

General Questions (All)

If you are responding as a trade association, where applicable please provide information on behalf of your sector, where possible.

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

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

Business Information

1. Full name

Cat Hay

2. Email

Cat.hav@fdfscotland.org.uk

3. Are you responding as an individual or an organisation?

Individual

Organisation

4. Organisation name

Food and Drink Federation Scotland

5. Please describe the nature and scope of your business in Scotland.

Industry representative body

Manufacturer

Retailer

Out of home provider (e.g. fast food outlet, coffee shop, restaurant)

Wholesaler/Distributor

Other (please specify)

6. How many staff do you employ across the UK (by headcount and FTE)?

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

Should you feel that it would be helpful to provide further detail on your response (for example if you are a member of a franchise/symbol group), please use the field below:

7. What proportion of those staff are based in Scotland?

8. What is your annual turnover in Scotland?

9. What percentage of your total turnover does this represent?

10. 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 BRIA survey?

- Yes
- No

Supplementary Questions: Industry Bodies

What, if any, additional data on the number of businesses in your sector operating in Scotland are you aware of?

Are you aware of any other relevant data sources that would be useful in assessing the impact of the proposals?

Welsh Government Draft Impact Assessment

The Welsh Government recently carried out a [similar exercise](#) looking at the impact of very similar policy and regulatory interventions relating to HFSS. The Welsh Government's draft impact assessment estimated costs to Welsh businesses over 25 years:

Volume & price promotions:

For HFSS Manufacturers lost profits through retail sales were estimated to be -£13.75m and non-HFSS manufacturers retail sales were estimated to be +£2.63m. This results in an estimated net loss to our sector of -£11.12m in Wales.

Placement promotions:

For HFSS Manufacturers lost profits through retail sales were estimated to be -£241m and non-HFSS manufacturers retail sales were estimated to be +£81m. This results in an estimated net loss to our sector of -£160m in Wales.

To note, the costs estimated for the placement promotions only include impact of the rules being applied in three areas: store entrances, checkouts, and end of aisles. If additional locations were brought into scope (such as island/bin displays) the costs impact to businesses would be higher.

The estimates are also based on using the current 2004/05 Nutrient Profile Model to identify products subject to the restrictions. The costs impact to businesses would be higher if the 2018 NPM (yet to be published) was used as it brings into scope a much wider range of products.

FDF Report on Economic Impact of Regulation

The FDF has commissioned research to better understand the economic impact not only of this policy but several other policies that will increase the cost pressures facing food and drink manufacturers. As soon as this report is available, we will share this with the Scottish Government.

FDF State of the Industry Report

In addition, the FDF produces quarterly "state of industry" reports where we survey food and drink manufacturers across the UK to better understand the broader challenges that our industry faces including energy prices, staff shortages and dramatic increases in ingredients, transport and logistics and currency instability. [The State of industry report Q3 2022](#) was published on 11

November 2022 and shows that food and drink companies have seen input costs increase by an average of 21% over the past 12 months, with a similar rise expected next year.

Are there any other particular challenges for your sector, not covered elsewhere?

Costs for HFSS assessment/communication

Businesses have invested considerable amount of time and money in resource and processes to identify products which are non-HFSS with the existing 2004/05 NPM as this is required for regulations in England. This includes providing information to retailers (in the form of reporting or outer case labelling indications) as well as generation of guidance to smaller retailing operators.

If HFSS regulations in Scotland were to use the 2018 NPM, this will add further time and cost to businesses as they would be required to revise information and outer case labelling, as requirements would differ from England. One manufacturer has indicated that if the 2018 NPM were to be taken forward for this policy, this would cost them in the region of £175,000 for updating artwork and packaging alone.

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. If the 2018 NPM was taken forward, substantial guidance and training would be required to upskill companies in how to calculate the score.

Promotional mechanisms/locations

Promotions are used by food and drink manufacturers to make consumers aware of reformulated products and healthier innovations. There are limitations to using the NPM to determine what can/cannot be promoted as the NPM does not recognise many reformulated or smaller portion products. Businesses are therefore concerned about the impact of the proposed restrictions on the success of new launches that support the reformulation programmes.

We are concerned about the impact an overly restrictive policy would have on companies' ability to bring healthier variants to the market. One brand successfully used in store promotions to switch sales of a popular dessert to a low calorie and low-fat option – removing the equivalent of 7 million calories from the diet. This lower calorie dessert would still fail the NPM – so if all promotional mechanisms are removed, this successful initiative would not have been possible. It is essential that Government policy does not inhibit the growth of categories where companies are trying to invest in reformulation in line with Government targets.

Similarly with promotional locations in store, an overly restrictive policy (for example bring into scope free standing displays) could have further implications for businesses. 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.

Additional costs

It is difficult to estimate the full costs to businesses, but it should be noted that the financial impact to manufacturers goes wider than simply lost sales. It will include familiarisations costs as well as ensuring the HFSS calculation is done correctly and reported back to retailers (each with their own reporting mechanisms).

The impact assessment should also consider the disproportionate nature of the policy, as non-prepacked products can be marketed freely, but their prepacked equivalents are subject to restrictions. Similarly, it should consider the smaller Scottish manufacturers and challenger brands that will find it more difficult to launch products and will have to invest in technical experts to help make sense of the rules and to calculate the HFSS status of their products.

If the government presses ahead with the proposals there will need to be time and resource dedicated to informing Scotland's 1,185 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.

Evidence

We have previously raised concerns with the evidence for the policy proposals – particularly the [Economic Modelling research paper](#) which concluded that restriction on the advertising of price promotions on discretionary food products was shown to have a net impact of reducing energy by 613 kcal per capita per week. We are sceptical about the large, estimated calorie impact, which diverges from other estimations such as by DHSC for the promotional restrictions in England. It is therefore imperative that a wider review of the evidence base is considered to inform any policy proposals.

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.

Implementation

UK retailers and manufacturers have just gone through the process of preparing for HFSS location restrictions in England. 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. It is important that clear guidance is developed in consultation with industry to enable any regulations to be consistently understood and applied.

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. As food producers, we would welcome being part of any implementation advisory group. 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.