

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

### RESPONDENT INFORMATION FORM

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Are you responding as an individual or an organisation?

- Individual  
 Organisation

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

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

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

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

Full name or organisation's name

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

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

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

- Yes
- No

## QUESTIONNAIRE

### Section 1. Foods that would be subject to restrictions

#### Question 1

Which food categories should foods promotion restrictions target?

- Option 1: Discretionary food categories (paragraph 61)
- Option 2: Discretionary foods + ice-cream and dairy desserts (paragraph 62)
- Option 3: Categories that are of most concern to childhood obesity (paragraphs 63-64)
- Option 4: All the categories included in the UK-wide reformulation programmes (paragraph 65)
- Other (please specify)
- Don't know

The FDF represents one of the most diverse sectors – food and drink manufacturing. Our members make high quality affordable, safe authentic food. To target any one or set of food categories in effect demonises these foods as “bad” The reality is that all food can be enjoyed as part of a healthy balanced diet.

Companies have been working hard to reformulate products and provide healthier and smaller portion options for many years and will continue to take bold steps. As a result, compared to four years ago, the FDF member products contribute 10% fewer calories, 12% fewer sugars, and 16% less salt to the average shopping basket (Kantar Worldpanel data for FDF members, nutrient growth versus the overall volume growth (percentage difference) from 2017 – 2021). Our [Celebrating Food and Nutrition Report](#) provides a snapshot of some of these achievements to date.

We query the definition for option 4 - it lists categories that UK DHSC decided not to take forward in the reformulation programme as they recognised there was limited scope to reformulate, option 4 should be discounted.

None of these are in the reformulation programmes:

- Bread with additions
- Savoury biscuits crackers and crispbreads
- Cooking sauces and pastes
- Table sauces and dressings – Consumed in very small quantities
- Processed meat product
- Pasta /rice/ noodles with added ingredients and flavours
- Prepared dips and composite salads as meal accompaniments
- Egg products/dishes

#### Question 2

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

- Other (please specify)

There are limitations with using the nutrient profiling model (NPM) as it does not recognise many reformulated or smaller portioned products. The consultation mentions the potential to adopt the 2018 nutrient profiling model, whilst we understand this has been included to futureproof the Scottish Government's policies, we strongly oppose the use of this model as consulted upon (although we note a final version has not been published.) It dramatically widens the range of products which "fail" the model, including pure fruit juices and smoothies, many yogurts / fromage frais and high fibre breakfast cereals. No account has been taken of the impact of this on business but more importantly to the nations diet. As an example, fruit juice contributes towards children's recommended micronutrient intake of potassium (4%), magnesium (3%), and folate (5-6%) and can count towards one of their 5 A DAY. Only 8% of children currently meet the 5 A DAY recommendation and many children consume below the lower recommended level for these micronutrients. Restricting promotion of fruit juice could further reduce already low intakes and widen inequalities between the most and least deprived. Food and drink manufactures have made substantial investments over the last few years to reformulate and introduce innovative non-HFSS products in line with the 2004/5 NPM. Having different goalposts for Scotland will disincentivise companies from bringing lower sugar or calorie products to market for Scottish consumers and penalise those companies who have already been active in shifting their portfolio through the Scottish Government-funded Reformulation for Health programme. Furthermore, we strongly believe that the 2018 model is not fit for purpose, as the inclusion of the free sugars criterion makes the NPM calculation incredibly difficult, especially for smaller companies without nutrition expertise. Free sugars is not a concept that many are familiar with, and its complexity risks inaccuracies in NPM scoring. We have found that even experienced nutritionists from large corporations have struggled to identify free sugars, for example in products with varying levels of diced / pureed fruits.

### Question 3

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

- Yes
- No
- Don't know
- Other (please specify)

Please explain your answer.

We are concerned about this disparity as prepacked goods are being penalised because they provide nutrition information on pack, versus foods sold loose, where consumers are unaware of the nutrition content. We acknowledge that the consultation on mandatory calorie labelling in the out of home sector recently closed which may go part-way to addressing this disparity.

This means similar products could be sold next to each other in store, some subject to promotional bans and some not e.g., cookies, morning goods, and pizzas. This clearly represents an inconsistent and inequitable approach, demonising prepacked foods versus instore bakeries. This proposal would therefore result in a distortion of competition between retailer and manufacturer products.

. It does not make sense for the regulations to apply simply because of how a product is wrapped/packaged. In addition, the government should consider the rapid rise in online out of home aggregator sites doing rapid delivery of very high fat, salt, sugar and calorie take aways and the contribution this is making to the Scottish Diet (Just Eat etc).

## Section 2. Price promotions

### Question 4

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

#### Extra Free:

- Agree
- Disagree
- Don't know

#### Meal Deals:

- Agree
- Disagree
- Don't know

Please explain your answers.

- Meal deals count as one complete nutritional meal
- Meal deals offer a convenient choice for consumers and removing them risks reducing consumer choice in Scotland
- Meal deals do not promote over consumption
- Overall – there is no evidence to suggest that this measure will have an impact on obesity.

#### Question 5

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

- Agree
- Disagree
- Don't know
- Other (please specify)

Please explain your answer.

Whilst we do not believe that this intervention will have any effect on obesity levels, we would not object to it.

#### Question 6

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

- Yes
- No
- Don't know

Please explain your answer.

FDF represents food and drink manufacturers, those in the business of providing “all you can eat” or “unlimited” are better placed to respond.

#### Question 7

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

Disagree

It is argued that promotions increase consumer spending. However, [a Kantar study](#) produced for the UK Government that analysed over 64,000 supermarket promotions over a 2 year period found that over 82% of increase in purchase is switching within a product category from one product to another or from one brand to a rival brand.

The same study demonstrated an average £72 saving for households per year. Banning TPRs will, by the Scottish Government's own admission increase the cost of the weekly shop for Scottish households who facing a grave cost of living crisis. Recent research carried out by Fraser of Allander <https://strathprints.strath.ac.uk/81326/> showed that a third of Scottish households are already cutting their spend on groceries, we expected this squeeze to continue particularly as energy costs continue to skyrocket. With this in mind, the Scottish Government should not introduce restrictions on TPRs. Instead, extensive research into the impact of TPR restrictions on household budgets in Scotland using the latest householder purchasing data available should be carried out.

The Scottish Government's evidence that is referenced in the consultation paper is based on research pre-pandemic using 10-year-old Kantar data. It is not exaggerating to say that what, how, when and why householders make choices about groceries has undergone a seismic shift in the last 2-3 years. Policy intervention that will impact on both businesses and households should be based on latest available and most relevant data sets. *(See our response to Q31 for further explanation of why the conclusions drawn from this paper are tentative)*

The impact of a ban on TPRs will be felt the greatest by smaller Scottish businesses who do not have the budget to advertise in the media and use TPRs to encourage switching from one brand to another.

#### **Why our industry uses TPRs**

- Established brands use TPRs as a key "lever" that businesses use to encourage consumers to try healthier/reformulated options within a product category
- For smaller producers to get onto shelves who may not have the budget for expensive advertising campaigns.
- To focus on seasonal, gifting or 'occasions-based' products (e.g., pancake day, Valentine's Day, summer barbeques etc.). Seasonality is an important aspect of Scotland's food culture.
- Promoting seasonality is also a means of bringing to wider attention festivals enjoyed by minority communities in the UK, such as Eid and Diwali, in which food often plays a major part.

Please explain your answer.

### Question 8

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

- Yes
- No
- Don't know

Please explain your answer.

The proposals are already far reaching with limited evidence that they will have any impact on obesity in Scotland however will likely disincentivise voluntary reformulation and increase costs for Scottish households.

It is imperative that if the proposals are taken forward a comprehensive and independent review of the policy should be undertaken within 2- 3 years from implementation and a sunset clause should be included. Our industry would be interested to explore how the Scottish Government and the food and drink producers, and retailers can work on a programme of research to evaluate data for 2-3 years to understand the impact of the restrictions on people's diets and wellbeing.

### Section 3. Location and other non-price promotions

#### Question 9

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

Checkout areas, including self-service:

- Yes
- No
- Don't know

End of aisle:

- Yes
- No
- Don't know

Front of store, including store entrances and covered outside areas connected to the main shopping area:

- Yes
- No
- Don't know

Island/ bin displays:

- Yes
- No
- Don't know

Please explain your answers.



We do not agree that free standing display units should be in scope, as we are not aware of any evidence that this encourages increased consumption. Free standing display are used to increase retail space during seasonal events such as Easter and Christmas. These are products that are not available all year round. Reducing retail sales space will mean more competition for existing shelf space, potentially disproportionately affecting smaller food and drink producers.

**Question 10**

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

- Yes (please specify)
- No
- Don't know

Please explain your answer.

**Question 11**

1. If included, should the location of targeted foods online be restricted on:

Home page:

- Yes
- No
- Don't know

Favourite products page:

- Yes
- No
- Don't know

Pop ups and similar pages not intentionally opened by the user:

- Yes
- No
- Don't know

Shopping basket:

- Yes
- No
- Don't know

Checkout page:

- Yes
- No
- Don't know

Please explain your answers.

The proposals make reference to how similar restrictions will be implemented in England. Most food and drink producers are not selling direct to the consumer and as such, the retailers will be best placed to explain any logistical issues with restrictions of online sales.

### Question 12

Should any other online locations be included in restrictions?

- Yes (please specify)  
 No  
 Don't know

Please explain your answer.

### Question 13

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

- Yes  
 No  
 Don't know

Please explain your answer.

The restrictions outlined within this consultation are being based on limited evidence that there will be any measurable impact on dietary health or obesity. Any further interventions would require research into their potential effectiveness. The best way for this is to do real-life scalable trials in store/online with retailers and food producers.

## Section 4. Places that would be subject to restrictions

2. It is proposed that promotions would apply to any place, both physical premises and online, where pre-packed targeted foods are sold to the public. This would include:
- **Retail** such as supermarkets, convenience stores, discounters and bargain stores (including online sales)
  - **Out of home** such as takeaway, home delivery services, restaurants, cafes, coffee shops, bakeries, sandwich shops and workplace canteens (including online sales)
  - **Wholesale** outlets where there are also sales made to the public (including online sales)
  - **Other outlets** such as clothes shops, tourist shops and pharmacies (including online sales)

### Question 14

Which places, where targeted foods are sold to the public, should promotions restrictions apply to?

Retail:

- Yes
- No
- Don't know

Out of home:

- Yes
- No
- Don't know

Wholesale (where sales are also made to the public):

- Yes
- No
- Don't know

Other outlets:

- Yes
- No
- Don't know

Please explain your answers.

It is likely the proposed bans will disproportionately affect smaller Scottish manufacturers and who use pricing and promotions to encourage shoppers to switch brands within a category. For smaller companies with limited budgets, an advertising campaign may not be feasible, and promotions may be the only affordable marketing mechanism.

**Question 15**

Are there other places/ types of business to which the restrictions should apply? It is proposed that the restrictions would not apply to: other wholesale outlets (where sales are only to trade); and where sales are not in the course of business, for example food provided through charitable activities, for example bake sales.

- Yes
- No
- Don't know

Please explain your answer.

**Question 16**

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

- Yes
- No
- Don't know

Please explain your answer.

Where regulations already exist in specific settings e.g. the healthcare retail standard and the school food nutrition regulations these restrictions should not apply as it creates an additional set of regulations overlaid with current restrictions.

## Section 5. Exemptions to restrictions

### Question 17

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

- Yes  
 No  
 Don't know

Please explain your answer.

It is unclear how specialist retailers, for example sweet shops, or kiosks could implement location restrictions.  
If the policy is progressed and an exemption is introduced for smaller/specialist retailers this will mean that competing businesses must abide by different policies. This would therefore result in a distortion of competition between larger retailers and smaller stores

### Question 18

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

	Yes	No	Don't know
Number of employees	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floor space	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
None	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Don't know	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answer.

By restricting what can be displayed in certain locations in store, overall shelf space for the products in scope is limited. This may lead retailers to prioritise shelf space to the biggest sellers. This would distort the market in favour of dominant brands and established products and will limit the availability of new innovative products to consumers, including those from smaller Scottish businesses.

### Question 19

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

- All businesses in scope of restrictions (no exemptions based on employee number)
- All in scope except businesses with fewer than 10 employees (micro)
- All in scope except businesses with fewer than 50 employees (small and micro)
- All in scope except businesses with fewer than 250 employees (medium, small & micro)
- Other (please specify)

Please explain your answer.

### Question 20

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

- Less than 93 square metres (1000 square feet)
- Less than 186 square metres (2000 square feet)
- Less than 279 square metres (3000 square feet)
- Other (please specify)

Please explain your answer.

Retailers are best placed to answer this question. We note that UK retailers in England will be exempt if they are <2000 square feet.

### Question 21

Are there any other types of exemptions that should apply?

- Yes
- No
- Don't know

Please explain your answer.

## Section 6. Enforcement and implementation

### Question 22

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

Don't know

Please explain your answer.

Local Authorities in Scotland have seen large reductions in funding and have seen their responsibilities in relation to food regulations increase as a result of the EU exit.

### Question 23

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

Please explain your answer.

If the government presses ahead with the proposals set out in this document, there will need to be time and resource dedicated to informing Scotland's 1015 food manufacturers, 65,000 retailers and 32 Local Authorities. Anecdotally, for the carrier bag charge this cost over £200,000 and required bespoke training resources as well as a full-time project manager employed for 2 years and dedicated resource to staff helplines to answer questions from the public and retailers. The HFSS proposals are much more complex and cover potentially thousands of food products so it is safe to assume the resource and cost to implement these regulations will be considerably higher. Applying the NPM to the proposed categories of food is highly complex and challenging. There will be a huge challenge for the enforcement officers to know whether certain products (particularly in options 3 and 4) are in scope of the regulations or not simply by entering premises and visually inspecting.

### Question 24

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

- 6 months
- 12 months
- 18 months
- 24 months
- Other (please specify)
- Don't know

Please explain your answer.

UK retailers and manufacturers have just gone through the process of preparing for HFSS location restrictions. We understand from the retailers that this has cost millions of pounds by retailers to prepare for.

The guidance and communications for implementation by the UK government has been poor – both in terms of clarity of guidance around implementation and timing with the guidance published at a very late stage.

The most cost-effective way that would minimise consumer confusion would be for the UK governments to urgently come together to review timelines for implementation of regulations relating to HFSS restrictions particularly give, at the time of writing, the UK government is considering halting any further HFSS restrictions over and above the location restrictions. As food producers, we would welcome being part of any implementation advisory group.

If a review is not forthcoming and the Scottish Government regulations are on a separate timetable to the rest of the UK and given the example of the carrier bag charge above, we would suggest that 12 months is the minimum time between the final guidance for businesses being published and the regulations being enforced to prepare businesses and train enforcement personnel.

In addition, there should be a 6 month grace period where any breach of regulations would not result in penalties, rather advice to correct and signposting to guidance / training for staff.

### Question 25

Are there any further considerations, e.g. as a result of the coronavirus pandemic, EU exit or rise in cost of living, that need to be taken into account in relation to **enforcement**?

Please explain your answer.

See response to Q 22

## Section 7: Legislative framework

### Question 26

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

- Yes
- No
- Don't know

Please explain your answer.

We do not believe fixed penalty notices are required for selling food in a free market. Compliance notices should be more than adequate to correct any inadvertent mistakes by retailers.

We note again the disparity between the proposals aimed at grocery retail where no such draconian action is proposed to out of home purchased food and drink or non packaged food for sale in retail.

## **Section 8. Impact Assessments**

### **Question 27**

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

### **Question 28**

What impacts, if any, do you think the proposed policy would have on people living with socio-economic disadvantage?

We are in the process of refreshing our impact of government policy on [food prices report](#) which showed in 2021 that the cumulative impact of UK and Scottish Government policy on food prices for Scottish Households was £160, we think it is likely the report will show this figure is higher in 2022.

One year on, with energy prices increasing exponentially (there is no energy price cap for businesses), commodity prices up by over 50% food inflation is increasing at an ever faster pace. Manufacturers (and retailers) cannot absorb these costs and food is and will continue to get more expensive.

This policy and subsequent regulation cannot be viewed in isolation. For instance, the Scottish Government pressing ahead with plans to charge Scotland's food and drink producers for cleaning up the cost of litter – an illegal activity carried out by selfish individuals over which food producers have no control. This alone will result in estimate annual cost of around £18million for food producers.

### **Question 29**

Please use this space to identify other communities or population groups who you consider may be differentially impacted by this policy proposal.

### **Question 30**

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



## Comment

We will respond fully through the Business and Regulatory Impact Assessment with data and evidence that sets out fully the impact of the proposals on our sector. The intended consequence of proposals was to discourage over purchasing of food to improve health however it is likely that over the next 12 months with the cost-of-living crisis many Scottish households won't have the budget available to purchase extra food and will instead be facing choices such as whether to heat their homes or eat.

In parallel, the sheer volume of regulation and cost of doing business means that many food and drink producers particularly SMEs will go out of business, at Scotland's economic detriment and resulting in job losses.

## **Question 31**

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

At the time of writing, there is a lack of clarity about how the UK and Welsh Governments plan to implement further measures relating to HFSS. Our members view the UK as a single market in which to trade and have responded to this consultation with developments in England in mind.

The Scottish Government acknowledged that restricting promotions of food and drink could not be brought forward during the height of the covid-19 pandemic. The situation facing communities and businesses across Scotland is now much worse than then with rampant inflation.

A [Kantar study produced for the UK Government](#) that analysed over 64,000 supermarket promotions over a 2 year period found that over 82% of increase in purchase is switching within a product category from one product to another or from one brand to a rival brand so does not significantly increase consumer spending. At a time when household budgets are being so squeezed, it is important to keep a buoyant and competitive grocery market to ensure choice.

It is imperative that if the proposals are taken forward, a comprehensive and independent review of the policy should be undertaken within 2- 3 years from implementation and a sunset clause should be included. Our industry would be interested to explore how the Scottish Government and the food and drink producers, and retailers can work on a programme of research to evaluate data for 2-3 years to understand the impact of the restrictions on people's diets and wellbeing.

On the economic modelling research produced by the Scottish Government the following was noted

- Only "discretionary" purchases were researched not the wide range of categories proposed in the consultation.
- Claims that a 613 kcal reduction per person per week could be achieved – this is an absolute upper bound of very wide range
- Authors making statements based on "own elaboration" based on (out of date) Kantar data:

*"The overall results are aggregated across all price promotions and could be viewed as an upper bound on the overall actual impacts that could follow from an introduction of promotion restrictions for discretionary foods, as they are dependent on the types of promotions included in the package of restrictions, as well as other factors, such as future changes in consumer purchasing decisions and retailer behaviour."*

*"The results from the choice experiment showed that restricting the advertising of promotions for chocolates, biscuits, and crisps did not significantly affect respondents' choices. However, when comparing with the results from the demand analysis, it is important to consider that the choice experiment analysis focused on very specific products instead of products within a category, and neither was it possible to consider the entire range of food and drink choices available to consumers."*