully committed to legislating to restrict the promotion of less healthy food and drink where they are sold to the public. I know that this is a commitment we all share.
- We have not pressed pause on promotions restrictions and the change of legislative vehicle from a Bill to Regulations is not indicative of a change in policy ambition.
- This is a more direct and efficient route to delivering our policy aims.

- Our forthcoming consultation will provide an opportunity for stakeholders to comment on the detail of proposed regulations.
 - Subject to the outcome of that consultation, we then intend to proceed to laying regulations.
 - There is a statutory requirement to consult on the detail of changes to food law and therefore we will consult again ahead of regulations.

An evidence based approach is central to the development of our policy.

- I am grateful to both FSS and PHS for your work to support development of the policy, including evidence gathering, research, and more recently the development of a monitoring and evaluation framework.
- I look forward to continuing to work closely to progress this important policy.

[If pressed on timing for the consultation:]

- I set out in my statement that we planned to consult in the autumn. Key is that our engagement on our proposals is extensive and as inclusive as possible, particularly as we expect this to be our final consultation ahead of laying regulations.
- The UK Government's decision to further delay multi-buy promotion restrictions to October 2025 in England does not impact our plans.

Extract on Promotions from briefing for Scottish Grocers' Federation (SGF) Big Breakfast event at Colinton Primary School

ANNEX C – Restricting Promotions of food and drink High in Fat, Sugar or Salt (HFSS)

Background

- Restricting promotions of food and drink high in fat, sugar or salt (HFSS) has been a long-standing commitment for this Government. We consulted on the policy in 2018 which fulfilled a commitment in our Diet and Healthy Weight Delivery Plan.
- The first commitment to legislation was given in the 2019/20 PfG. However, the development of the Bill was paused in June 2020 due to the impact of the COVID-19 pandemic.
- We consulted again in July 2022 and following a commitment in the 2022/23 PfG, [Redacted]
- Earlier this year, it was determined that a Bill was not required as the policy aims can be delivered through regulations.
- You updated Parliament in a Ministerial Statement on 30 May, confirming that the Scottish Government planned to consult on the detail of regulations to restrict HFSS promotions in the autumn.
- Business stakeholders broadly welcomed and were reassured by the announcement, with some seeking clarity on implications on timings for promotions restrictions. Public health stakeholders have some concerns, particularly around the perceived involvement of business in setting of public health policy.

SGF views and engagement

- Overall, SGF are not supportive of proposals to restrict promotions of less healthy food and drink. SGF suggest that restrictions will have a disproportional impact on the convenience sector who will be left unable to compete with larger rivals. In addition, they highlight the significant costs involved in refitting stores to comply with restrictions, particularly location.
- A key issue for SGF is that they are seeking exemptions for small businesses which align, as a minimum, with the exemptions for the equivalent regulations for England.
- In England, businesses with less than 50 employees are not within scope of either price or location restrictions. In addition, business premises less than 2000 sq ft are exempt from location restrictions (regardless of employee number).
- SGF also suggest that location restrictions should not apply to premises less than 3000 sq ft rather than 2000 sq ft.
- Officials met SGF after your statement to discuss the content of your update and the implications on timing for restrictions.
- SGF are vocal about the cumulative regulatory burden on the convenience sector. We have highlighted that we are working with the Joint Taskforce on Regulation to consider cumulative impacts and timing for implementation. We have also reassured that implementation of promotions restrictions would not be before 2025 at the earliest.

Top lines

We are committed to legislating to restrict the promotion of less healthy food and drink where they are sold to the public.

- There is a statutory requirement to consult on the detail of changes to food law and therefore we will consult again ahead of regulations.
- In line with the principles of the New Deal for Business, this will be done in parallel with an extensive programme of engagement to ensure everyone has an opportunity to engage and have their voice heard, in order to support the most effective implementation of the policy.
- Subject to the outcome of that consultation, we then intend to proceed to laying regulations.
- There will be a period between regulations being laid before Parliament and regulations coming into force to enable industry to fully prepare.
- Our forthcoming consultation will seek views on the length of implementation required ahead of regulations coming into force.
- The restrictions will not come into force before 2025 at the earliest.
- We welcome SGF's pro-active and constructive engagement on our proposals to date and look forward to that continuing going forward.

We are giving detailed consideration to the potential for policy alignment with the rest of the UK where that is in Scotland's best interests to do so.

- An evidence-based approach is central to the development of our policy to restrict promotions on less healthy food and drink.
- We are using a wide range of evidence and data sources to consider the potential impact of restricting promotions, ensuring we have a robust and balanced evidence base to inform the policy proposals.
- We are also monitoring developments elsewhere in UK, including in Wales.
- We are developing impact assessments to assess whether the proposed measures are proportionate as well as assessing their impact on health inequalities.

You will appreciate that to maximise the public health impacts of the policy, restrictions should apply to as many businesses as possible.

- I recognise that there are challenges for smaller businesses, and we have consulted on whether there should be exemptions from location restrictions based on factors such as employee number and/or floor space.
- We welcome SGF engagement and are giving consideration to The Scottish Local Shop Report 2022 (a report by the Association of Convenience Stores and the SGF) as part of our evidence-based approach to development of the policy. We are considering the business impact of any proposed exemptions alongside the potential health impacts.

The overall food environment, and promotion and marketing in particular, can significantly influence our dietary choices.

- The food environment is often skewed toward the promotion of less healthy food and drink, encouraging extra spend and higher calorie intake.
- By restricting the promotion of less healthy food and drink we will make it easier for people to spend less and make healthier food choices.

- We are focusing on transforming the food environment because this is more likely to be effective in improving diet and reducing health inequalities than only encouraging behaviour change.

Background

[Redacted – out of scope]

Promotions restrictions

- Discretionary foods are defined as foods typically high in calories, fat, sugar and/or salt and which are not needed as part of a healthy diet. These categories are: confectionery, sweet biscuits, savoury snacks, cakes, pastries, puddings, soft drinks with added sugar.
- In our 2018/19 and 2022 consultations on restricting promotions on less healthy foods, we proposed targeting discretionary food categories as a minimum. In 2022, we also sought views on targeting categories of most concern to childhood obesity (consistent with equivalent UKG regulations). This includes discretionary foods plus ice cream and dairy desserts. Breakfast cereals, sweetened yoghurt and fromage frais, pizza, ready meals and roast potatoes, chips and similar products.

[Redacted – out of scope]

In our [2018 Diet and Healthy Weight Delivery Plan](#) we set out ambitious and wide-ranging action to deliver our vision for a Scotland where everyone eats well and has a healthy weight.

- [Redacted- out of scope]We continue to make progress. This includes, among other things:
 - In our forthcoming consultation, we will consult on the detail of proposed regulations to restrict **promotions** of less healthy food and drink where they are sold to the public.

[Redacted – out of scope]

We are committed to legislating to restrict the promotion of less healthy food and drink where they are sold to the public.

- In our forthcoming consultation, we will consult on the detail of proposed regulations with a view to laying regulations subject to the outcome of the consultation
- We are considering targeting, amongst other things, crisps, confectionary, cakes and sugary soft drinks.
- Restrictions we are considering include, but are not restricted to, multi-buys and unlimited refills and location restrictions, such as at checkouts and front of store.

DIET & HEALTHY WEIGHT – CONTRIBUTION – GO LOCAL CONSIDERATIONS

- We are using a wide range of evidence and data sources to inform the policy and consider its impact .
- We continue to develop impact assessments to help us assess whether the measures are proportionate and how they impact on health inequalities
- In line with the principles of the [New Deal for Business](#), this will be done in parallel with an extensive programme of engagement to ensure everyone has an opportunity to engage and have their voice heard, in order to support the most effective implementation of the policy.

[Redacted – out of scope]

EXTRACT FROM MINISTERIAL CLOSING KEY NOTE ADDRESS: “NCD PREVENTION: REDUCING THE IMPACT OF HEALTH HARMING PRODUCTS”. – 20 SEPTEMBER 2023

ANNEX B

| NCD Coalition Ask | Lines to take |
|---|---|
| 1. Restrict price and location promotions on high, fat, sugar and salt (HFSS) food and drinks | <ul style="list-style-type: none">• We remain committed to legislating to restrict the promotion of less healthy food and drink where they are sold to the public.• Following our consultation last summer, and the further development of policy proposals, we are now in a position to determine that there is a more direct and efficient route to delivering this policy• <u>The change in legislative vehicle does not change the planned policy outcomes.</u> |

ANNEX C

RESTRICTION OF PROMOTIONS

Top lines

The Scottish Government remains absolutely committed to our Public Health agenda and the range of priority actions that we have already set out on in relation to the various health harming products including legislation to restrict the promotion of less healthy food and drink.

- We are focusing on transforming the food environment because this is more likely to be effective in improving diet and reducing health inequalities than only encouraging behaviour change.
- The change of legislative vehicle from a Bill to Regulations is not indicative of a change in policy ambition.
- This is a more direct and efficient route to delivering our policy aims.

I am deeply concerned about the rising cost of food and drink, and the impact that this is having on household finances.

- We anticipate that the policy will help people to save money by only buying what they need and reducing impulse spend on promoted products, which tend to be more expensive.
- We funded the Poverty Alliance to facilitate two sessions to help us to understand the potential impact of the policy on individuals experiencing socioeconomic disadvantage.
- We will continue to engage with individuals and stakeholders as we further develop the policy to understand the potential impacts.

There is a statutory requirement to consult on the detail of changes to food law and therefore we will consult again ahead of regulations.

- In our forthcoming consultation, we will consult on the detail of proposed regulations with a view to laying regulations subject to the outcome of the

consultation. Ministers will consider carefully the appropriate time to implement promotions restrictions.

- We are considering targeting, amongst other things, crisps, confectionary, cakes and sugary soft drinks.
- Restrictions we are considering include, but are not restricted to, multi-buys and unlimited refills and location restrictions, such as at checkouts and front of store.
- We are using a wide range of evidence and data sources to inform the policy and consider its impact.
- We are considering evidence from Scientific Advisory Committee on Nutrition around Ultra-Processed Foods (UPF).
- As the proposals are further developed and further consultation is undertaken, we will consider any potential impacts of the UK Internal Market Act 2020 on the detail of the policy proposals.
- We continue to develop impact assessments to help us assess whether the measures are proportionate and how they impact on health inequalities.

[If pressed on timing for the consultation:]

- I set out in my statement that we planned to consult in the autumn. Key is that engagement on our proposals is extensive and as inclusive as possible.
- The UK Government's decision to further delay multi-buy promotion restrictions to October 2025 in England does not impact our plans.

We are giving detailed consideration to the potential for policy alignment with the rest of the UK where that is in Scotland's best interests to do so.

- An evidence-based approach is central to the development of our policy to restrict promotions on less healthy food and drink.
- We are using a wide range of evidence and data sources to consider the potential impact of restricting promotions, ensuring we have a robust and balanced evidence base to inform the policy proposals.
- We are also monitoring developments elsewhere in UK, including in Wales.

Extract relating to promotions restrictions from HSC Committee Session Brief - September 2023

Promotions

Background

30 May - Ministerial Statement: Update on Diet & Healthy Weight Consultation confirmed:

- Restriction of promotions – plan to move directly to consult on the detail of proposed regulation. This is a move away from a Bill.

Stakeholder reaction

Political - criticism from Conservative and Labour MSPs on lack of progress and addressing obesity challenge

Business - Broadly welcomed and reassured by the announcement. Some seeking clarity on implications on timings for promotions restrictions.

Public health – critical that the statement lacks ambition and is a backward step with economic consideration put before public health.

Proposals:

- Foods we are considering targeting include, amongst other things, crisps, confectionary, cakes and sugary soft drinks. Promotions types we are considering restricting include, but are not limited to, multi-buys and unlimited refills and location restrictions, such as at checkouts and front of store. We are also actively considering whether meal deals and temporary price reductions should be within scope of the policy. Also under consideration is exemptions, including for some businesses. E.g. exemptions from location restrictions for businesses with limited floor space.

Question: Following the Scottish Government's commitment to introduce secondary legislation to restrict price and location promotions of products high in fat, salt and sugar (HFSS), can the Cabinet Secretary confirm what the scope of these restrictions will be i.e. what types of promotions will be covered by the legislation?

We are committed to legislating to restrict the promotion of less healthy food and drink where they are sold to the public.

In our forthcoming consultation, we will set out the detail of proposed regulations to restrict promotions of foods high in fat, sugar or salt with a view to laying regulations, subject to the outcome of the consultation.

- We will set out in detail the proposed scope of the policy in our forthcoming consultation.
- The types of foods we are considering targeting include, amongst other things, crisps, confectionary, cakes, and sugary soft drinks.
- The types of promotions we are considering include, but are not limited to, multi-buys and unlimited refills and location restrictions, such as at checkouts and front of store.
- We are giving detailed consideration to the potential for policy alignment with the rest of the UK where that is in Scotland's best interests to do so.
- The UK Government's decision to further delay multi-buy promotion restrictions to October 2025 in England does not impact our plans.

Our forthcoming consultation will provide an opportunity for stakeholders to comment on the detail of proposed regulations.

- There is a statutory requirement to consult on the detail of changes to food law and therefore we will consult again ahead of regulations.
- In line with the principles of the [New Deal for Business](#), this will be done in parallel with an extensive programme of engagement to ensure everyone has an opportunity to engage and have their voice heard, in order to support the most effective implementation of the policy.
- We are using a wide range of evidence and data sources to inform the policy and consider its potential impact.
- We are developing impact assessments to help us consider whether the measures are proportionate and how they impact on health inequalities.
- We will carefully consider the appropriate time to bring restrictions into force subject to the outcome of the consultation.

[If pressed on timing for the consultation]

- The Minister for Public Health set out in her statement before summer recess that we planned to consult in the autumn. Key is that our engagement on our proposals is extensive and as inclusive as possible, particularly as we expect this to be our final consultation ahead of laying regulations.

[If pressed on the move from Bill to regulations]

- The change of legislative vehicle from a Bill to Regulations is not indicative of a change in policy ambition.
- This is a more direct and efficient route to delivering our policy aims.

Minister for Public Health and Women’s Health - Meeting with Obesity Action Scotland (OAS)

| | |
|------------------------------------|--|
| Date and time of engagement | 19 September 2023 15:00-15:45 Meeting with OAS officials |
| Where | The Scottish Parliament, Edinburgh, EH99 1SP |
| Who | Meeting attendees [Redacted] |
| Key purpose or message | [Redacted – out of scope] |
| Top facts or figures | [Redacted] |
| Sensitivities | RESTRICTING PROMOTIONS <ul style="list-style-type: none"> As per your statement of 30 May the announced decision not to proceed with a Bill. [Redacted] |
| Media handling | N / A |
| Official support | [Redacted] |

Briefing Contents

| | |
|------------------|--|
| Annex A | Background on OAS |
| Annex B | Summary Note - Key topics for discussion <ul style="list-style-type: none">• Promotions<ul style="list-style-type: none">○ New deal for business and impact on promotions○ Cost of living impact on promotions○ Pushing on dates for promotions consultation○ |
| Annex C | Restricting Promotions of food and drink High in Fat, Sugar or Salt (HFSS) <ul style="list-style-type: none">• Sensitivities, background and top lines |
| Annex D-J | [Redacted – out of scope] |

BACKGROUND ON OAS AND ATTENDEES

OAS Background

[Redacted – out of scope]

KEY TOPICS

OAS have indicated the following key topics for discussion

• **Promotions**

- New deal for business and impact on promotions
- Cost of living impact on promotions
- Pushing on dates for promotions consultation
- [Redacted – out of scope]

Please find below top lines the Minister may like to take alongside OAS position with suggested questions the Minister may wish to raise during the meeting.

[Redacted – out of scope]

PROMOTIONS

OAS views on promotions and engagement

[Redacted]

Impact of New Deal for Business on promotions

Top lines

- The Scottish Government remains absolutely committed to our Public Health agenda and the range of priority actions that we have already set out on in relation to the various health harming products (including alcohol, tobacco and less healthy food).
- Many of these proposals will inevitably have an impact on the way in which businesses currently operate.
- As part of our commitment on the New Deal for Business, we will engage at an early stage in the process to work with business (and a range of other key stakeholders) to ensure that the impact of policy proposals on businesses is fully understood and that policy implementation is effective and proportionate, while still delivering the beneficial outcomes for population health that we are seeking.
- This is distinct from guiding the specific content and development of that policy in the first instance which is not appropriate for all sectors.
- As you know Scottish Government is working on a conflict of interest principles, to help support our work and will engage with stakeholders as this develops.

Cost of Living impact

Top lines

- I share your concerns about the rising cost of food and drink, and the impact that this is having on household finances.
- We anticipate that the policy will help people to save money by only buying what they need and reducing impulse spend on promoted products, which tend to be more expensive.
- We continue to develop impact assessments to help us assess whether the measures are proportionate and how they impact on health inequalities.

Consultation

Top lines

- There is a statutory requirement to consult on the detail of changes to food law and therefore we will consult again ahead of regulations.
- Our forthcoming consultation will provide an opportunity for stakeholders to comment on the detail of proposed regulations, with a view to laying regulations subject to the outcome of the consultation.

[If pressed]

- I set out in my statement that we planned to consult in the autumn. Key is that engagement on our proposals is extensive and as inclusive as possible.
- The UK Government's decision to further delay multi-buy promotion restrictions to October 2025 in England does not impact our plans.

[Redacted – out of scope]

ANNEX C

RESTRICTING PROMOTIONS OF FOOD AND DRINK HIGH IN FAT, SUGAR OR SALT (HFSS)

Background

- Restricting promotions of food and drink high in fat, sugar or salt (HFSS) has been a long-standing commitment for this Government. We consulted on the policy in 2018 which fulfilled a commitment in our Diet and Healthy Weight Delivery Plan.
- The first commitment to legislation was given in the 2019/20 PfG however the development of the Bill was paused in June 2020 due to the impact of the COVID-19 pandemic.
- We consulted again in July 2022 and following a commitment in the 2022/23 PfG,
- Earlier this year, it was determined that a Bill was not required as the policy aims can be delivered through regulations. You updated Parliament in a Ministerial Statement on 30 May confirming that the Scottish Government planned to consult on the detail of regulations to restrict HFSS promotions in the autumn.
- Following the statement, some public health stakeholders expressed concerns that the change in legislative approach signalled a dilution in policy ambition and that policy was being increasingly influenced by economic rather than public health considerations.

Top lines

The Scottish Government remains absolutely committed to our Public Health agenda and the range of priority actions that we have already set out on in relation to the various health harming products including legislation to restrict the promotion of less healthy food and drink.

- We are focusing on transforming the food environment because this is more likely to be effective in improving diet and reducing health inequalities than only encouraging behaviour change.
- The change of legislative vehicle from a Bill to Regulations is not indicative of a change in policy ambition.
- This is a more direct and efficient route to delivering our policy aims.

I am deeply concerned about the rising cost of food and drink, and the impact that this is having on household finances.

- We anticipate that the policy will help people to save money by only buying what they need and reducing impulse spend on promoted products, which tend to be more expensive.
- We funded the Poverty Alliance to facilitate two sessions to help us to understand the potential impact of the policy on individuals experiencing socioeconomic disadvantage.

- We will continue to engage with individuals and stakeholders as we further develop the policy to understand the potential impacts.

There is a statutory requirement to consult on the detail of changes to food law and therefore we will consult again ahead of regulations.

- In our forthcoming consultation, we will consult on the detail of proposed regulations with a view to laying regulations subject to the outcome of the consultation. Ministers will consider carefully the appropriate time to implement promotions restrictions.
- We are considering targeting, amongst other things, crisps, confectionary, cakes and sugary soft drinks.
- Restrictions we are considering include, but are not restricted to, multi-buys and unlimited refills and location restrictions, such as at checkouts and front of store.
- We are using a wide range of evidence and data sources to inform the policy and consider its impact.
-
- As the proposals are further developed and further consultation is undertaken, we will consider any potential impacts of the UK Internal Market Act 2020 on the detail of the policy proposals.
- We continue to develop impact assessments to help us assess whether the measures are proportionate and how they impact on health inequalities.

[If pressed on timing for the consultation:]

- I set out in my statement that we planned to consult in the autumn. Key is that engagement on our proposals is extensive and as inclusive as possible.
- The UK Government's decision to further delay multi-buy promotion restrictions to October 2025 in England does not impact our plans.

We are giving detailed consideration to the potential for policy alignment with the rest of the UK where that is in Scotland's best interests to do so.

- An evidence-based approach is central to the development of our policy to restrict promotions on less healthy food and drink.
- We are using a wide range of evidence and data sources to consider the potential impact of restricting promotions, ensuring we have a robust and balanced evidence base to inform the policy proposals.
- We are also monitoring developments elsewhere in UK, including in Wales.

[Redacted – out of scope]

PS Minute Information

Event Details

Date of Event:
Not Specified

Time of Event:
Not Specified

MiCase Reference:
[Redacted]

Final Due Date:
19/05/2023

Case Owner:
[Redacted]

Sender:
[Redacted]

Has the Minister been asked to attend on Behalf of FM?:
No

Recommendation:
Accept

Has this advice been agreed with your Head of Division:
Yes

Recommendation Comments:

Scotland Food and Drink , the industry leadership organisation, is a key stakeholder. It is recommended that you meet with them in early course after the Ministerial Statement: Update on Diet and Healthy Weight Consultations planned for 30 May. This would be in line with our commitment to engagement and timely given the planned statement which will be of interest to Scotland Food and Drink. The organisation states that they are committed to supporting good health and wellbeing across our population and that they are keen to play a positive role in addressing these challenges, so this fits well with our dietary goals.

Has another minister been asked to attend?:

No

Theme Of Event:

An invitation to meet with Scotland Food and Drink to discuss how they can possibly work with the Scottish Government on food policy and its impact on public health in Scotland.

Purpose Of Event

- => Improve relations with stakeholders.
- => Recognise contribution to policy implementation.
- => Reinforce or illustrate existing policy.

Most appropriate type of ministerial input:

To meet with Scotland Food and Drink.

Main message to communicate:

The Scottish Government are keen to work with and hear the views of stakeholders to see through our ambitions to make Scotland a healthier nation.