

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

RESPONDENT INFORMATION FORM

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

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

Academic Research Consortium specialising in commercial determinants of health

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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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

Please explain your answer.

Overweight and obesity are preventable causes of Non-Communicable Diseases (NCDs) including cardio-vascular conditions, cancers and diabetes. For cancer, overweight and obesity is the second biggest preventable cause in the UK – it affects a high proportion of the population and is linked with numerous cancer types¹. It is now predicted to overtake smoking as the primary cause of cancer in women in approximately 25 years². As a consortium of academic institutions and civil society partners engaged in research and policy development to prevent NCDs we fully support the Scottish Government's aim to halve childhood obesity by 2030. Based on the evidence of current levels of obesity in Scotland, we recognise that regulation must be designed to support significant dietary change across the population.

Research has demonstrated that rates of overweight and obesity in children and adults remain high across the UK, with evidence suggesting that it will continue to rise if strong, public health population level measures are not implemented^{3,4}. In Scotland, 66% of adults aged 16 and over are overweight or obese. 30% of children aged 2 to 15 were reported to be overweight or obese in Scotland according to the Diet and healthy weight: monitoring report 2020⁵. As we emerge from the Covid-19 pandemic, it is also worth noting that those who are obese are significantly more likely to suffer severe negative consequences after infection with COVID-19

¹ Brown, K.F., Rumgay, H., Dunlop, C. et al. The fraction of cancer attributable to modifiable risk factors in England, Wales, Scotland, Northern Ireland, and the United Kingdom in 2015. *Br J Cancer* 118, 1130–1141 (2018). <https://doi.org/10.1038/s41416-018-0029-6>

² Coker, T., Rumgay, H., Whiteside, E., Rosenberg, G. & Vohra, J. 2019. Paying the price: new evidence on the link between price promotions, purchasing of less healthy food and drink, and overweight and obesity in Great Britain.

³Office for Health Improvement and Disparities. Obesity Profile Update: July 2022 <https://fingertips.phe.org.uk/profile/national-child-measurement-programme>

⁴ Diet & Healthy Weight Monitoring Report: <https://www.gov.scot/publications/diet-healthy-weight-monitoring-report-2020/pages/1/>

compared to those of a healthy weight⁵. Regulation in this space therefore needs to be recognised as part of Scotland's longer term recovery plan and protection against potential future waves of COVID-19 or similar viruses.

A comprehensive and systematic approach to challenge the social norms around the consumption of HFSS products is required to address the increasing incidence and impact of obesity and overweight on individuals and wider society. Children living in a home where one or more parent or guardian are overweight or obese are more likely to also be overweight or obese^{6,7}. Thus, adults have an important role in preventing children adopting unhealthy behaviours that can increase their risk of becoming overweight or obese. By reducing the number of promotions on HFSS products and increasing promotions on healthy products, it will be possible to support parents in enabling better choices⁸ for the benefit of families and communities.

The main sources of energy consumption were previously demonstrated to broadly be the same in both children and adults with 25% of calories being derived from cakes, biscuits, cereals, confectionary and puddings for example in addition to a further 5% from sugary drinks⁹. Therefore, by including all products high in fat, sugar and salt, both children and adults would benefit.

Although alcohol is not within the scope of the current consultation, we would encourage the Scottish government to consider the outcomes of this consultation in the context of wider NCD prevention. An additional source of "empty calories" for many adults is alcohol. One unit of alcohol contains eight grams or 10ml of alcohol which equates to 56 calories (kcal) and this is often increased due to the addition of soft drinks – many of which are sugar sweetened beverages. The sugar content of alcohol varies and also should be taken into account. For example, 13% ABV wine is around 70 calories per unit making a 175ml glass of wine around 160 calories in total. At the present time there is no requirement to include calorie labelling on alcoholic beverages despite the fact that those that drink derived 10% of their calorie intake from alcohol¹⁰ whilst 80% of the public are unaware of the calorie content of a large glass of wine and over 60% didn't know how many calories there were in a pint of lager¹¹.

⁵ Sattar N, McInnes IB, McMurray JJV. Obesity Is a Risk Factor for Severe COVID-19 Infection: Multiple Potential Mechanisms. *Circulation*. 2020 Jul;142(1):4-6. DOI: 10.1161/circulationaha.120.047659. PMID: 32320270

⁶ <https://digital.nhs.uk/news/2018/health-survey-reveals-association-between-parent-and-child-obesity>

⁷ Lee JS, Jin MH, Lee HJ. Global relationship between parent and child obesity: a systematic review and meta-analysis. *Clin Exp Pediatr*. 2022 Jan;65(1):35-46. doi: 10.3345/cep.2020.01620. Epub 2021 Mar 29. PMID: 33781054; PMCID: PMC8743427.

⁸ Isaacs A, Halligan J, Neve K and Hawkes C. From healthy food environments to healthy wellbeing environments: Policy insights from a focused ethnography with low-income parents' in England, *Health & Place*, 77,2022, 102862,1353-8292. <https://doi.org/10.1016/j.healthplace.2022.102862>.

⁹ Calorie reduction: The scope and ambition for action (publishing.service.gov.uk): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800675/Calories_Evidence_Document.pdf

¹⁰ Bates, B., Lennox, A., and Swan, G., (eds.), 2009. National diet and nutrition survey: headline results from year 1 of the rolling programme (2008/2009). London: Food Standards Agency.

¹¹ <https://www.rsph.org.uk/static/uploaded/979245d2-7b5d-4693-a9b3fb1b98b68d76.pdf>

We recommend that a review of any measures introduced should be undertaken within two years to monitor implementation, compliance and efficacy.

Although we are selecting Option 4 in response to this question and note the use of the UK-wide reformulation programme in defining this option, we would like to note our position that reformulation should not be a primary focus of the proposed regulations. To meet the Scottish Government's target of halving childhood obesity by 2030, policy action needs to be bold and ambitious. As noted above, the intention needs to be significant dietary change with a focus on creating the environments which support that change. We believe that while reformulation can contribute to this, the priority should be ending promotions and removing discretionary HFSS products from our diets.

Question 2

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

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

Please explain your answer.

Given the scale of the challenge to halve childhood obesity, we believe that restrictions on promotions of foods identified in Option 1 and Option 2 should be applied to the whole category. This would make for a clearer, simpler approach which would aid implementation and avoid potential loopholes that could be exploited. We recognise that the NPM could more usefully be applied to foods categories in Option 3 and 4. We acknowledge the Scottish Government's rationale for specifying the use of NPM 2004/05 but would encourage the use of the modified NPM consulted upon in 2018 should it be published in time. As outlined in NHS guidelines¹², the number of calories a person should consume each day can be affected by a range of factors, including an individual's age and level of physical activity amongst other things. Expanding the information provided to include data on the nutritional composition of the food – such as the amount of fibre, salt, protein, fat and carbohydrates – would be valuable.

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

¹² <https://www.nhs.uk/common-health-questions/food-and-diet/what-should-my-daily-intake-of-calories-be/>

- Don't know
- Other (please specify)

Please explain your answer.

We strongly disagree with this proposal on the basis that it would potentially significantly limit the impact of the proposed restrictions by failing to capture HFSS products sold for consumption from Out of Home (OOH) settings. Foods prepared to order are not necessarily pre-packaged and so could be exempt from restrictions under this proposal. The Scottish Government recently consulted on calorie labelling in OOH settings and proposed that businesses would be required to calculate the calories in the products being sold using ingredients and nutritional information. It would therefore seem feasible for a similar approach to be applied to identifying HFSS foods for which promotions should be restricted. This would be supported by the suggested food category approach outlined in our response to question 2 above.

Producers and retailers of non-pre-packaged food are required to know the ingredients and nutritional content of their products for the purposes of informing customers of potential allergies and intolerances. We would strongly encourage retailers to provide indicative nutritional information at the point of selection – such as on a shelf label.

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.

A restriction on the promotions of HFSS products is supported by 62% of the public in the UK¹³. Limiting promotion would be a step forward in converting the current obesogenic food environment to a healthier food environment. Although some policy interventions are highly contested, they can be effective public health measures

¹³ 74% of the Public Support Government Action on Obesity in the Wake of Emerging Links with COVID-19 - Obesity Health Alliance: <https://obesityhealthalliance.org.uk/2020/06/03/74-of-the-public-support-government-action-on-obesity-in-the-wake-of-emerging-links-with-covid-19/>

without affecting industry revenues. For example, the tax on sugary drinks (the UK soft drinks industry levy) has resulted in a reduction in the amount of high-sugar drinks purchased since its introduction without harming the overall number of sales of soft drinks as consumers choose did not reduce the volume of soft drinks purchased – they chose to purchase more of the lower tier products with less sugar¹⁴.

There is increasing evidence of the extensive role that promotions play in influencing food preferences and purchases. Studies have shown that promotions result in people buying more than they initially intended to, with these products often being HFSS thus making them more affordable and a cheaper alternative to healthier foods^{15, 16}. Rather than stockpiling extra purchases, people tend to increase their consumption of these unhealthy products instead. In the context of the current cost of living crisis, this is of particular concern as many people will be sourcing cheaper alternatives and be relying on these promotions as an alternative to higher price healthier foods.

We are in favour of optimising the impact of restrictions on promotions to support healthier choices and therefore support the widest scope of the proposed restrictions. Therefore we are supportive of including extra free and meal deals in the multi-buys restrictions.

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.

Evidence shows that portion sizes served outside of home are generally larger and often results in both adults and children consuming more calories than they would

¹⁴ Pell D, Mytton O, Penney T L, Briggs A, Cummins S, Penn-Jones C et al. Changes in soft drinks purchased by British households associated with the UK soft drinks industry levy: controlled interrupted time series analysis BMJ 2021; 372 :n254 doi:10.1136/bmj.n254

¹⁵ Public Health England 2015. Sugar reduction: the evidence for action. Annexe 4: An analysis of the role of price promotions on the household purchases of food and drinks high in sugar
Croker, H., Packer, J., Russell, S. J., Stansfield, C. & Viner, R. M. 2020. Front of pack nutritional labelling schemes: a systematic review and meta-analysis of recent evidence relating to objectively measured consumption and purchasing. 33, 518-537.

¹⁶ Croker, H., Packer, J., Russell, S. J., Stansfield, C. & Viner, R. M. 2020. Front of pack nutritional labelling schemes: a systematic review and meta-analysis of recent evidence relating to objectively measured consumption and purchasing. 33, 518-537.

normally^{17,18} thus continuing to allow such promotions enables consumers to increase their consumption of “empty calories” without conscious thought. Free refills are a volume promotion and should be included in the scope of the proposed restrictions.

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.

We also recommend that consideration be given to restricting free re-fills on any HFSS product outside of the home – such as ice creams or frozen yoghurts which can also contribute to additional calorie intake without conscious thought. Such bottomless offers often are self-serve (for example Nando's Bottomless Fro-Yo). Consequently there is no formal measure of portion size and some vendors will include unlimited sugary sweets and sauces (also self-serve with no serving size) too.

Question 7

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

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

Please explain your answer.

A stated previously, there is increasing evidence of the extensive role that promotions play in influencing food preferences and purchases. Studies show that promotions result in people buying more than they initially intended to, with these products often being HFSS thus making them more affordable and a cheaper

¹⁷ Hollands GJ, Shemilt I, Marteau TM, Jebb SA, Lewis HB, Wei Y, Higgins JPT, Ogilvie D. Portion, package or tableware size for changing selection and consumption of food, alcohol and tobacco. Cochrane Database of Systematic Reviews 2015, Issue 9. Art. No.: CD011045. DOI: 10.1002/14651858.CD011045.pub2

¹⁸ John LK, Donnelly GE, Roberto CA. Psychologically Informed Implementations of Sugary-Drink Portion Limits. Psychological Science. 2017;28(5):620-629. doi:10.1177/0956797617692041

alternative to healthier foods^{19,20}. Rather than stockpiling extra purchases, people tend to increase their consumption of these unhealthy products instead. In the context of the current cost of living crisis, this is of particular concern as many people will be sourcing cheaper alternatives and be relying on these promotions as an alternative to higher price healthier foods.

A restriction on the promotions of HFSS products is supported by 62% of the public in the UK²¹. Limiting promotions – including temporary price reductions - would be a step forward in converting the current obesogenic food environment to a healthier food environment. Including TPRs may lead certain retailers to change their menu or discount HFSS items regularly so this would potentially be a loophole which could be exploited.

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.

Controlling price and affordability of unhealthy products is one of the WHO 'three best buys' for harm prevention. There are numerous price promotions used by producers and retailers and we believe as many of these as possible should be within the scope of the proposed restrictions. Those price promotions not currently covered in the consultation document include: price-marked packs, multi-packs, shelf-edge labels and signage and loyalty pricing. Failure to include the majority of price promotions will enable businesses to adapt promotional activity to those remaining available channels.

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:

¹⁹ Public Health England 2015. Sugar reduction: the evidence for action. Annexe 4: An analysis of the role of price promotions on the household purchases of food and drinks high in sugar

²⁰ Croker, H., Packer, J., Russell, S. J., Stansfield, C. & Viner, R. M. 2020. Front of pack nutritional labelling schemes: a systematic review and meta-analysis of recent evidence relating to objectively measured consumption and purchasing. 33, 518-537.

²¹ 74% of the Public Support Government Action on Obesity in the Wake of Emerging Links with COVID-19 - Obesity Health Alliance: <https://obesityhealthalliance.org.uk/2020/06/03/74-of-the-public-support-government-action-on-obesity-in-the-wake-of-emerging-links-with-covid-19/>

- 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.

The placement of products has significant impact on how likely customers are to buy them – for example, the placement of HFSS products at/near the till increases the likelihood of impulse purchases and is more likely to be an additional unplanned purchase²². Although some supermarkets have already voluntarily removed HFSS products from checkouts²³, these potential new regulations should ensure that all retailers are bound by the same standards, creating a level playing field. However, the development, implementation, monitoring and evaluation of such regulation must be robust and allow for amendments to be made as new evidence arises or as industry identify new ways to circumvent rules.

Research undertaken by our research partner the Obesity Health Alliance (OHA)²⁴ in 2018, found that 70% of products placed in prominent locations in a range of supermarkets were HFSS products and the 43% were for high sugar products particularly. Less than 1% of the food and drink products placed in high visibility locations were for fruit or vegetables. Additional research from the OHA following the covid-19 pandemic indicates that 72% of people welcome restrictions on the promotion of unhealthy foods in prominent areas like entrances and at checkouts²⁶.

²² Temptation at Checkout | Center for Science in the Public Interest:
<https://www.cspinet.org/temptation-checkout>

²³ Ejlerskov KT, Sharp SJ, Stead M, Adamson AJ, White M, Adams J (2018) Supermarket policies on less-healthy food at checkouts: Natural experimental evaluation using interrupted time series analyses of purchases. PLoS Med 15(12): e1002712. <https://doi.org/10.1371/journal.pmed.1002712>

²⁴ Obesity Health Alliance (2018). Out of Place – the extent of unhealthy food promotions in supermarkets

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.

We note the stated intention in the consultation document to match restricted locations to regulations in England. However, we would encourage the Scottish Government to pursue its own ambition for these restrictions. We note that other locations were included in the previous consultation in 2018 because they were identified as having an impact on purchasing habits. We believe that policy should be evidence-led and on this basis, these locations should still be included in the scope of the proposed restrictions. These include: seasonal/promotional aisles and designated queuing areas.

Question 11

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

Home page:

- Yes
- No
- Don't know

Favourite products page:

- Yes
- No
- Don't know

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

- Yes
- No
- Don't know

Shopping basket:

- Yes
- No
- Don't know

Checkout page:

- Yes
- No

Don't know

Please explain your answers.

The out of home food sector has grown rapidly in recent years and has expanded to include breakfast, lunch and groceries in addition to the standard dinner delivery. In 2016, Kantar reported that the UK's online grocery market was the largest in the world²⁵ and it is forecast to remain so with an estimated value of \$22.1 billion (£17.2bn) predicted for 2023²⁶. In 2021 58% of people reported purchasing their groceries online²⁷. These methods of purchasing food and drinks do not limit options to purchase food prepared outside of the home. The number of food outlets that accept orders through leading online delivery services increases alongside the level of deprivation in that area²⁸.

Prior to the Covid-19 pandemic, around a quarter of calories in the UK were consumed out of the home,²⁹ in places such as cafés, restaurants, takeaways and canteens and 15% of adults reported using an online food delivery service in the previous week³⁰. Following the acute period of the pandemic, 34% of households used online delivery services with 10% using them weekly³¹. A 2021 survey found 54% of young people had ordering unhealthy food online at least once a week³². Evidence from Nesta shows that repositioning of products online – for example positioning those with the lowest calorie count at the top and highest at the bottom – affected purchase choices. When compared to those using a menu where food items were randomly listed, those ordering from a repositioned menu selected products that contained less calories on average³³ demonstrating that placement (location) can influence purchasing online.

On this basis it would be proportionate to include online promotions, although we recognise the challenges in the context of devolved powers.

²⁵ McKeivitt, Fraser (2016) UK leads as third-largest adopter of online grocery shopping. 30/09/2016 Available from: <https://uk.kantar.com/consumer/shoppers/2016/kantar-worldpanel-ecommerce-grocery-market-data>

²⁶ <https://www.statista.com/statistics/960484/online-grocery-market-sizes-europe/>

²⁷ <https://store.mintel.com/report/uk-online-grocery-retailing-market-report>

²⁸ M. Keeble et al. 2021 'Socioeconomic inequalities in food outlet access through an online food delivery service in England: a cross-sectional descriptive analysis' Applied Geography 133(2021): 102498 <https://doi.org/10.1016/j.apgeog.2021.102498>

²⁹ Calorie reduction: The scope and ambition for action (publishing.service.gov.uk): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800675/Calories_Evidence_Document.pdf

³⁰ M. Keeble et al. 2020 'Use of online food delivery services to order food prepared away-from-home and associated sociodemographic characteristics: a cross-sectional, multi-country analysis' Int. J. Environ. Res. Public Health 17: 5190 <https://doi.org/10.3390/ijerph17145190>

³¹ National Diet and Nutrition Survey: diet, nutrition and physical activity (publishing.service.gov.uk): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1019663/Follow_up_stud_2020_main_report.pdf

³² BiteBack2030 2021 Survey data, pending publication

³³

https://media.nesta.org.uk/documents/Nesta__BIT_AHL_Food_delivery_apps_July_2022_Final_pdf_aWtrcHp.pdf

Question 12

Should any other online locations be included in restrictions?

- Yes (please specify)
 No
 Don't know

Please explain your answer.

As noted above, there has been an increase in the use of food delivery services since the covid-19 pandemic. We would welcome the inclusion of food delivery services and aggregator platforms in the restrictions.

Question 13

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

- Yes
 No
 Don't know

Please explain your answer.

Section 4. Places that would be subject to restrictions

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

- Don't know

Please explain your answers.

If any of the above were exempted, this could result in continued exposure to promotions that encourage increased selection, purchasing and consumption of HFSS products, which would undermine the aim of the policy and broader public health goals. It is vitally important that the policy is as robust as possible through effective policy design, as well as continued evaluation of the policy development process. Smaller retailers may require additional support from the Government to adjust to and comply with any new restrictions.

Question 15

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

- Yes
- No
- Don't know

Please explain your answer.

Charity sales, care homes and settings, hospitals, schools, colleges and early year/childcare settings should not be exempted, this could result in continued, albeit less, exposure to promotions that encourage increased selection, purchasing and consumption of HFSS products. This would undermine the aim of the policy and broader public health goals. It is vitally important that the policy is as robust as possible making compliance with restrictions applicable across the board wherever possible.

School food is a significant contributor to children's dietary intake in Scotland for those children in primary 1 to 5 who receive a free school lunch during term time and some schools providing breakfast before school starts³⁴. During term time, many kids

³⁴ <https://www.mygov.scot/school-meals>

of primary school age will eat two-thirds of their meals in school. It is the responsibility of schools to provide healthy diet choices in line with the Nutritional Requirements for Food and Drink in schools (Scotland) Regulations 2020.

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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.

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.

All retailers and stockiest of HFSS products should be within scope.

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.

Specialist business may not be able to comply with the restrictions on the placement of products as they only sell food products that fall under the umbrella of this proposal. However, they should still be required to comply with proposed pricing and placement restrictions.

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 type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Floor space	<input type="checkbox"/>	<input checked="" 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.

We do not accept that exemptions should be permitted on the basis of the number of employees or floor space. If they were exempted, this could result in continued, albeit less, exposure to promotions that encourage increased selection, purchasing and consumption of HFSS products, which would undermine the aim of the policy and broader public health goals. It is vitally important that the policy is as robust as possible through effective policy design, as well as continued evaluation of the policy development process. Additional support and guidance will be required to enable smaller retailers to comply with new restrictions.

Question 19

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

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

Please explain your answer.

Question 20

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

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

Please explain your answer.

Question 21

Are there any other types of exemptions that should apply?

- Yes
- No
- Don't know

Please explain your answer.

There are no other types of exemptions which should be permitted.

It is acknowledged that the Consultation notes that principles for exemption must be implementable in a proportionate fashion in addition to being meaningful whilst not undermining the overall policy. Whilst the UK Government has published regulation exemptions on the basis of number of employees, floor space and specialist retailers, which the Welsh Government has indicated they will also adopt, we strongly encourage the Scottish Government to take a substantial step forward in this policy area by not permitting such exemptions. The Scottish Government should push the UK Government to keep this exemption under review and advocate for the inclusion of data and evidence on the impact of the exemption on policy implementation in any evaluation.

We also suggest that including value promotions within restrictions is proportionate and meaningful and careful consideration is required to avoid the creation of loopholes which can be exploited – for example related to the exemption for products close to their expiry. “Expiry” should be clarified and clearly defined to avoid this.

Scottish Government should remain alert to industry claims that the business model of smaller retailers is reliant on the sales of food and drink high in fat, sugar or salt. Work by the SPECTRUM consortium has demonstrated that in recent years the financial importance of other another unhealthy commodity (tobacco) to smaller retailers across Britain has decreased; the industry's arguments that tobacco is essential to these businesses have weakened and the potential for policies that encourage small retailers to reduce the sales of unhealthy commodities has strengthened.

Section 6. Enforcement and implementation

Question 22

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

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

Please explain your answer.

Investment in local expertise in Environmental Health and Trading Standards is important in order to support producers and retailers to assure food safety and quality and that HFSS products are not mis-sold. These professionals already collaborate across the England-Scotland boundary so should be able to identify potential loopholes as well as identifying and supporting good practice. This would complement action by Food Standards Authorities, Public Health and NHS bodies.

Nonetheless, there are challenges around the calculation of NPM scores where the data may not be included within the product label and it is difficult for others to calculate the NPM if they are not the producer of the items concerned. Therefore consideration of a whole category approach would be a means to address this.

The inclusion of Industry in the development of guidance and regulations is of great concern. Whilst it is acknowledged that industry are stakeholders and should be consulted, they must not have any role in the development of regulations, policy design or policy implementation due to the clear conflict of interest.

Limited attention to the causes means that the adverse influence of powerful Unhealthy Commodity Industries (UCI) continues to pose a significant barrier to progress in public health policy. Recent examples of UCI actions during the COVID-19 pandemic serve to illustrate the vulnerability of public health policies to corporate capture³⁵. Policy makers must be aware of attempts by UCIs to influence their decision-making, exclude industry from decision-making processes and actively manage conflicts of interest in public health policy.

While there is a clear evidence base on the most effective and cost-effective policy options to prevent and reduce harm from non-communicable diseases resulting from the consumption of unhealthy products, such as HFSS foods, there remain significant barriers and challenges to their implementation. If Scotland is to realise its public health ambitions, these barriers must be exposed, understood and adequately responded to at the national policy level.

The influence of powerful corporate actors on the policy process is one of the most significant barriers. Unhealthy Commodity Industries (UCIs), including industries that produce, promote and sell alcohol, tobacco and foods high in fat, salt and sugar (HFSS) are often involved in public health policy making, which usually results in weaker, non-evidence-based policies.

Commercial Determinants of Health (CDOH) are those activities of the private sector that affect the health of populations. These can be direct, such as the marketing of unhealthy products, or more indirect, like industry lobbying against duty increases, donating to political campaigns, funding dubious research, and generating doubt around product harms.

Until recently, except for the tobacco industry, the commercial determinants have remained largely absent from how we think about the social determinants of health. That is now changing, with a growing understanding of the core drivers of such

³⁵ Signalling Virtue, Promoting Harm: Unhealthy commodity industries and COVID-19: https://ncdalliance.org/sites/default/files/resource_files/Signalling%20Virtue%2C%20Promoting%20Harm_Sept2020_FINALv.pdf

companies, their strategies, the third parties they use, and their direct and indirect impacts on health and health inequalities. The actions of unhealthy commodity producers can affect everything from consumption patterns of a particular product, to the social norms surrounding when and how much of it we use, to how normal and desirable children perceive products to be, to the tax and regulatory frameworks surrounding such products, the science regarding its harms and benefits, how policy-makers view the problem and its causes, and the framing of possible solutions in the mind of the public. Addressing NCDs requires an understanding of the CDOH and the actions of UCIs in driving them. It requires policy makers to be aware of attempts by UCIs to influence their decision-making and to actively manage conflicts of interest. The WHO Framework Convention on Tobacco Control (FCTC) Article 5.3 is the best international example of good practice in this area, intended to protect public health policy from the influence of the tobacco industry. A similar approach needs to be applied across other UCIs.

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.

Others may be better placed to comment on this.

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.

Others may be better placed to comment on this.

Question 25

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

Please explain your answer.

Research published by SPECTRUM and the NCD Alliance exposed UCI tactics during the COVID-19 pandemic, serving to illustrate UCI agility to use a global health crisis to promote brands, products and corporations whose economic interests frequently conflict with public health goals³⁵.

The report identified broad categories of strategic responses to the pandemic from UCIs:

- Adapting marketing and promotion of products;
- Corporate social responsibility and philanthropy;
- Pursuing partnerships and collaborations; and
- Shaping policy environments.

The report highlights the exploitation of the COVID-19 pandemic by UCIs to advance preferred policy positions, particularly as governments struggle to reconcile health objectives with economic and trade imperatives.

Key activities highlighted include:

- Lobbying to have unhealthy commodities designated as ‘essential’ products;
- Petitioning to accelerate the easing of lockdown;
- Working to undermine health and environmental regulations; and
- Attempting to shape strategies for economic recovery.

We have seen clear examples of these activities here in Scotland and UK. The report highlights several Scottish case studies including the Scottish Food and Drink Federation publicly congratulating the Scottish Government’s decision to withdraw a new bill introducing restrictions on junk food promotions in Scotland; and The Scotch Whisky Association calling for the Scottish Government to abandon proposed advertising restrictions on alcohol and offering to engage in “a sustained dialogue with government on smart taxation” in order to support the post-COVID-19 recovery.

These examples from Scotland, along with submissions from around the world, indicate an extraordinary range and scale of responses to COVID-19 from unhealthy commodity industries, reflecting extensive efforts on the part of these industries to be viewed as contributing to the pandemic response. These activities serve to promote these industries’ core interests by promoting products, enhancing reputations, and building political influence. They distract from the role of UCIs in harming population health, which made us more vulnerable to COVID-19. Collectively, the actions outlined in the report raise concerns about the prospect of the involvement of unhealthy commodity industries in the pandemic response directing public policy efforts away from broader health and social goals and towards the entrenchment of industry interests.

The implications of the growing cost of living crisis cannot be ignored. Studies have shown that promotions result in people buying more than they initially intended to, with these products often being HFSS thus making them more affordable and a cheaper alternative to healthier foods^{36, 37}. Rather than stockpiling extra purchases, people tend to increase their consumption of these unhealthy products instead. In the context of the current cost of living crisis, this is of particular concern as many people will be sourcing cheaper alternatives and be relying on these promotions as an alternative to higher price healthier foods.

Whilst we encourage restricting value promotions, it is acknowledged that minimising food waste is important and that overall the number of use-by-date HFSS products

³⁶ Public Health England 2015. Sugar reduction: the evidence for action. Annexe 4: An analysis of the role of price promotions on the household purchases of food and drinks high in sugar

³⁷ Public Health England 2015. Sugar reduction: the evidence for action. Annexe 4: An analysis of the role of price promotions on the household purchases of food and drinks high in sugar

are a small percentage of the overall number of products sold each day which would mean allowing an exemption could be tolerated.

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.

Any legislation must permit future changes in order to ensure that the policy can remain relevant and flexible to the future needs of society in relation to nutrition and healthy weight policies.

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?

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

Comment

We do not envision any negative impacts of the proposed restrictions on any specific individuals.

Question 28

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

Comment

We live in an obesogenic environment – this refers to environmental characteristics including that promotes obesity through a range of factors such as food affordability and availability, normalisation of food consumption in any place (such as walking down the street, during meetings) and the increasing calorie density of the food that is easily available. In some cases this may mean areas where individuals have little or no access to fresh fruit and vegetables at an affordable price. Our towns and villages are populated by an increasing number of fast food outlets and Glasgow and Edinburgh are reported to be amongst the seven cities with the highest takeaway

density across the UK³⁸. Contrasting the Scottish Index of Multiple Deprivation (SIMD) with take away density, it is clear that local authorities in Scotland that are classed as more deprived have an over representation of takeaways relative to their population⁶. An additional consideration is that our lives have become more sedentary, with opportunities for physical activity limited, for instance, by the lack of safe active travel infrastructure^{39, 40}.

International evidence linking the distribution of Hot Food Takeaways and health outcomes (including obesity) – including extensive work in the UK^{41,42} - have previously established a clear association between the number of fast-food outlets and increased BMI particularly amongst those living in more deprived neighbourhoods. Further research however, suggested that the increased BMI is associated with individuals living in areas of low-deprivation because of wider, more complex factors such as poor quality diets and lack of access to affordable, fresh products. The evidence on restricting the policy focus to the vicinity of educational establishment is not encouraging suggesting the importance of taking a more holistic approach to people's food environment⁴³.

It is important that policy objectives consider the impacts on inequalities (that is, not only address overall distribution, but also close the gap across neighbourhoods sorted by deprivation). This point has been demonstrated by recent work from SPECTRUM collaborators with regards to another unhealthy commodity – tobacco. The results from this work show that very significant differences in outcomes depending on the specification of the policy⁴⁴.

Question 29

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

Comment

None identified – others may be better placed to comment on this.

³⁸ The Scottish Parliament Information Centre: <https://spice-spotlight.scot/2019/08/07/fast-food-booming-a-cause-for-concern/>

³⁹ <https://apps.who.int/iris/bitstream/handle/10665/353747/9789289057738-eng.pdf> (p. 70 onwards)

⁴⁰ <https://www.nber.org/papers/w7423>

⁴¹ Burgoine, T., Sarkar, C., Webster, C.J. et al. Examining the interaction of fast-food outlet exposure and income on diet and obesity: evidence from 51,361 UK Biobank participants. *Int J Behav Nutr Phys Act* 15, 71 (2018). <https://doi.org/10.1186/s12966-018-0699-8>

⁴² Fraser LK and Edwards KL. The association between the geography of fast food outlets and childhood obesity rates in Leeds, UK. *Health & Place* 2010;16(6):1124-1128

⁴³ Shareck, M., Lewis, D., Smith, N., Clary, C., & Cummins, S. (2018). Associations between home and school neighbourhood food environments and adolescents' fast-food and sugar-sweetened beverage intakes: Findings from the Olympic Regeneration in East London (ORiEL) Study. *Public Health Nutrition*, 21(15), 2842-2851. doi:10.1017/S1368980018001477

⁴⁴ Caryl FM, Pearce J, Reid G, et al. Simulating the density reduction and equity impact of potential tobacco retail control policies. *Tobacco Control* 2021;30:e138-e143 <http://dx.doi.org/10.1136/tobaccocontrol-2020-056002>

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

None identified – others may be better placed to comment on this.

Question 31

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

Comment

Whilst the Consultation outlines an option to focus on the reformulation of products, we recommend that less emphasis is given to this – indeed we would remove this as a focus all together. Focusing on supporting healthy dietary choices and reducing the influence of price, availability and marketing upon the purchasing habits of individuals in order to reduce the consumption of HFSS products.