

Scottish Government consultation on Restricting Promotions of Food and Drink High in Fat, Sugar or Salt (HFSS)

Response from Obesity Action Scotland
Closing date: 23rd September 2022

We warmly welcome this consultation. We all wish to see a thriving, productive healthy population in Scotland. We must therefore substantially improve our diet and achieve dietary goals. Legislation addressing the promotion and marketing of unhealthy foods in the retail and out of home environment could generate big improvements in health, and also reduce inequalities.

Question 1 – Which food categories should foods promotion restrictions apply to?

Option 2: Discretionary foods + ice cream and dairy desserts

After careful consideration, we indicate our preference for option 2. We believe the evidence is clear and strong: a policy which targets discretionary foods and all elements of price and location promotion will deliver the most effective change in the population's diet. It would also provide a simpler model for enforcement and public and retailer understanding. We believe a policy that is focused on reducing the amount of discretionary foods in our diet will be more effective and cost-effective than a policy focused just on reformulation.

Promotions restrictions should apply to all the food categories detailed in option 2. In this approach, a model of whole category restriction can apply. This reduced the need to apply the nutrient profile model (NPM) and therefore simplifying implementation and enforcement. We need whole category restrictions that comprehensively target/restrict all types of price and location promotions of discretionary foods.

Products in these categories can still be sold, but not promoted. If we want to truly shift the diet of the Scottish population to make meaningful progress towards dietary goals, we need whole category exclusion. We also need the aim of this legislation to be dietary improvement, not just reformulation. If the aim is reformulation we are only tinkering at the edges, and not delivering the meaningful change required. **Reformulation of products needs to be addressed separately and should not be the focus of these regulations.**

A category-based approach is also easier to understand by retailers and consumers, and easier to enforce and regulate. This was evidenced by the World Health Organisation (WHO) European Office, who clearly state that category-based models are easier to adapt and modify¹.

A recent Scottish Government modelling study demonstrated that **restrictions on the promotion and marketing of unhealthy HFSS products could be powerful, reducing energy intake by more than 600 calories per person per week.** Crucially, however, this calorie reduction could only be achieved when all types of promotions are restricted. Restricting only one or two types of promotions would significantly reduce the impact.

¹ World Health Organization (WHO) Regional Office for Europe (2015) Nutrient Profile Model
http://www.euro.who.int/__data/assets/pdf_file/0005/270716/Nutrient-children_web-new.pdf

It is thus imperative that ice cream and dairy desserts are included. Ice creams, puddings and desserts are among the most commonly purchased type of food on promotion – around 40% of these types of products were purchased on promotion in 2018².

However, disappointingly, **“dairy desserts” are not defined in the consultation document**. It is thus currently unclear which products this specifically refers to. We raised this issue in our response to the 2018 consultation, which appeared to define dairy desserts as frozen dairy desserts, which we stated left an important loophole with regards to non-frozen dairy desserts and how these products are to be classified for the purposes of the restrictions³. This lack of definition risks the same issue(s) arising again.

One third of total calories purchased are on price promotion. However, paragraph 50 in the consultation document states that 27% of products purchased in 2020 were bought on promotion. 2020 was a pandemic year and thus not a normal or representative year. Figures from pre-pandemic years show a much higher proportion of products and total calories purchased on promotion. In 2018, price promotions accounted for 32% of total calories purchased and 36% of total fats and saturated fats purchased (34% in 2017) - amongst the highest in Europe⁴. Further, looking at specific product types, 74% of confectionery was purchased on promotion.

Price promotions target discretionary products. Conversely, much lower levels of healthier non-discretionary foods such as fruit and vegetables were purchased on promotion - less than 30%⁵.

Question 2 – Should nutrient profiling be used within all targeted food categories to identify non-HFSS foods?

No

We would strongly recommend that discretionary foods are covered by a blanket restriction based on the category descriptor, as based on the WHO Europe NPM⁶. As detailed in our response to question 1, unhealthy food and beverages was recommended by the World Health Organization’s (WHO) Commission on Ending Childhood Obesity (ECHO) as one of the very effective interventions to prevent childhood obesity⁷. The NPM model was designed for use by Governments for the purposes of restricting food marketing to children. Food categories 1-5 within the model clearly align with the discretionary foods which make up such a substantial part of our shopping basket in Scotland. Within the WHO model, categories 1-5 are subject to a simple, category-wide nutrient profiling. This approach is a practical, evidence-based way forward to tackle the health harming

² Food Standards Scotland (2020) Situation Report: The Scottish Diet: It needs to change 2020 update https://www.foodstandards.gov.scot/downloads/Situation_Report_-_The_Scottish_Diet_It_Needs_to_Change_%282020_update%29.pdf

³ Obesity Action Scotland (2019) Response to the Scottish Government’s Reducing Health Harms of Foods High in Fat, Sugar or Salt Consultation <https://www.obesityactionsotland.org/media/1236/promotions-oas-response-080119-final-who-lt.pdf>

⁴ Obesity Action Scotland (2021) Obesity and Promotion of HFSS Products https://www.obesityactionsotland.org/media/1630/promotions_b.pdf

⁵ Food Standards Scotland (2020) Situation Report: The Scottish Diet: It needs to change 2020 update https://www.foodstandards.gov.scot/downloads/Situation_Report_-_The_Scottish_Diet_It_Needs_to_Change_%282020_update%29.pdf

⁶ World Health Organization (WHO) Regional Office for Europe (2015) Nutrient Profile Model http://www.euro.who.int/__data/assets/pdf_file/0005/270716/Nutrient-children_web-new.pdf

⁷ World Health Organization (2016) Report of the Commission on Ending Childhood Obesity

products that make up such a considerable part of our diet in Scotland and the UK. It is simple to understand, to enforce and matches well with the Eatwell Plate which informs the public⁸.

Question 3 – If nutrient profiling were used, do you agree with the proposal to target pre-packed products and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge?

No

We strongly disagree with the proposals to include only pre-packed products. Including only pre-packed products will be particularly problematic for targeting price and location promotions in out of home (OOH) settings, where food is often made and/or served to order, and so is not pre-packed.

Paragraph 74 of the consultation document states that non-prepacked products are out with the scope of the restrictions as “businesses may not be able to determine whether these products can or cannot be promoted due to relevant nutritional information not being available”. We do not believe this is a valid argument. For example, in a consultation recently held by the Scottish Government on the introduction of mandatory calorie labelling in the OOH sector⁹, it was proposed that businesses would be required to calculate the number of calories in the products/items they sell, using the ingredients and nutritional composition of the product(s) to calculate calorie content. Therefore, if there is an expectation that retailers have the relevant nutritional information of products to be able to calculate calories, then this information is known and so can be used to determine if the products fall within the categories proposed for inclusion in restrictions on price and location promotions. Furthermore, it is also a legal requirement that businesses have full knowledge of the nutritional composition of and full list of ingredients in the products they are selling with regards to allergies and intolerances for example. Therefore, it is reasonable to expect a business to be able to provide a list of the full ingredients and nutritional composition. The argument that nutritional information is not available is not valid and is not an acceptable reason for excluding non-pre-packed products.

We would also propose that a category approach would provide even greater simplification to the model (as we described in question 2). This would allow businesses to easily determine whether products can be promoted or not.

Worryingly, “pre-packed” currently excludes food pre-packed for direct sale (footnote 22 on page 18 of the consultation document). **Failure to include such products in the restrictions is a significant omission and creates loopholes which can be exploited by manufacturers and retailers.** It is concerning that products such as freshly made filled baguettes, packaged and sold in a chiller cabinet are excluded (as detailed on pages 46-47 of the consultation document). This appears to be a contradiction. It is not clear why these products would not be treated the same as other pre-packed items, such as other pre-packed sandwiches sold in a supermarket for example. The consultation document does not provide any explanation for this apparent and worrying anomaly, and this needs to be clarified.

Furthermore, including only pre-packed products could also shift promotions and sales towards non-pre-packed items, such as pick and mix and loose bakery items, that are not subject to the

⁸ Garbrijeljic Blenkus Mojca (2017) Restrict Marketing and Advertising to Children. Action Area 4 of the EU AP on Childhood Obesity. Update from Slovenia on process of adapting WHO Europe nutrient profile Model. Presentation from High Level Group on Nutrition and Physical Activity meeting Brussels, 8th March 2017.

https://ec.europa.eu/health/sites/health/files/nutrition_physical_activity/docs/ev_20170308_co_05_en.pdf

⁹ Scottish Government (2022) Consultation on Mandatory Calorie Labelling in the Out of Home Sector in Scotland <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2022/04/consultation-mandatory-calorie-labelling-out-home-sector-scotland/documents/consultation-mandatory-calorie-labelling-out-home-sector-scotland/consultation-mandatory-calorie-labelling-out-home-sector-scotland/govscot%3Adocument/consultation-mandatory-calorie-labelling-out-home-sector-scotland.pdf>

restrictions. This would simply result in a shift in promotions to other HFSS items, rather than resulting in an overall decrease in the number of promotions on unhealthy HFSS items, which should be the aim for implementing the restrictions.

Significantly, **not including non-pre-packed items is a watering down of the proposals from the 2018 consultation, where such items were explicitly proposed for inclusion.** This is extremely disappointing. Excluding these types of food would have a negative impact on tackling promotions of HFSS products and create a loophole that industry would exploit.

It is welcome that the definition of soft drinks with added sugar includes fruit juices and milk drinks. This recognises the contribution these products can make to free sugar intake. However, it is important that the categories of soft drinks with added sugar to be covered by the restrictions are not limited to those products covered by the Soft Drinks Industry Levy (SDIL), but is a whole category restriction. Simply using the SDIL could result in products with added sugar up to 5g/100ml sugar being exempt from the restrictions.

The WHO Model category approach makes it clear that the only soft drinks that should be marketed to children are those free from sugar and sweeteners and some types of milk-based drinks. This is clear, simple and evidence based.

Question 4 – What are your views on the proposal to include the following within the scope of multi-buy restrictions?

Extra free: **Agree**

Meal deals: **Agree**

It is vital that both Meal Deals, and Extra Free types of promotions are included. It is thus welcome that the consultation proposes to include them. There needs to be a consistent and blanket approach across and between different types of price and location promotions to avoid loopholes.

The consultation document explicitly states that meal deals would be within the scope of the restrictions and that if one or more of the component items of the meal deal was a targeted HFSS or less healthy product, then the products could not be sold for less than the sum of their individual parts. We called for this in our response¹⁰ to the consultation held in 2018 and it is welcome it has been included. **However, it is important to ensure that the HFSS or less healthy components of a meal deal are not on promotion outside of the meal deal, to avoid them still being able to be accessed at a discounted price.** It also remains unclear if the restrictions on meal deal promotions would apply to lunch and dinner meal deals, for example.

Data from Food Standards Scotland (FSS) highlights that **meal deals account for the largest proportion of supermarket front-of-store offerings, and account for the highest proportion of trips on promotion.** Food on the go (which is largely constituted by meal deals) accounted for a fifth of all items purchased on promotion in supermarket convenience stores, with crisps, savoury snacks and popcorn, and sandwiches the top product categories sold on promotion (55% and 42% respectively)¹¹. The massive reach of these promotions underlines the need for them to be included in price and location promotions restrictions.

¹⁰ <https://www.obesityactionsotland.org/media/1236/promotions-oas-response-080119-final-who-lt.pdf>

¹¹ Food Standards Scotland (2019) The Out of Home Environment in Scotland

https://www.foodstandards.gov.scot/downloads/The_Out_of_Home_Environment_in_Scotland_2019_PDF.pdf

Question 5 – What are your views on the proposal to restrict unlimited refills for fixed charge on targeted soft drinks with added sugar?

Agree

We welcome the proposals to restrict unlimited refills of targeted soft drinks with added sugar, as these products account for a significant proportion of free sugars in our diet. **However, the restrictions need to include the whole category of soft drinks with added sugar.** It is important that categories of soft drinks with added sugar to be covered by the restrictions are not limited to just those products covered by the Soft Drinks Industry Levy, as this could result in products still high in sugar being exempt from the restrictions.

Furthermore, **diet soft drinks are currently not included in the product categories that will be subject to restrictions on unlimited refills.** Yet, diet soft drinks account for a growing proportion of soft drink consumption in Scotland – between 2014 and 2018, there has been a 20% increase in diet soft drinks sold, equivalent to over 272 million litres, and over 40% of diet soft drinks sold were sold on promotion in 2018¹².

In truth, diet soft drinks are a discretionary product and not required for a healthy diet. They can reinforce a preference for sweet flavours¹³ and where they are carbonated, the acidity can contribute to tooth decay¹⁴, and distracts attention from tap water, which should be the default healthy hydration option. This aligns with the WHO model/recommendation, (discussed in our response to question 2), which proposes that restrictions should apply to any beverages to which non-calorie sweeteners (i.e. diet soft drinks) are added.

Question 6 – Should other targeted foods be included in restrictions on unlimited amounts for a fixed charge?

Yes

Other targeted foods should be included. We believe whole category restrictions should apply and so the restrictions on unlimited amounts for a fixed charge would apply to all products within the relevant categories (detailed above in options 1 & 2).

We would also like to see restrictions on unlimited refills extended to diet soft drinks, (as detailed in our response to question 5). Diet soft drinks make up a significant and growing proportion of soft drink consumption in Scotland and should therefore be covered by promotions restrictions. Unlimited refills of diet soft drinks/soft drinks with added sweeteners are discretionary products, with no place in healthy diets, and have a negative effect on health.

Question 7 – What are your views on the proposal to restrict temporary price reductions?

Agree

We strongly support the proposals to restrict temporary price reductions (TPRs). TPRs were not included in the previous consultation proposals, and it is welcome to see the Scottish Government taking into consideration the views and evidence presented in the previous consultation held in 2018, where we and other respondents called for TPRs to be included in price promotion restrictions.

¹²https://www.foodstandards.gov.scot/downloads/MONITORING_RETAIL_PURCHASE_AND_PRICE_PROMOTIONS_2014_-_2018.pdf

¹³ Green E, Murphy C (2012) Altered processing of sweet taste in the brain of diet soda drinkers. *Physiological Behaviour* 107(4):560-7. doi: 10.1016/j.physbeh.2012.05.006

¹⁴ <https://bda.org/sugar>

TPRs must be included in price promotion restrictions as they are the most commonly used type of price promotion in Scotland. They account for 23% of all calories purchased¹⁵, and 43% of people report that TPRs caused them to impulse buy¹⁶. Further, the more than 600 calorie per person per week reduction presented in the Scottish Government’s own economic modelling study (outlined earlier in our response to question 1), could only be achieved if all types of price promotions were restricted. If only multi-buy promotions were restricted, that would achieve a much smaller reduction of only 115 calories per person per week¹⁷. This highlights the major impact that TPRs have on overall calorie consumption. TPRs therefore must be restricted.

TPRs are also the most commonly used type of promotion online. Our study in 2021 found that TPRs accounted for 57% of price promotions online¹⁸. Furthermore, the majority of these were for discretionary HFSS products.

Further, TPRs are also the most commonly used type of price promotion during the Christmas season and other seasonal periods, accounting for around a quarter of all price promotions. Substantially more calories are purchased and consumed during these periods¹⁹. Failing to include TPRs in regulations on price promotions will therefore do little to address this calorie over-consumption.

TPRs account for a large amount of promotions. **Failing to include TPRs in price promotions restrictions would thus powerfully undermine the proposed policy.** It could also encourage displacement of promotions away from other types of promotions included in the restrictions, like multi-buys, resulting in even more TPR promotions.

One of the arguments presented against the inclusion of TPRs in price promotion restrictions is the issue of defining temporary with regards to a price reduction. This problem of defining ‘temporary’ should be easily resolved using existing consumer protection guidance for pricing.

Question 8 – Are there any other form of price promotion that should be within scope of this policy?

Yes

Several important types of price promotions are not currently mentioned. These should be included within the scope of the policy, notably: price marked packs, multi-packs, shelf-edge labels, upselling, and loyalty pricing.

Price marked packs

Whilst we agree that price marked packs are not in and of themselves intrinsically promotional, we think it is important to monitor whether price marked packs would continue to be used as a promotional tool for categories and products covered by the restrictions.

¹⁵ https://www.foodstandards.gov.scot/downloads/MONITORING_RETAIL_PURCHASE_AND_PRICE_PROMOTIONS_2014_-_2018.pdf

¹⁶ Obesity Action Scotland (2021) Obesity and Promotion of HFSS Products
https://www.obesityactionsotland.org/media/1630/promotions_b.pdf

¹⁷ Scottish Government (2022) Economic modelling: reducing health harms of foods high in fat, salt or sugar: Final report
<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2022/05/economic-modelling-reducing-health-harms-foods-high-fat-sugar-salt-final-report/documents/economic-modelling-reducing-health-harms-foods-high-fat-sugar-salt-final-report/govscot%3Adocument/economic-modelling-reducing-health-harms-foods-high-fat-sugar-salt-final-report.pdf>

¹⁸ Obesity Action Scotland (2021) Survey of Food and Drink Promotions in an Online Retail Environment
<https://www.obesityactionsotland.org/media/1601/survey-of-promotions-online-march2021.pdf>

¹⁹ Food Standards Scotland (2016) Foods and drinks purchased into the home in Scotland using data from Kantar WorldPanel

https://www.foodstandards.gov.scot/downloads/Food_and_Drinks_Purchased_into_The_Home_in_Scotland_report.pdf

Multi-packs

These should be included, as failing to include them could create a loophole that the industry could exploit, by shifting promotions and production towards multi-packs. We note the previous consultation in 2018 proposed not to include them and there is no mention of them in the current consultation. This is disappointing.

Data from FSS shows that multi-packs of crisps and snacks are more frequently purchased on promotion than smaller sized single packs, encouraging overconsumption. Multi-packs were also the most common type of purchase for crisps and snacks, accounting for over 50% of all purchases of crisps and snacks in 2018²⁰. The data highlights the importance of multi-packs to the purchase and consumption of discretionary snack foods, and demonstrates why they should be included within the scope of the policy.

Shelf-edge labels

We note the consultation on this topic held by the Scottish Government in 2018 proposed that shelf-edge displays/labels and signage should be included in location restrictions for HFSS promotions. Such labels and displays are not mentioned in the current consultation which is disappointing and should be included.

Upselling

This needs to be included. We are disappointed to see that upselling is considered to be out with the scope of the regulations, and will therefore be exempt.

Upselling continues to be a problem for consumers when purchasing. Data from an FSS Consumer Survey highlights that just under two-thirds of people (64%) feel that OOH premises shouldn't encourage customers to upsize. More than a quarter (27%) report being asked if they wish to upsize too often, and a fifth report finding it difficult to say no, if they are asked to 'go large', make it a meal deal or add sides and extras²¹. We discuss this further in our response to question 13.

Loyalty pricing

This is an increasingly important promotion technique used by retailers and it must be included within the regulations. Loyalty pricing is preferential pricing offered to regular or loyal customers, such as Tesco Clubcard Prices. Evidence shows that around 95% of promotional sales in Tesco are now only available via the Clubcard Prices mechanism²², demonstrating not only the widespread reach of these promotions but also that there has been a shift in the behaviours of supermarkets in the promotions they offer. If other promotions were banned, but loyalty pricing permitted, it is likely that even more promotions would be offered via loyalty pricing mechanisms.

Evidence shows that loyalty pricing encourages consumers to make a purchase they wouldn't otherwise have made, with a third of people (33%) reporting that loyalty pricing resulted in them impulse buying²³.

It is disappointing that the types of price promotion listed above are not currently being considered for inclusion in the regulations. We note upselling, shelf-edge displays, and loyalty pricing/other purchase related loyalty rewards were listed in the consultation held in 2018 as types of promotions

²⁰ Food Standards Scotland (2020) Monitor retail purchase and price promotions in Scotland (2014 – 2018) https://www.foodstandards.gov.scot/downloads/MONITORING_RETAIL_PURCHASE_AND_PRICE_PROMOTIONS_2014_-_2018.pdf

²¹ Food Standards Scotland (2019) Food in Scotland Consumer Tracking Survey Wave 8 – Diet & Nutrition https://www.foodstandards.gov.scot/downloads/FSS_Consumer_Tracker_-_Wave_8_-_Report.pdf

²² <https://www.thegrocer.co.uk/supermarkets/why-loyalty-and-personalisation-schemes-will-set-supermarkets-apart-as-inflation-spirals/664363.article>

²³ Obesity Action Scotland (2021) Obesity and Promotion of HFSS Products https://www.obesityactionsotland.org/media/1630/promotions_b.pdf

to be included in the restrictions, recognising the important contribution these types of promotions can have on the purchase and consumption patterns of discretionary HFSS products²⁴. It is disappointing that it has not been included in this consultation, in light of this previous recognition by the Scottish Government.

Overall, price promotions of HFSS products encourages purchase and overconsumption of these products, and influences the types and volumes of purchases of the items on promotion. Price promotions encourage consumers to purchase around 18% more than they normally would²⁵, and increase consumption as a result. Such promotions also influence consumers preferences for unhealthy food, with 57% reporting in an FSS survey that multi-buy promotions on unhealthy HFSS products encourage them to impulse buy unhealthy products they didn't intend to purchase²⁶. Further, recent polling evidence from the Food Foundation shows that 81% of households prefer promotions on core essentials such as meat and dairy, fruit and veg, and pasta and rice, rather than on discretionary products such as sweets and confectionery²⁷. Promotions make products cheaper and change shopping habits, by normalising overconsumption and excess. Whilst promotions do make products cheaper, they do not save consumers money, as they promote and encourage purchases that wouldn't have been made had the promotion not been there.

There is also a high level of public support for measures to restrict price promotions of discretionary HFSS products. Findings from recent polling we commissioned, with a sample of more than one thousand people in Scotland, found 57% of people were in favour of restricting price promotions of unhealthy foods in shops. Further, the vast majority of respondents (87%) supported interventions to ensure special offers and promotions are applied to healthy foods and everyday essentials when shopping in-store and online, while only 5% of respondents opposed such measures²⁸.

As has been demonstrated throughout our response so far, price promotions of all types are much more common on discretionary HFSS products. Therefore, restrictions on price promotions need to cover as many different types of price promotion as possible.

Question 9 – Should the location of targeted food in-store be restricted at:

Checkout areas, including self-service – Yes

End of aisle – Yes

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

Island/bin displays – Yes

Promotions should be restricted in each of the areas listed above. It is welcome that location restrictions would also apply to pre-packed targeted foods and unlimited refills of non-pre-packed soft drinks, and also to equivalent locations online.

Increasing the **visibility of unhealthy products at key locations** throughout a store clearly leads to an increase in the sales of the products featured there²⁹. Key location displays are predominantly allocated to HFSS products. A 2018 study by the Obesity Health Alliance (OHA) found that 43% of products in prominent locations within premises were high in sugar. Of these, 42% were targeted by

²⁴ Scottish Government (2018) Reducing Health Harms of Foods High in Fat, Sugar or Salt. Consultation Paper <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2018/10/reducing-health-harms-foods-high-fat-sugar-salt/documents/00541066-pdf/00541066-pdf/govscot%3Adocument/00541066.pdf>

²⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/470175/Annexe_4_Analysis_of_price_promotions.pdf

²⁶ Obesity Action Scotland (2021) Obesity and Promotion of HFSS Products https://www.obesityactionsotland.org/media/1630/promotions_b.pdf

²⁷ <https://www.foodfoundation.org.uk/news/our-reaction-policies-protect-childrens-health-are-delayed-government>

²⁸ <https://www.obesityactionsotland.org/media/1854/policy-polling-august-2022.pdf>

²⁹ Cohen D and Lesser L. Obesity prevention at the point of purchase (2016) *Obesity Reviews* 17:389–396

Public Health England's Sugar Reduction Programme and 27% by their Calorie Reduction Programme. The study also found that less than 1% of products in high profile locations were fruit and vegetables³⁰.

Checkout areas

Checkout areas within stores are a key location and target area for displaying HFSS products, with many people reporting that displays at checkouts encourage them to buy the products on display. Furthermore, in the OOH sector, food placed at checkouts is more likely to be high in sugar such as cakes, biscuits and confectionery.

Data from an FSS Consumer Tracking Survey has reported that more than two thirds of people agree that placing HFSS products next to the checkout encourages people to buy more³¹, with two thirds of people (66%) in the Scottish Social Attitudes Survey stating that they believe that shops and supermarkets shouldn't be allowed to place HFSS products at checkouts³².

Removing HFSS products from checkout areas should significantly decrease the purchase and consumption of these harmful products. In one key study, removing unhealthy food and drink from checkouts and nearby aisle-ends led to approximately 1,500 fewer portions of confectionery being sold in a supermarket each week³³. Research has found that removing discretionary foods, like sweets and crisps, from supermarket checkouts can lead to a dramatic fall in the amount of unhealthy snacks purchased. The study found that there was a 76% reduction in purchases of sugary confectionery, chocolate, and crisps from supermarkets that had checkout location restrictions for HFSS products compared to those that did not, over the course of a year, and also found an immediate 17% reduction in purchases of sugary confectionery in supermarkets with checkout policies³⁴.

There is an opportunity to replace HFSS products at checkouts with healthier options, to promote and encourage purchase and consumption of healthier options. Furthermore, almost two-thirds of Scots supported measures to restrict where unhealthy food can be displayed in stores (findings from polling of more than one thousand people, commissioned by OAS in August 2022 in Scotland³⁵). This is supported by data from the FSS Consumer Tracking Survey³⁶, and a systematic review in 2020, which confirmed that increased availability and more promotions of healthy food, accompanied by fewer promotions of unhealthy food, leads to "better dietary-related behaviours"³⁷. There is thus a high level of public support for these proven measures to restrict the display of HFSS products at checkouts and other prominent locations.

³⁰ Obesity Health Alliance (2018) Out of place: The extent of unhealthy foods in prime locations in supermarkets <https://obesityhealthalliance.org.uk/wp-content/uploads/2018/11/Out-of-Place-Obesity-Health-Alliance-2.pdf>

³¹ Food Standards Scotland (2019) Food in Scotland Consumer Tracking Survey Wave 8 – Diet & Nutrition https://www.foodstandards.gov.scot/downloads/FSS_Consumer_Tracker_-_Wave_8_-_Report.pdf

³² NHS Health Scotland (2018) Public attitudes to reducing levels of overweight and obesity in Scotland <http://www.healthscotland.scot/media/1705/public-attitudes-to-reducing-obesity-in-scotland.pdf>

³³ World Health Organization (WHO) Regional Office for Europe (2022) WHO European Regional Obesity Report 2022 <https://apps.who.int/iris/bitstream/handle/10665/353747/9789289057738-eng.pdf>

³⁴ Ejlerskov K, Sharp S, Stead M et al (2018) Supermarket policies on less healthy food at checkouts: Natural experimental evaluation using interrupted time series analyses of purchases, *PLoS Med*, 15(12):e1002712

³⁵ <https://www.obesityactionsotland.org/media/1854/policy-polling-august-2022.pdf>

³⁶ Food Standards Scotland (2019) Food in Scotland Consumer Tracking Survey Wave 8 – Diet & Nutrition https://www.foodstandards.gov.scot/downloads/FSS_Consumer_Tracker_-_Wave_8_-_Report.pdf

³⁷ Shaw SC, Ntani G, Baird J, Vogel CA (2020) A systematic review of the influences of food store product placement on dietary-related outcomes, *Nutr Rev*, 78(12):1030-1045.doi:10.1093/nutrit/nuaa024

End of aisle

End of aisle displays clearly influence purchasing behaviour, in particular by encouraging impulse purchases. Data from FSS shows that just under a third of people have reported that end of aisle displays have led them to buy unhealthy food or drink on impulse³⁸.

Front of store

Prominent displays at the front of stores predominantly display unhealthy, HFSS products.

Evidence from a 2018 survey by the OHA found that 86% of food and drink products located at store entrances were products high in sugar and calories, including crisps, cakes and confectionery³⁹.

Location promotions on healthy products like fruit and vegetables can substantially increase and consumption. Prompts focusing on fresh produce (in the form of an easel board just inside store entrances), resulted in 60% more fruit and vegetables being purchased, a 62% increase in spend, a 49% increase in the quantity of healthier products purchased and an associated 52% increased spend on these healthier products⁴⁰.

The proposals could and should go much further in terms of the locations to be included. The locations identified in the current consultation have been significantly reduced from those identified in the 2018 consultation, with the justification of matching the current policy in England. This is extremely disappointing and represents a significant reversal on policy commitments. We will comment below on what additional locations should be included in our response to question 10.

Question 10 - Should any other types of in-store locations be included in restrictions?

Yes

Location promotions are impacting on achievement of dietary goals in Scotland and if we value the health of the population and achieving dietary goals we require brave and bold action. **We are therefore very disappointed by the limited number of in-store locations proposed to be included in the location restrictions.** Those listed in the consultation document represent a significant culling of the locations outlined in the 2018 consultation. The current consultation document states that the purpose of this is to match the regulations in England. This is disappointing - English regulations shouldn't be used as the sole basis for decision making in Scotland.

Other important locations were included in the 2018 consultation, but are missing from this consultation. We would like to see all of these in-store locations included in the proposed location promotion restrictions. All are recognised as having an impact, notably: promotion of value, shelf-edge displays, in-store advertising, upselling, coupons, branded chillers and floor displays, free samples, promotion/seasonal aisles, and designated queuing areas (where these would not be covered by any of the above included areas).

Shelf-edge displays/labels and signage should be included in location restrictions for HFSS promotions. Such labels and displays were specified in the Scottish Government consultation in 2018, but are not in the current consultation. That omission is very disappointing and should be reinstated.

³⁸ Food Standards Scotland (2019) Food in Scotland Consumer Tracking Survey Wave 8 – Diet & Nutrition https://www.foodstandards.gov.scot/downloads/FSS_Consumer_Tracker_-_Wave_8_-_Report.pdf

³⁹ Obesity Health Alliance (2018) Out of place: The extent of unhealthy foods in prime locations in supermarkets <https://obesityhealthalliance.org.uk/wp-content/uploads/2018/11/Out-of-Place-Obesity-Health-Alliance-2.pdf>

⁴⁰ Obesity Action Scotland (2019) Evidence overview: Impact of in-store advertising on consumer purchasing <https://www.obesityactionsotland.org/media/1398/hfss-promotion-restrictions-oas-evidence-overview-website-ready.pdf>

We are concerned about creating loopholes - limiting the locations where restrictions apply will result in other location promotions being employed in other parts of stores not covered by the regulations. For example, this photo was taken in a store in Wandsworth London as it prepared for the location promotion restrictions being introduced in England⁴¹. The store was able to draw significant attention to its promotions of unhealthy foods, while still complying with location restrictions that prevent checkouts, front of store or aisle ends being used for promotions.



Question 11 – If included, should the location of targeted foods online be restricted on:

Home page - **Yes**

Favourite product pages - **Yes**

Pop-ups and similar pages not intentionally opened by the user - **Yes**

Shopping basket - **Yes**

Checkout page - **Yes**

We strongly support the proposed restrictions being applied to targeted products online. Extensive evidence demonstrates a pressing need for both price and location restrictions on promotions of HFSS products to apply online as well as in in-store locations, to reflect changing shopping patterns.

Online location restrictions should match with physical in-store locations and should be applied to all of the locations listed above. Applying the same restrictions to online shopping environments would provide a consistent and fair approach for retailers and avoid any 'displacement' effects of not applying the restrictions across all channels. For example, if HFSS promotions were allowed in online stores, this may move customers online, reducing the potential impact of the restrictions. Applying the policy equally to both online and in-store locations ensures a level-playing field for businesses and can maximise health benefits. Furthermore, online location promotion restrictions

⁴¹ Photo taken in Wandsworth Alderbrook store at 40 Balham Hill, Wandsworth, London, SW12 9EL and received in personal communication

could be implemented easily and quickly due to them being digital and the benefits of such restrictions would be seen quickly due to high and growing usage⁴².

A substantial proportion of groceries in the UK are bought online. This is continuing to rise, particularly since the Covid-19 pandemic. Convenience is a major driver of online sales, and promotions continue to be a major influencing factor in online shopping behaviours. Our research study in 2021 found that 61% of promotions served online were non-monetary promotions and around a fifth of total promotions were on discretionary foods⁴³. Online shoppers are also more susceptible to promotions, with a study finding that around 60% of additions to online shopping baskets were 'disrupted', that is resulting from site searches or engagements with retailers promotions⁴⁴.

Non-monetary promotions are more important online than in a retail environment. This is because online shoppers can't physically see the stock, with the majority of promotions found at the stage of selecting items (on product landing pages and search results), or in the offers tab⁴⁵. Therefore, placing products where retailers know customers will visit or are required to visit as part of their journey on the website, including most or all of those identified above, is a logical strategy, and demonstrates the need for these online locations to be subject to regulation on the location of promotions of HFSS products.

It is important that price and location promotion restrictions also apply online, and that they mirror restrictions on price and location promotions in physical premises. Any restrictions online of HFSS products should cover as many types of promotions as possible. Evidence from our study into online promotions found that supermarkets employed a combination of price and non-monetary promotions, demonstrating that many combinations work⁴⁶. This indicates that the introduction of restrictions to only some types of promotions is likely to lead to compensation with other types.

The Covid-19 pandemic has had a significant impact on shopping habits, with more UK consumers now regularly shopping for groceries online. In 2019, 29% of the UK population had purchased groceries online, which was the highest figure in Europe at that time. Between March and April 2020, this figure had risen to 83% and the trend continued throughout the rest of the year. Online grocery sales increased by 79% in September 2020 compared to the same month the previous year. Such shifts in grocery shopping patterns can easily become habitual, with 69% stating that their use of and/or move to online grocery shopping during the pandemic would last beyond the pandemic⁴⁷.

Question 12 – Should any other locations be included in restrictions?

Yes

We strongly welcome the consultation proposal to include other online locations like apps, and aggregator platforms like Deliveroo and Just Eat. This is particularly relevant for the OOH sector. There has been a sharp increase in the usage of these platforms during the pandemic, and they now

⁴² Obesity Action Scotland (2021) Online Grocery Shopping: Factsheet
https://www.obesityactionsotland.org/media/1581/online_grocery_shopping_f_1802.pdf

⁴³ Ibid

⁴⁴ Munson J., Tiropanis, T. and Lowe, M. (2017) Online grocery shopping: Identifying change in consumption practices. In: Lecture Notes in Computer Science (including subseries Lecture Notes in Artificial Intelligence and Lecture Notes in Bioinformatics), Springer Verlag, pp. 192–211

⁴⁵ Obesity Action Scotland (2021) Survey of Food and Drink Promotions in an Online Retail Environment
<https://www.obesityactionsotland.org/media/1601/survey-of-promotions-online-march2021.pdf>

⁴⁶ Ibid

⁴⁷ Ibid

account for 70% of takeaway delivery orders. Additionally, these platforms also predominantly sell and promote unhealthy HFSS products to users⁴⁸.

Given this growth in usage and the dominance of HFSS products, these platforms need to be included in the regulations to restrict price and location promotions, to ensure consumers are offered and have access to healthy options. This could be achieved, for example, by a regulation that permits only healthy products to be shown on app home and landing pages. A recent study by Nesta, which examined the effect of food placement using 4 hypothetical app layouts, found there was a significantly higher number of calories ordered on the control app (where food and restaurants were positioned at random) than the 3 other versions of the app (where healthier and lower-calorie options were given more prominence). In the app where food was repositioned to promote healthier options, study participants ordered 6% fewer calories, and in the app where restaurants were repositioned, study participants ordered 12% fewer calories⁴⁹. This study highlights the importance of and need for restrictions on location promotions in online and digital environments, and the opportunities this presents for encouraging and promoting healthier options and behaviours.

Question 13 – Are there any other restrictions on promotions (in-store or online) not covered by our proposals for restricting price and location promotions that should be within scope?

Yes

Restricting promoting the value of a product is important, and should be included. However, we note the consultation document states that restricting promoting the value of a product would not be included, due to “a lack of evidence” (i.e. on promotion of value). Specifically, paragraph 113 states, in relation to the previous consultation, that few specific comments were received to inform proposals on promotion of value. We disagree with this statement, as we provided specific evidence in the previous consultation on this. Table 7.3 in the 2018 consultation analysis summary document shows that 726 responses were received from individuals and organisation to the question on this topic⁵⁰. We regard this to be a large enough number of responses and does not support the lack of evidence argument. Further, there needs to be clarification on what is meant by promotion of value as detailed in paragraph 113, as this is currently unclear and is not defined.

In relation to promotion of value, paragraph 114 states that research was commissioned on this and it found there to be no impact. That is not correct. **In fact, the study clearly indicates that restricting promotion of value is likely to have a positive effect in terms of the calories consumed from HFSS products.** It states the following:

*“All the nutritional categories showed similar results (calories, sugar, fat, salt), which indicates that **restricting promotion of value on discretionary foods is likely to be positive** in terms of the purchase/consumption of foods high in fat, sugar and salt. It should be noted that the reduction in nutrients was only partially compensated by the increase in quantities in non-discretionary food and drinks (i.e., other food and drinks).”⁵¹* It is thus unclear why the consultation claims that there is no

⁴⁸ Food Standards Scotland (2021) The Out of Home Food Environment in Scotland

<https://www.foodstandards.gov.scot/publications-and-research/publications/the-out-of-home-environment-in-scotland>

⁴⁹ Nesta (2022) Reordering food options on apps could help to reduce obesity

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

⁵⁰ Scottish Government (2019) Consultation Analysis – Reducing health harms of foods high in fat, sugar or salt

<https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2019/09/reducing-health-harms-foods-high-fat-sugar-salt-consultation-analysis/documents/consultation-analysis-reducing-health-harms-foods-high-fat-sugar-salt/consultation-analysis-reducing-health-harms-foods-high-fat-sugar-salt/govscot%3Adocument/consultation-analysis-reducing-health-harms-foods-high-fat-sugar-salt.pdf>

⁵¹ Scottish Government (2022) Economic modelling: reducing health harms of foods high in fat, salt or sugar: Final report

<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2022/05/economic-modelling-reducing-health-harms-foods-high-fat-sugar-salt-final-report/documents/economic-modelling-reducing-health-harms-foods-high-fat-sugar-salt-final-report/documents/economic-modelling-reducing-health-harms-foods-high-fat-sugar-salt-final-report.pdf>

impact. We would therefore be grateful for clarification on why this conclusion that has been reached, as the evidence linked to in the consultation document appears to suggest the contrary.

Upselling or upsizing should be included. At present they have been excluded from this consultation. Both were included in the previous consultation in 2018, recognising the important contribution this type of promotion can have on the purchase and consumption patterns of HFSS products. It is disappointing that it has not been included in this consultation, in light of this previous recognition by the Scottish Government.

Upsizing continues to be a problem for consumers (as outlined in our response to question 8). Recognising the extent of the issue, FSS ran a campaign in 2018 called #NoToUpsizing, which aimed to highlight the problem of upsizing or upselling to consumers. The campaign research reported that 45% of people didn't consider the additional calories they consumed from upsizing. Furthermore, 23% upsize regularly and this can have a significant impact on weight. For example, upselling a burger meal in a fast food restaurant (by adding fries and a sugary soft fizzy drink to a single burger) will add around 450 additional calories, which if eaten weekly, could result in a 3lbs weight gain over the course of the year⁵², and that is only for one product. It is likely consumers will upsize on other items too, such as coffees and adding a cake to a coffee order, which contributes further additional weekly calories.

Other important types of promotion should also be included, notably: vouchers/coupons, free samples, and branded chillers (in addition to the types of promotion listed in our response to question 8). For example, currently, a company manufacturing and selling donuts provides such chiller cabinets promoting and prominently displaying their products in supermarkets, usually at or near store entrances. Such display units are not explicitly mentioned. It is therefore unclear from the current consultation if these would be within the scope of the regulations; but presumably not. The regulations on restricting location promotions needs to ensure that these display cabinets are totally removed (or as a minimum not located at the front of stores) and that no positional advantage is given to discretionary foods.

Question 14 – Which places, where targeted foods are sold to the public, should promotions restrictions apply to:

Retail – **Yes**

Out of home – **Yes**

Wholesale (where sales are also made to the public) – **Yes**

Other outlets – **Yes**

We strongly welcome the sectors outlined here to be included, particularly the inclusion of the OOH sector. Promotions in the OOH sector make a major contribution to purchase and consumption of HFSS products and overall calorie intake.

However, the proposal to only apply restrictions to pre-packed foods will significantly undermine this, as the vast majority of food purchased OOH is non-pre-packed⁵³. This loophole must be filled.

[https://www.foodstandards.gov.scot/news-and-alerts/upsizing-habit-could-lead-to-upsized-waistlines-says-food-standards-scotland#:~:text=Food%20Standards%20Scotland%20\(FSS\)%20is,%2C%20cafes%2C%20shops%20and%20takeaways.](https://www.foodstandards.gov.scot/news-and-alerts/upsizing-habit-could-lead-to-upsized-waistlines-says-food-standards-scotland#:~:text=Food%20Standards%20Scotland%20(FSS)%20is,%2C%20cafes%2C%20shops%20and%20takeaways.)

⁵² [https://www.foodstandards.gov.scot/news-and-alerts/upsizing-habit-could-lead-to-upsized-waistlines-says-food-standards-scotland#:~:text=Food%20Standards%20Scotland%20\(FSS\)%20is,%2C%20cafes%2C%20shops%20and%20takeaways.](https://www.foodstandards.gov.scot/news-and-alerts/upsizing-habit-could-lead-to-upsized-waistlines-says-food-standards-scotland#:~:text=Food%20Standards%20Scotland%20(FSS)%20is,%2C%20cafes%2C%20shops%20and%20takeaways.)

⁵³ https://www.foodstandards.gov.scot/downloads/Diet_and_Nutrition_-_Recommendations_for_an_out_of_home_strategy_for_Scotland.pdf

There needs to be consistent application of the regulations between the sectors listed. This is important to prevent loopholes both emerging and being exploited, and to avoid undermining public confidence in measures designed to protect public health.

Question 15 – Are there other places/types of business to which the restrictions should apply?

Yes

The restrictions should apply to restricted products sold on modes of transport, such as catering trollies on trains, and in transport hubs.

The restrictions should also apply to publicly run or operated facilities where food is purchased by the public, such as cafes in leisure centres and museums for example. For the latter, regardless of whether they are considered to be OOH or retail premises, they should be subject to the same restrictions as other businesses selling HFSS products.

Restrictions on price promotions should also apply to wholesale businesses. We note the consultation document currently states that the restrictions would not apply to wholesale businesses where sales are made solely to trade or other businesses. We would like clarification on why this is the case. We agree it could be impractical for location restrictions to apply, based on the warehouse style layout of many wholesale facilities. However, if retailers can purchase HFSS products on price promotion in the wholesale environment, then they could be deemed to be more likely to sell this on in a retail setting to customers on price promotion.

Question 16 – Are there other places/types of businesses which should not be within the scope of the restrictions?

No

There should be no further exemptions to the restrictions. There needs to be consistent application of the regulations between the sectors listed. **It will be crucial to avoid loopholes** emerging and being exploited, and thus undermining public confidence in measures designed to protect public health.

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

We accept that specialist businesses should be exempt from location restrictions. We recognise that specialist shops, such as confectioners, would be unable to stop displaying food subject to the restrictions at the front of store, at end of aisles or in promotional bins, as these products are the only category of product they sell.

However, they should still be required to comply with price promotion restrictions, and restrictions on checkout locations should apply in all stores. Checkout displays prompt impulse buys that are additional and on top of what consumers select from the shop floor before they head to the checkout area, so there is no need for customers to be nudged to purchase even more when they are waiting to pay.

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:

Number of employees – **No**

Floor space – **No**

Other (please specify)

There should be no further exemptions.

Exemptions based on floor space and number of employees are currently in place in the English regulations and have been detailed in the proposals by the Welsh Government. **We do not support such exemptions and call on the Scottish Government not to introduce such exemptions. These would create loopholes, enabling unscrupulous companies to undermine the regulations.**

Questions 19 & 20 only to be answered if answered yes to Q18.

Question 21 – Are there any other types of exemptions that should apply?

No

We would again emphasise that there should not be any other types of exemptions, lest damaging loopholes be created. Avoiding exemptions is important to ensure consistency in the application of the regulations between different settings, to prevent loopholes being exploited and to avoid undermining public understanding and confidence in the measures.

There should also not be any seasonal exemptions for both price and location promotions. As outlined in our response to question 7, evidence shows there is a large uplift in calories purchased from discretionary foods during festive periods⁵⁴.

Paragraph 130 in the consultation document outlines the principles that will be used to guide any decisions on whether an exemption should apply. These are implementable – can the exemption be implemented in a proportionate way - and meaningful – the exemption does not undermine the overall aims and benefits of the policy. **We believe that the majority, if not all, of the exemptions proposed in the consultation (paragraph 130) fail to meet these principles and so should therefore not be implemented as exemptions. Such exemptions could also widen existing inequalities between communities.**

This is particularly the case for the meaningful principle, in relation to the exemption for floor space and number of employees. This could widen existing inequalities between the most and least deprived communities. For example, as smaller convenience stores are more prevalent in more deprived areas, excluding businesses on the basis of floor space and/or number of employees, could have a clear inequalities impact, disproportionately negatively impacting more deprived areas, as they would have more businesses that are exempt from the regulations and so individuals in these communities would continue to be more greatly exposed to price and location promotions in these businesses.

Also, with regards to the implementable principle, there is a question or issue with how “proportionate” is defined and how this would be determined. This is not made clear in the

⁵⁴ Food Standards Scotland (2016) Foods and drinks purchased into the home in Scotland using data from Kantar WorldPanel

https://www.foodstandards.gov.scot/downloads/Food_and_Drinks_Purchased_into_The_Home_in_Scotland_report.pdf

consultation and so would be open to the interpretation of the individuals/businesses applying the principle. This is another worrying potential loophole.

We believe promotion of value restrictions should be pursued, and so it is important that regulations are in place to ensure products close to their expiry date are not exempt if promotions of value restrictions are pursued. We acknowledge that the consultation does deem an exemption for products close to their expiry date to be appropriate. For location restrictions, we welcome that the consultation recognises that they should not be exempt from these restrictions, with the possibility to create a loophole which could undermine proposed location exemptions if they were exempt. However, in relation to price promotions, we note the consultation states that an exemption from price restrictions is not needed, as the proposals are not pursuing promotion of value restrictions.

Applying restrictions on temporary price reductions (TPRs) would thus be valuable. Products close to expiry would then not be within the scope of the restrictions as any discount applied to foods close to expiry would be permanent before the product is sold or removed from sale. However, there remains the possibility to circumvent by either shortening shelf life or holding off on promotions until close to expiry before reducing the price. There is also the issue of how to define close to expiry (i.e. how many days), which is not detailed in the consultation and needs to be clarified.

Question 22 – Do you agree with the proposal that local authorities are best placed to enforce the policy?

Yes

Local authorities are best placed to enforce the policy as they already have enforcement responsibility for food hygiene.

However, despite this, there remain a number of areas of concern in this regard, notably around calculating NPM scores. **It would thus be crucial for the regulations to use a whole category approach, as outlined in the WHO evidence-based model,** to overcome this problem. There would otherwise be concerns with how local authority officers would be able to calculate NPM scores during an inspection e.g. free sugar content of a product is required to calculate the NPM score, but this is not always detailed on product labels. Furthermore, a scoring system such as the UK NPM also makes it very difficult to have true transparency, as it is very difficult for independent or third sector organisations to calculate the score for products. Such a scoring system would instead leave the power in the hands of the food industry.

The proposed involvement of industry is concerning. Involvement of industry in the design of policy and regulation is a clear conflict of interest and undermines the effectiveness of the policy and regulations implemented. The private sector should have no role in policy development in relation to public health. Parts of the private sector are responsible for the production, marketing and selling of HFSS products and so allowing their involvement in public health policy and regulation decision making would fatally undermine the process and could lead to their interests being pursued through public health initiatives.

We recognise industry are an actor here and they need to be consulted. **However, crucially, they should not and cannot have any role in designing public health policy and regulations.** Paragraphs 152 and 157 in the consultation document currently outline worrying proposals to work with industry in developing regulations and guidance, and to develop materials for industry, co-designed by an industry representative body, to support effective implementation. Such industry involvement is of concern. The best and fairest approach is for regulations to create a “level playing field”. The introduction of mandatory measures will create this level playing field across the retail sector and,

crucially, also the out of home sector. This is supported by industry (British Retail Consortium), and by McKinsey Institute⁵⁵ and FSS⁵⁶. These reports agreed that re-balancing of promotional activity towards healthier food will only work if all industry actors agree to take action. FSS concluded that population level improvements could only be achieved with “consistency in approach within and between sectors”. Similarly, representatives of the British Retail Consortium during Health Select Committee hearings in 2015 and then in 2017 stressed the importance of government intervention to achieve a level playing field equally fair to all businesses^{57 58}.

Question 25 – Are there any further considerations, for example as a result of the coronavirus pandemic, EU exit, or rising cost of living, that need to be taken into account in relation to enforcement?

Restricting price promotions will have a positive effect on the whole population by influencing the food environment and options available to consumers⁵⁹. Restricting price and location promotions will therefore positively impact on the rising cost of living.

As outlined throughout our response, price and location promotions of HFSS products encourage purchasing and consumption of these products, and cause consumers to spend more money than they otherwise would. This has clear implications for the rising cost of living. Contrary to industry arguments, promotions do not save people money and instead encourage them to spend more. Figures from the Money Advice Service estimate that promotions cause consumers to spend around £1,300 a year more than they otherwise would⁶⁰. Significantly, promotions appeal to everyone from all demographic groups, not just those on low incomes.

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 setting of offences and the issuing of compliance notices and fixed penalty notices)?

Yes

We strongly support this proposal as detailed in paragraph 19 in the executive summary and in section 7, paragraphs 159 – 161 in the consultation document. Ensuring that the legislation is flexible enough to permit further legislative change needed in the future is vital if the policy is to remain relevant and be able to adapt to future circumstances, opportunities and challenges in relation to diet, healthy weight, and the food environment.

We welcome the commitment in paragraph 160 for action to include labelling, marketing and advertising of less healthy food and drink, and the descriptions which may apply to them. Policies in these areas are strongly evidence-based regarding their effectiveness in addressing harms from HFSS products.

⁵⁵ Dobbs R, Sawers C, Thompson F, et al. Overcoming obesity. An initial economic analysis. Discussion paper. 2014

⁵⁶ Food Standards Scotland (2016) Diet and nutrition: Proposals for setting the direction for the Scottish diet. Paper for the board meeting 20 January 2016, FSS 16/01/04

⁵⁷ The House of Commons Health Committee (2017) Childhood obesity: Follow-up. Seventh report of session 2016- 17

⁵⁸ The House of Commons Health Committee (2015) Childhood obesity - brave and bold action. First report of session 2015-16, HC 465

⁵⁹ UK Government Department for Health and Social Care (2021) Restricting promotions of products high in fat, sugar and salt by location and by price: equality assessment <https://www.gov.uk/government/consultations/restricting-promotions-of-food-and-drink-that-is-high-in-fat-sugar-and-salt/outcome/restricting-promotions-of-products-high-in-fat-sugar-and-salt-by-location-and-by-price-equality-assessment>

⁶⁰ Money Advice Service (2016) Shopping offers make us spend £1,300 more per year

<https://www.themoneypages.com/latest-news/special-offers-making-shoppers-spend-an-extra-1300-a-year/>

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.

We do not foresee any negative impacts of the proposed restrictions of any of the characteristics listed here. Indeed, inequalities are likely to be reduced, because the most disadvantaged groups are likely to gain the biggest benefits⁶¹.

Any groups or individuals in Scotland could potentially benefit from the proposed restrictions through (1) spending less on, (2) buying less of and consequently (3) consuming less of the products subject to the restrictions.

Question 28 – What impacts, if any, do you think the proposed policy could have on people living with socio-economic disadvantage? Please consider both potentially positive and negative impacts and provide evidence where available.

The proposed policy could particularly benefit people living with socio-economic disadvantage. Evidence from a recently published economic modelling report by the Scottish Government shows a significant weekly reduction in calories consumed of over 500kcal per person in those in the most deprived quintile⁶². This is likely to reduce inequalities by improving both the weight and overall health of these individuals.

Furthermore, more deprived households are actually more price-sensitive, and will therefore experience disproportionately greater health benefits, thus potentially narrowing the inequalities gap.

The proposed policies to restrict promotions would have a positive impact on the socio-economically disadvantaged, reducing the gap between rich and poor. Paragraph 27 in the 2018 consultation analysis report is therefore incorrect in postulating that such policies would have a disproportionately negative impact on the socio-economically disadvantaged by increasing food costs⁶³. Recent evidence shows this not to be the case - promotions actually encourage people to spend more than they otherwise would, by encouraging them to purchase discretionary products. Promotions increase the volume of HFSS food and drink purchased during a shopping trip with no reduction in the volume purchased at subsequent trips. There is little evidence of compensatory behaviours in purchasing. This means there is an overall increase in the total amount of food and drink purchased and taken into the home for consumption⁶⁴.

⁶¹ Capewell, C and Capewell, A (2018) An effectiveness hierarchy of preventive interventions: neglected paradigm or self-evident truth? J Public Health (Oxf), 1;40(2):350-358. doi: 10.1093/pubmed/fox055. PMID: 28525612

⁶² Scottish Government (2022) Economic modelling: reducing health harms of foods high in fat, salt or sugar: Final report <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2022/05/economic-modelling-reducing-health-harms-foods-high-fat-sugar-salt-final-report/documents/economic-modelling-reducing-health-harms-foods-high-fat-sugar-salt-final-report/govscot%3Adocument/economic-modelling-reducing-health-harms-foods-high-fat-sugar-salt-final-report.pdf>

⁶³ Scottish Government (2019) Consultation Analysis – Reducing health harms of foods high in fat, sugar or salt <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2019/09/reducing-health-harms-foods-high-fat-sugar-salt-consultation-analysis/documents/consultation-analysis-reducing-health-harms-foods-high-fat-sugar-salt/consultation-analysis-reducing-health-harms-foods-high-fat-sugar-salt/govscot%3Adocument/consultation-analysis-reducing-health-harms-foods-high-fat-sugar-salt.pdf>

⁶⁴ Public Health England (2015) Sugar Reduction: the evidence for action https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/470175/Annexe_4_Analysis_of_price_promotions.pdf

Action on price promotions of HFSS products could also help with clarity and understanding. Data from FSS shows that those in socioeconomic group DE had lower levels of knowledge about and greater perceived barriers to healthy eating. Two-thirds (66%) of people in socioeconomic group DE reported they are confident they know what makes a balanced diet, compared to 81% in socioeconomic group AB, and 34% of those in socioeconomic group DE say they get confused about what's supposed to be healthy and what isn't, compared to only 23% in group AB⁶⁵.

Question 31 – Please outline any other comments you wish to make on this consultation

We strongly disagree with the proposal's focus on reformulation (paragraph 33 of the consultation document). It is not about reformulation of products. **Instead, the focus should be on improving our diets and removing the unnecessary, discretionary HFSS products from our diets, which provide little or no nutritional benefit, and on addressing the most powerful drivers of consumption of these products – price, availability and marketing.**

Context is crucial. Improving our food environment is the single most important thing we can do to help achieve healthy weight across the population. We need action to improve the food environment now. Average adult weight has risen steadily and significantly since 1995 when the Scottish Health Survey began. Not only has our weight gone up but the adult population's waist circumference has also increased significantly in that time⁶⁶. The pandemic is likely to have only made that worse as many adults reported putting on weight. We will not know the true picture for a number of years (due to the need to change the format of the Scottish Health Survey because of pandemic control measures) but we cannot wait that long for action.

The percentage of children entering Primary 1 at risk of obesity rocketed from 10% to over 15% in the most recent data. Furthermore, children from the most deprived backgrounds are almost three times as likely to be at risk of obesity than their peers from the least deprived areas (21% vs 8%)⁶⁷. Tackling the inequalities gap requires action across a number of policies but improving the food environment is a key piece of the puzzle. We need action on the promotion of unhealthy foods to protect and improve the health of children and to achieve the aim of halving childhood obesity by 2030.

We recognise the **rising cost of living** is a significant concern for many people at this time. There is clear evidence that price and location promotions encourage consumers to purchase and consume more than intended, and do not save consumers money.

The health consequences associated with obesity are well evidenced and include NCDs, COVID-19 severity and in a report, from University of Glasgow and Glasgow Centre for Population Health (GCPh), obesity has been identified as a potential contributing factor to the recently seen stalling in life expectancy⁶⁸.

If we wish to see a thriving, productive healthy population in Scotland we must improve our diet and achieve dietary goals. Addressing the promotion and marketing of unhealthy foods through legislation can deliver the necessary shift in promotions in the retail and out of home environment.

⁶⁵ https://www.foodstandards.gov.scot/downloads/FSS_Consumer_Tracker_Wave_12_report.pdf

⁶⁶ Obesity Action Scotland (2022) The Weight of the Nation

<https://www.obesityactionsotland.org/publications/reports/weight-of-the-nation/>

⁶⁷ Public Health Scotland (2021) Primary 1 Body Mass Index (BMI) statistics Scotland. School Year 2020/21

<https://www.publichealthscotland.scot/media/10829/2021-12-14-p1-bmi-statistics-publication-report.pdf>

⁶⁸ McCartney. G, Welsh. D, Fenton. L and Devine. R (2022) Resetting the course for population health Evidence and recommendations to address stalled mortality improvements in Scotland and the rest of the UK. A report from University of Glasgow and Glasgow Centre for Population Health

https://www.gcph.co.uk/assets/0000/8723/Stalled_Mortality_report_FINAL_WEB.pdf

About us

Obesity Action Scotland provide clinical leadership and independent advocacy on preventing and reducing overweight and obesity in Scotland. <https://www.obesityactionsotland.org/>

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