

Scottish Government consultation on restricting promotions of food and drink high in fat, sugar or salt – Consultation on the detail of proposed regulations

Scottish Obesity Alliance response

Section 1: Foods subject to restriction

Question 1 – Do you agree with the proposal to be consistent with the category descriptions set out in Schedule 1 of the UK Government regulations for England?

Yes

Our preference is for a whole category approach, rather than applying the nutrient profile model (NPM) to specific products within categories. A policy approach which targets unhealthy (discretionary) foods, and all elements of price and location promotions will deliver the most effective change in the population's diet. We believe a policy that is focused on reducing the amount of unhealthy (discretionary) foods in our diet will be more effective and cost-effective than a policy focused just on reformulation. Further, we prefer referring to them as unhealthy food and drink or food high in fat, sugar and salt (HFSS), as the term 'discretionary' is misleading and prejudicial with regard to consumers.

The Alliance believes that if a targeted approach is considered, the Scottish Government should adopt the most up to date version of the UKNPM as soon as it is viable. This is because it is most reflective of the latest scientific evidence and applies a more stringent criteria.

Within its approach we suggest that the Scottish Government should give due consideration to a whole category approach.

Question 2 – Do the food category descriptors set out in Schedule 1 [and included in Annex D] sufficiently describe the food categories within the scope of regulations?

Yes

Whilst the categories are generally clear, with regards to what would be in scope, there is some uncertainty over which products would and wouldn't be included, due to a lack of definitions being provided. We recommend the categories being defined to be inclusive of all unhealthy foods there within.

It is welcome that category 5 in Appendix D of the food categories that will be in scope of the regulations details that frozen products including ice cream are included. We called for these products to be in scope in our response to the previous consultation held in 2022 and are pleased to see them featured. However, there remains some uncertainty with regards to some of the products listed in the category. 'Similar frozen products' is listed within category 5, but this is not defined and it's not clear what types of products this would cover. Linked to this, it is also welcome to see dairy desserts included within category 9 – we also called for these to be included in our response to the previous consultation. However, as with 'similar frozen products', 'dairy desserts' are not defined in the consultation document. It is thus currently unclear which products this specifically refers to. This lack of definition for both types of

products could create loopholes and makes both implementation and enforcement more challenging.

On page 8 of the consultation document, fruit juices are included in the products listed in the soft drinks with added sugar category, which suggests that they are considered as being within scope. However, section 3(2) of Annex D on page 47 states that a “a soft drink does not contain added sugar ingredients only by reason of containing fruit juice, vegetable juice or milk (or any combination of them)”, which contrary to the information provided on page 8, appears to suggest that fruit juice would not be within scope. This is also consistent with the products currently covered by the Soft Drinks Industry Levy. It is therefore very unclear whether fruit juices are within or out with scope of the proposed regulations. This needs to be clarified to avoid loopholes and ensure effective implementation, adherence, and enforcement.

We note that diet soft drinks are not discussed at all within the consultation and are not currently included within the proposals outlined. Diet soft drinks account for a growing proportion of soft drink consumption in Scotland. Recently published data from Food Standards Scotland shows there has been a 10% increase in the amount of diet soft drinks sold online between 2021 and 2022¹, and that more than a third of diet soft drinks (34.8%) were purchased on a price promotion in 2022, which was higher than the proportion of regular soft drinks (31.6%) sold on price promotion². Diet soft drinks are a discretionary product and not required for a healthy diet. They can reinforce a preference for sweet flavours³ and where they are carbonated, the acidity can contribute to tooth decay⁴, and distracts attention from tap water, which should be the default healthy hydration option. This aligns with the WHO model/recommendation which proposes that restrictions should apply to any beverages to which non-calorie sweeteners (i.e. diet soft drinks) are added. We would like to see diet soft drinks within scope of the regulations.

Any categories of products proposed for inclusion could align as closely as possible with categories used by retailers to maximise likelihood of compliance with the regulations.

Question 3 – Please provide any additional comments on the proposed approach to foods in scope of the policy.

We strongly disagree with the proposal that non-pre-packed foods will be out with scope of the regulations, as detailed in paragraphs 37 and 38 on page 10 of the consultation document. Including only prepacked 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 prepacked.

Paragraph 37 on page 10 of the consultation document outlines the reason for this is that businesses may not be able to determine where loose or non-pre-packed products can or cannot be promoted due to relevant nutritional information not being available. We do not believe this to be a valid argument for several reasons. First, it is a legal requirement that

¹ Food Standards Scotland (2022) Take Home Retail Purchase and Price Promotions in Scotland https://www.foodstandards.gov.scot/downloads/FSS_-_NSP_-_Kantar_Retail_Purchase_and_Promotion_2021_Data_-_Slide_Deck_-_FINAL_FOR_PUBLICATION_-_29_November_2022_%281%29.pdf

² Food Standards Scotland (2024) Monitoring Retail Purchase and Price Promotions in Scotland 2019- 2022 https://www.foodstandards.gov.scot/downloads/Monitoring_retail_purchase_and_price_promotions_in_Scotland_2019-2022.pdf

³ 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

⁴ <https://www.bda.org/what-we-do/campaigns-and-advocacy/priorities/improving-oral-health/sugar/>

businesses have full knowledge of the nutritional composition 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 and be able to calculate the NPM score as a result. Secondly, in a previous Scottish Government consultation on the introduction of legislation on mandatory calorie labelling in the Out of Home (OOH) sector⁵, 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. The argument that nutritional information is not available is not valid and is not an acceptable reason for excluding non-pre-packed products.

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 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 regulations. For many of these products, like in-store bakery items, it should be assumed they are less healthy unless the company can provide evidence to indicate otherwise.

Significantly, excluding non-pre-packed items doesn't create a level playing field for food and drink businesses. It disadvantages retailers, as the out of home sector tends to provide more non-pre-packed foods, and so with this rule in place, many of their products would be out with scope, which wouldn't be the case for retailers selling predominantly pre-packed products. This was noted by businesses/business stakeholders themselves, as detailed on page 66 of the Partial Business and Regulatory Impact Assessment published alongside the consultation document⁶, indicating this is real concern for food and drink businesses, who wish to see consistency and fairness across the sector for all.

Section 2: Price Promotions

Question 4 – Is the proposed definition of the following sufficiently clear for the purpose of implementation and enforcement?

- a. Multibuy – Yes**
- b. Extra free – No**

⁵ 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/consultationmandatory-calorie-labelling-out-home-sector-scotland/documents/consultation-mandatory-calorie-labelling-out-homesector-scotland/consultation-mandatory-calorie-labelling-out-home-sector-scotland/govscot%3Adocument/consultationmandatory-calorie-labelling-out-home-sector-scotland.pdf>

⁶ Scottish Government (2024) Restricting Promotions of Foods High in Fat, Salt, or Sugar (HFSS). Partial Business and Regulatory Impact Assessment <https://www.gov.scot/binaries/content/documents/govscot/publications/impact-assessment/2024/02/restricting-promotions-food-drink-high-fat-sugar-salt-partial-business-regulatory-impact-assessment/documents/restricting-promotions-foods-high-fat-salt-sugar-hfss-partial-business-regulatory-impact-assessment/govscot%3Adocument/restricting-promotions-foods-high-fat-salt-sugar-hfss-partial-business-regulatory-impact-assessment.pdf>

The definition of multibuy is clear. The definition for extra-free is less clear as this is included with the definition of multi-buys and not provided separately. Extra free is currently only referenced in part (ii) of paragraph 46 on page 13 within the definition section for multi-buys. It is therefore unclear what we're being asked to comment on in this question. For clarity, it would be beneficial to separate out multibuys and extra free and provide individual definitions for each.

Question 5 – Is the proposed timescale of 12 months at paragraph 56 sufficient to allow price promotions on packaging to be phased out?

Yes

12 months is a sufficient timescale and shouldn't be any longer. These regulations have been discussed and proposed in Scotland since 2018 and as a result the food and drink industry have known they are coming and have had ample time to prepare.

Question 6 – What, if any, implications do you expect there would be for businesses if meal deals are included within the scope of this policy (please include evidence where available)?

Meal deals should be included within the regulations. Including them presents positive opportunities for businesses.

Including meal deals within the regulations offers businesses the opportunity to provide healthier options to consumers. Recently conducted consumer surveys report that around a third (32%) of consumers state they would continue to purchase meal deals if they contained a healthier item in place of a restricted unhealthy one, and a further 9% reported they would buy the main component without the additional item⁷ – this indicates that over 40% of consumers support and would like to see meal deals change to become healthier, and this presents an important opportunity for businesses to amend their offering to cater for this.

Restricting unhealthy HFSS products within meal deals also creates a level playing field for all businesses and would facilitate access to healthier meal deal options. It would also be logistically simpler for businesses. It's important to stress that the proposals in the consultation would not ban meal deals and they would still be able to be sold in Scotland – it is clear from the Partial Business and Regulatory Impact Assessment that a blanket approach to restricting meal deals is not supported by businesses. Rather, the proposals mean that businesses will be empowered to provide healthier products within meal deals, continue to benefit from the sale of meal deals, and could see an increase in sales of healthier products.

Question 7 – If meal deals are included within the scope of the policy, which would be your preferred option for targeting them?

Option 1 – Meal deals cannot contain HFSS targeted foods

Option 2 – Meal deals can contain up to one HFSS targeted food

⁷ Scottish Government (2024) Consumer Survey on Shopping Behaviours and Meal Deals: Evidence Brief <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2024/02/consumer-survey-shopping-behaviours-meal-deals-evidence-brief/documents/consumer-survey-shopping-behaviours-meal-deals-evidence-brief/consumer-survey-shopping-behaviours-meal-deals-evidence-brief/govscot%3Adocument/consumer-survey-shopping-behaviours-meal-deals-evidence-brief.pdf>

Option 3 – Meal deals cannot contain targeted HFSS discretionary foods

Please explain your answer, including any alternative suggestions for how promotion regulations could help improve meal deals to better support a healthy diet.

Option 1 is our preferred option. Meal deals are a significant source of calories and are recognised in evidence as being a public health issue. Evidence shows that meal deals in the UK often fall short of UK nutrition guidelines, with lunch time meal deals typically exceeding the recommended meal calorie consumption. Similar findings were also found for sugar and salt, demonstrating that meal deals can make a significant contribution to excess calorie, sugar, and salt consumption. Meal deals have also been shown to drive less healthy purchases⁸. Recently published analysis from Food Standards Scotland highlights that the average meal deal on offer in the UK exceeds the recommended 600 kcal per meal as recommended by Public Health England. It found the average sandwich meal deal contained 861 kcals and the average burger meal deal contained 1,021 kcals, both of which are significantly in excess of the 600 kcal figure⁹.

Given this evidence, it is vital that meal deals are within the scope of the regulations. Failure to include meal deals, especially the unhealthy HFSS products featured within them, risks undermining the overall effectiveness of the regulations, and would result in unhealthy products continuing to be heavily promoted to consumers.

Option 2 should not be chosen. This would significantly undermine the primary aim of the policy and would also be very challenging for businesses to administer. It would require complex changes to checkout/payment systems, for example, to make it work in practice.

In any option selected, it's important to ensure that 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's vital that meal deals are within scope of the regulations as they make a significant contribution to promotions and the purchase of excess calories.

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)¹⁰. This is further supported by evidence from our recently published study, which found meal deals accounted for 38% of price promotions, in the 5 supermarkets visited in Glasgow, and meal deals were the most commonly used type of price promotion to promote

⁸ Public Health Scotland (2024) Restricting promotions of food and drink high in fat, sugar or salt Evidence briefing 2: Meal deals https://publichealthscotland.scot/media/24917/v3_hfss-meal-deals-evidence-briefing-2_1380.pdf

⁹ Food Standards Scotland (2024) An analysis of the calorie content of 'food on the go' products in the out of home sector in Scotland – 2023

https://www.foodstandards.gov.scot/downloads/An_analysis_of_the_calorie_content_of_%E2%80%99food_on_the_go_%E2%80%99_products_in_the_out_of_home_sector_in_Scotland_2023.pdf

¹⁰ 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

discretionary food and drink items¹¹. Meal deals account for a large proportion of price promotions and are skewed towards unhealthy discretionary products.

There is a need to ensure that any restrictions placed on unhealthy products within meals do not result in the overall price of meal deals increasing when healthier options are provided. For example, meal deals are likely to be regularly used by young people, due to perception of affordability. The affordability of these for consumers is important to serve the objectives of the regulation, and they offer the opportunity to increase access to affordable, healthy meal options.

Question 8 – If temporary price reductions (TPRs) are included within the scope of the policy, is the proposed broad definition at paragraph 85 sufficient for implementation and enforcement?

Yes

The definition is sufficient for implementation and enforcement. We would like to emphasise the importance of not outlining/defining a specific time-period within the regulations i.e. the time period that would be classified as ‘temporary’ for the purposes of the promotion, as doing so would create loopholes or opportunities for businesses to subvert the restrictions by setting the timescale for these promotions out with the time-period defined in the regulations.

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 pricing¹².

Any definition used should avoid scope for loopholes and be as comprehensive as possible.

Question 9 – What, if any, implications do you expect there would be for businesses if TPRs are included within the scope of this policy? (please include evidence where available)

TPRs must be included in price promotion restrictions as they are the most commonly used type of price promotion in Scotland.

TPRs consistently account the largest proportion of price promotions in Scotland. Recently published data from Food Standards Scotland reports that TPRs account for 14.4% of all food and drink purchased on price promotion, out of a total of 20%, compared to only 0.1% for multi-buy promotions¹³. Further, findings from our recently published research found TRPs were the most commonly used type of price promotion and were also most commonly used on discretionary HFSS products. Our research found that TPRs were the only type of price promotion used in each of the stores visited, demonstrating the extensive use of them and their reach¹⁴. TPRs currently aid brand shifting and brand share, rather than supporting consumers to

¹¹ Obesity Action Scotland (2024) In store promotions of food and drink products. An observational study <https://www.obesityactionsotland.org/media/kprjwwxv/in-store-promotions-report-2024.pdf>

¹² [https://www.legislation.gov.uk/ukxi/2005/2705/schedules/made#:~:text=Introduction-,The%20Consumer%20Protection%20Act,of%20new%20homes\)%20or%20facilities.](https://www.legislation.gov.uk/ukxi/2005/2705/schedules/made#:~:text=Introduction-,The%20Consumer%20Protection%20Act,of%20new%20homes)%20or%20facilities.)

¹³ Food Standards Scotland (2024) Monitoring Retail Purchase and Price Promotions in Scotland 2019- 2022 https://www.foodstandards.gov.scot/downloads/Monitoring_retail_purchase_and_price_promotions_in_Scotland_2019-2022.pdf

¹⁴ Obesity Action Scotland (2024) In store promotions of food and drink products. An observational study <https://www.obesityactionsotland.org/media/kprjwwxv/in-store-promotions-report-2024.pdf>

access healthier products. Including them within the scope of the regulations presents an opportunity to change this trend and improve access to and affordability of healthier products.

The full impact of the regulations in terms of achieving positive diet and health impacts can only be achieved if TPRs are included in the regulations. Evidence from a Scottish Government commissioned modelling study found that restricting promotions and marketing of HFSS products can 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. If only multi-buy promotions were restricted, a much smaller reduction of only 115 calories per person per week would be achieved¹⁵. This highlights the major impact that TPRs have on overall calorie consumption. TPRs therefore must be restricted.

As with all promotions regulations, important to stress that not banning promotions, rather banning promotions on unhealthy HFSS products, and HFSS products (within the categories) can still be sold, just not promoted.

Promotions overall and specifically TPRs encourage people to impulse purchase and spend more, on average around 20% more than they intended to, with 43% of people reporting that TPRs caused them to impulse buy¹⁶. This is further supported by evidence presented in the partial BRIA. Table 20 on page 30 outlines the modelled reduction in take home spend by consumers on discretionary products for just multi-buy promotions and then for all types of promotions. The findings show much larger savings when all types of promotions are included.

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 periods. Failing to include TPRs in regulations on price promotions will therefore do little to address this calorie overconsumption.

TPRs account for a large number of promotions in Scotland. 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. Including all types of promotions in the regulations creates a level playing field for retailers and incentivises a shift towards healthier options being more accessible and for affordable for everyone. Any perceived negative impact on business shouldn't be prioritised over public health.

As with all promotions regulations, it's important to stress that the regulations will not ban promotions; rather, they will restrict promotions on unhealthy HFSS products. These HFSS products are still able to do sold, just not promoted, and retailers are still able to offer promotions on healthier products. A comprehensive approach including TPRs in scope should avoid loopholes.

¹⁵ 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/economicmodelling-reducing-health-harms-foods-high-fat-sugar-salt-final-report/documents/economic-modelling-reducing-health-harms-foods-high-fat-sugar-salt-final-report/economic-modelling-reducing-health-harms-foods-high-fat-sugar-salt-finalreport/govscot%3Adocument/economic-modelling-reducing-health-harms-foods-high-fat-sugar-salt-final-report.pdf>

¹⁶ Obesity Action Scotland (2022) Obesity and Promotions of HFSS products briefing https://www.obesityactionscotland.org/media/ozegu5kc/promotions_briefing_update.pdf

If we want to truly shift the diet of the Scottish population to make meaningful progress towards dietary goals, we 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.

Section 3: Location Restrictions

Question 10 – Are the proposed definitions of the following prominent in-store locations, as described in paragraph 98, sufficiently clear for implementation and enforcement?

- a. Checkout – No**
- b. End of aisle – Yes**
- c. Store entrances – Yes**
- d. Covered external area – Don't know**
- e. Free standing display area – Yes**

Please explain your answers

a. Checkout

We feel the definition is not clear.

Paragraph 98 (i) of the consultation document states that a checkout area where targeted food cannot be placed is defined as “any area within 2 metres of the checkout facility...including a self-checkout” and (ii) “any area within 2 metres of a designated queuing area or queue management system”. However, both paragraph 98 (i) and (ii) go on to state that “Targeted HFSS foods would be able to be placed in an aisle (but not the end of an aisle) even if it is within 2 metres of a checkout”. This is unclear and needs clarification. The 2-metre restriction should be in place, regardless of whether this covers an aisle or not. This leaves opportunities for loopholes with regards to where products are placed within stores, and will also make implementation, monitoring, and enforcement much more challenging.

Checkouts are known to be key target locations within stores, so it's vital they are within scope of the regulations and for there to be a clear and easy to understand definition and rules. Evidence shows that food placed at checkouts is more likely to be unhealthy, and many people report that displays at checkouts encourage them to buy the products on display.

Data from an FSS Consumer Tracking Survey has reported that more than two thirds (67%) of people agree that placing HFSS products next to the checkout encourages people to buy more¹⁷, and checkouts are among the most common prominent locations used to promote discretionary products. Research from The Obesity Health Alliance in 2019 found that 43% of all food and drink products placed in prominent in-store locations such as checkouts were for

¹⁷ 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

sugary food and drinks – as well as impulse purchasing, placing these products at checkouts is also known to increase children pestering parents and drives increased sales¹⁸.

Removing HFSS products from checkout areas should significantly decrease the purchase and consumption of these harmful products. Findings from a study has shown that 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 week¹⁹. 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 policies²⁰.

There is an opportunity to replace HFSS products at checkouts with healthier options, to promote and encourage purchase and consumption of healthier options. Furthermore, survey evidence shows that almost two-thirds of Scots support measures to restrict where unhealthy food can be displayed in stores (findings from polling of more than one thousand people, commissioned by Obesity Action Scotland in August 2022 in Scotland²¹). This is supported by data from the FSS Consumer Tracking Survey, 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”²². 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.

There is huge potential for changes in the retail environment to affect positive consumer behaviour change.

b. End of Aisle

The definition provided is largely sufficient. However, we feel it is not clear as to whether this applies to only displays fixed to the end of an aisle or also ones which sit just inside an aisle i.e. such as at the inside edge of the aisles, which are increasingly used to display products that would be within scope of the regulations. This could be a potential loophole in the regulations. Lessons from the location promotion restrictions in England point to retailers simply shifting HFSS/restricted products to locations within aisles, and drawing significant attention to these products through the use of floor stickers, ceiling mounted signs etc.

¹⁸ Obesity Health Alliance and Food Active (2023) Location, location, location. Exploring the impact and implementation of the promotion of high in fat, sugar and salt products by locations legislation in England https://foodactive.org.uk/wp-content/uploads/2023/11/Location_Location_Location_Winter2023_FINAL.pdf

¹⁹ 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>

²⁰ 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

²¹ <https://www.obesityactionscotland.org/media/qlufvkum/policy-polling-august-2022.pdf>

²² 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

Research has shown end of aisle promotions to be associated with an increase in sales of the products promoted there across a range of product categories²³, and just under a third of people have reported that end of aisle displays led them to buy unhealthy food or drink on impulse²⁴. Aisle end promotions also account for a sizeable proportion of in-store location promotions – findings from our study found 12% of location promotions were end of aisle promotions²⁵.

c. Store entrances

The definition provided is largely sufficient. It is based on a floor space calculation which we understand is consistent with that used in the English regulations.

It's important that store entrances are within scope of the regulations, as evidence shows that predominantly unhealthy products are displayed here. Evidence from a survey by the Obesity Health Alliance found that 86% of food and drink products located at store entrances were products high in sugar and calories, including crisps, cakes, and confectionery²⁶.

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 products²⁷.

We would like to see the entrance area definition expanded to include all areas (such as aisles) where customers have to walk through (where there are no other routes) to gain access to the main part of outlet, and areas with significant customer dwell time.

d. Covered external areas

We note the definition in the consultation outlines outside areas that are connected to the store's main shopping area through which the public passed to end the main store. However, there is no mention about external areas that are not directly attached or connected to the store's main shopping area/entrance that could sell products within scope i.e. a covered external area that consumers do not pass through to get into the store. Additionally, this only appears to include covered areas with no mention of external selling areas that are not covered. It is currently not clear if such locations would be considered as in scope of the restrictions.

As with store entrances, we would like to see this expanded to all areas customers have to walk through or past to gain access to the store and areas of significant customer dwell time.

²³ Whitehead R et al. (2021) The impact of non-price in-premise marketing on food and beverage purchasing and consumer behaviour: A systematic review. PHS, University of Stirling and University of Glasgow

²⁴ Food Standards Scotland (2019) Food in Scotland Consumer Tracking Survey – Wave 8
<https://www.foodstandards.gov.scot/publications-and-research/publications/food-in-scotland-consumer-tracking-survey-wave-8>

²⁵ Obesity Action Scotland (2024) In store promotions of food and drink products. An observational study
<https://www.obesityactionsotland.org/media/kprjwwwxv/in-store-promotions-report-2024.pdf>

²⁶ 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>

²⁷ Obesity Action Scotland (2019) Evidence overview: Impact of in-store advertising on consumer purchasing
<https://www.obesityactionsotland.org/media/i0pjseuy/hfss-promotion-restrictions-oas-evidence-overview-website-ready.pdf>

e. Free standing display areas

The definition is largely sufficient. It is welcome that the proposed definition specifically mentions display locations including the middle of an aisle. It is important this is reflected as key learnings from the implementation of the location promotions restrictions in England highlighted that retailers simply shifted promotions from end of aisles and other prominent locations to the middle of aisles using ceiling mounted and floor signage to clearly demarcate the items are being on promotion, as these locations were not in scope of the regulations in England. No clear definition of free-standing display units was provided in England which was problematic for effective implementation and enforcement of the regulations. There is also scope to further broaden out the definition to consider products and free standing displays in the context in which they are displayed.

A clear definition is essential for implementation, monitoring, and enforcement, to avoid loopholes.

However, we feel there are some points within the definition that need to be clarified. For example, within the definition outlined in the consultation document, aisle units are included in the list of display units that are within scope. Despite the location being titled free standing display areas, aisle units usually denote the built-in actual shelving units within aisles which are part of the aisles themselves and not free standing display units, which are likely to be much less common within aisles. It is therefore not clear from the definition if this means all aisle units as we've described or just ones that are fully free standing. The definition is not clear and could have a real impact on how promotions are displayed.

We encourage the Scottish Government to follow the proposed position in Wales whereby free-standing display units (in addition to those associated with the end of an aisle) are within scope. It is important to include as many locations as possible, to prevent loopholes, avoid promotions being shifted to locations not covered by the regulations, and to ensure maximum effectiveness of the regulations.

Question 11 – Do you agree with the proposed approach to applying store entrance criteria to dedicated food areas within the stores, as described at paragraphs 100-102?

Yes

Yes, we largely agree with the proposed approach. It's essential the regulations cover any areas in stores where customers walk past items when entering and exiting (i.e. high flow areas), areas of significant dwell, and anything that indicates there are unhealthy foods on offer.

Question 12 – Do you agree with the proposed description for relevant floor space?

Yes

Yes, we largely agree.

We note paragraph 104 in the consultation document notes that “an area occupied by a separate business other than the store it is in (a concession), but only where the concession operates its own payment facilities” would be excluded from the relevant floor area of a store. This statement implies that a concession would be excluded, if it has its own payment facilities, however, this needs to be clarified and what the implications of this would be if the concession

area on its own met the criteria for a qualifying business i.e. would the concession area be within or out with scope?

We consider it particularly important that there is a robust and comprehensive way for enforcement agencies to independently verify the area that is in scope of the restrictions.

Question 13 – Please provide any additional comments on the proposals for in-store locations within the scope of the policy

It's important that in-store location restrictions are as comprehensive as possible to ensure their effectiveness if not undermined by stores simply shifting to locations not covered by the regulations, as has been seen in some instances in England.

There are some important types of promotions not included in the proposals that we feel should be included. These include: shelf edge labels, upselling, loyalty pricing, promotional/seasonal aisles, designated queuing areas, in-store advertising, and on-pack promotions/advertising. We discuss some of these below.

Upselling

Upselling continues to be a problem for consumers when purchasing. Data from a Food Standards Scotland Consumer Tracking survey highlights that just under two-thirds of people (64%) feel that out of home 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 extras²⁸.

Loyalty pricing

This is an increasingly important promotion technique used by retailers and should 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 mechanism²⁹, 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 for HFSS products were restricted, 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 buying³⁰.

²⁸ 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

²⁹ <https://www.thegrocer.co.uk/supermarkets/why-loyalty-and-personalisation-schemes-will-set-supermarkets-apart-as-inflation-spirals/664363.article>

³⁰ Obesity Action Scotland (2021) Obesity and Promotion of HFSS Products
https://www.obesityactionscotland.org/media/1630/promotions_b.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. It is disappointing they aren't discussed in the current consultation.

Data from Food Standards Scotland 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 snacks³¹. The data highlights the importance of multi-packs to the purchase and consumption of discretionary snack foods.

Question 14 – Are the proposed descriptions of the following online equivalent in-store locations sufficiently clear for implementation and enforcement?

- a. Home page – Yes**
- b. Favourites page – No**
- c. Pages not opened intentionally by the consumer – Yes**
- d. Checkout pages – Yes**

Please explain your answers

a. Home page

Yes, the definition is clear. It's welcome the proposal acknowledges this would apply regardless of whether a consumer enters the website via the homepage or not.

b. Favourites page

We do not feel the definition is clear.

Page 26 of the consultation document states promotions would be restricted on a favourite products page unless the consumer has previously purchased the targeted food (whether in store or online) or intentionally identified as a favourite product. It then goes on to define a favourite products page as meaning “a page intentionally opened by a consumer for the purpose of browsing products they have previously purchased or intentionally identified as favourite products.” This is unclear as it suggests that items previously purchased or intentionally identified as a favourite product would be out with scope of the regulations, and yet this is exactly what a favourites page is. This is very unclear and needs to be clarified.

c. Pages not opened intentionally by the consumer

Yes, this definition is clear

³¹ 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

d. Checkout pages

Yes, the definition is clear.

It would be welcome if the 'shopping basket' page/section was explicitly listed within the definition. It is implied in the definition that this part of the checkout process is included but it would assist with clarity for implementation and enforcement if this was explicitly listed.

Question 15 – Are there any other equivalent online locations that should be within scope of the policy?

Yes

Other types of online equivalent promotions we would like to see included are recommended products, best sellers, customers who bought this also bought functions, and promotional offers in order email confirmations for example.

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 tab. 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.

We strongly welcome the consultation proposal to include other online locations like apps, and aggregator platforms like Deliveroo and Just Eat. Paragraph 119 in the consultation document states: *"Where a qualifying business sells targeted foods to the public through a website or other online platform, such as an aggregator or delivery app, they will be required to comply with price and location restrictions in respect of those online sales of targeted foods. Parts of online aggregator sites or apps may be captured by promotions restrictions, such as checkout pages or pop-ups on the qualifying business' sections of the app or site."* This is particularly relevant for the out of home sector. There has been a sharp increase in the usage of these platforms since the COVID-19 pandemic, and they now account for 70% of takeaway delivery orders. Between 2019 and 2021, the use of third-party aggregator delivery apps (e.g. Just Eat) in Scotland increased considerably by 286%, while restaurant app usage grew by over 440%. Additionally, these platforms also predominantly sell and promote unhealthy HFSS products to users³².

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 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

³² Obesity Action Scotland (2023) Ordering Food Online (Out of Home)
https://www.obesityactionsotland.org/media/hisjmj0s/ordering_food_online_-ooh-_final.pdf

the app where restaurants were repositioned, study participants ordered 12% fewer calories³³. 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.

It is welcome that apps and aggregators are proposed to be within scope of the restrictions and are discussed in the consultation. There is scope to improve clarity around what will and won't be covered by the regulations with regards to these, based on the definition outlined in paragraph 119 on page 29. We will discuss this further in our response to question 18.

Question 16 – Please provide any additional comments on the proposals for online locations within the scope of the policy

Online location restrictions should match with physical in-store locations (as far as possible) and should be applied to all locations discussed in our response. 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 regulations equally to both online and in-store locations ensure a level-playing field for businesses and can maximise health benefits. Furthermore, online location promotion restrictions 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 usage.

A substantial proportion of groceries are bought online in Scotland. Data from Food Standards Scotland shows there has been a 66.4% increase between 2019 and 2022 in the volume of food and drink purchased, with online sales accounting for 8% of total food and drink sales in 2022. Additionally, more than a quarter (25.8%) of all food and drink purchased online was purchased on promotion, and of these more than 18% (18.3%) were TPRs³⁴, illustrating the importance of promotions in the online food retail environment.

Further, convenience is a major driver of online sales, and promotions continue to be a major influencing factor in online shopping behaviours. 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' promotions³⁵.

Section 4: Businesses in scope

Question 17 – Are the types of business within the scope of the policy sufficiently described for the purpose of implementation and enforcement?

Yes

³³ 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

³⁴ Food Standards Scotland (2024) Monitoring Retail Purchase and Price Promotions in Scotland 2019- 2022

https://www.foodstandards.gov.scot/downloads/Monitoring_retail_purchase_and_price_promotions_in_Scotland_2019-2022.pdf

³⁵ 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

The types of business within the scope of are sufficiently clear, however, we do not agree with the proposal that only businesses with 50 or more employees will be within scope.

If only businesses with 50 or more employees are within scope, this will exempt a lot of food and drink businesses in Scotland, particularly in the out of home sector, where small and micro businesses make up the substantial majority of food and drink businesses. Data in the partial BRIA published alongside the consultation highlights that 97.02% (12,730 out of a total of 13,120) of registered out of home private sector businesses have fewer than 50 employees, with micro businesses (0-10 employees) making up the majority of these. Therefore, exempting businesses with fewer than 50 employees will have a significant impact on the effectiveness of the regulations. We acknowledge that micro and smaller businesses would likely need to support to enable them to comply with the regulations. This support should be provided to enable to regulations to be extended to these businesses to ensure maximum effectiveness and impact of the regulations in the out of home sector. Such a move should also place greater liability on stakeholders higher up the supply chain to provide more healthy products.

We appreciate it may be more challenging for smaller retailers to apply the location restrictions. However, excluding these micro and small businesses could also have an impact on health inequalities. Evidence shows that smaller stores are more common in more deprived areas, and individuals within these communities are therefore more reliant on them³⁶. There is a strong association between deprivation and childhood obesity, with children both living in more deprived areas and living in lower income households at greater risk of obesity throughout childhood³⁷. Therefore, exempting these businesses could contribute to widening health inequalities and would do nothing to close the childhood obesity inequality gap, as well as preventing those from more deprived communities experiencing the benefits of the regulations. Indeed, page 13 of the partial BRIA acknowledges that excluding smaller stores could drive up health inequalities, demonstrating it is a real and acknowledged concern.

We encourage the Scottish Government to consider ways that smaller retailers can be discouraged from using location-based strategies to promote HFSS products in the longer-term and to monitor the presence of promotions in exempt retailers as part of the evaluation of this policy.

Out of Home sector

We welcome that the proposed regulations include the out of home sector. The out of home sector accounts for a quarter of all calories consumed in Scotland. In 2021, 96% of people in Scotland reported visiting an OOH outlet with an average of just under three trips a week per person. Total spend for the sector reached £3.6bn in 2021³⁸. Promotions in the OOH sector make a major contribution to purchase and consumption of HFSS products and overall calorie intake.

³⁶ <https://www.smf.co.uk/wp-content/uploads/2018/10/What-are-the-barriers-to-eating-healthy-in-the-UK.pdf>

³⁷ Miall, N & Pearce, A (2024) Growing up in Scotland: obesity from early childhood to adolescence. Obesity Action Scotland. doi: 10.36399/gla.pubs.319087 <https://www.obesityactionscotland.org/media/c2elenpt/gus-report-full-final.pdf>

³⁸ Obesity Action Scotland (2023) Briefing: The Out of Home Food and Drink Sector <https://www.obesityactionscotland.org/media/yqhflx3m/out-of-home-briefing-2023-final.pdf>

Including the out of home sector within the regulations could also contribute to reducing inequalities. People from lower social class backgrounds (categorised by type of occupation) visited the OOH sector more often, on average, than those from higher social classes (182 vs 132 average visits per person). This trend was the same in 2019 and 2020. Despite visiting the OOH sector more often, those from lower social classes were shown to spend less per visit in 2021 compared to customers from higher social classes £4.78 vs £6.32). This is likely to be a reflection of the different types of OOH outlets visited by each group³⁹.

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-packed. This loophole must be filled. 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.

Introducing mandatory regulations in the out of home sector can further assist with levelling the playing field by supporting and strengthening actions in other areas, such as those in the Out of Home Action Plan⁴⁰ which are voluntary measures

Question 18 – Is the proposed extension of restrictions to online sales, including through online aggregator sites and apps (see paragraph 119) sufficiently described for the purpose of implementation and enforcement?

Yes

The proposals are largely sufficiently described. It is welcome that aggregator sites and apps are proposed to be within scope of the regulations.

As outlined in our response to question 15, these platforms have significant reach with strong growth and are a key purchasing mechanism for the out of home sector. However, there remains some uncertainty in the proposal in paragraph 119 over exactly how and where the restrictions would apply to these platforms. For example, paragraph 119 states qualifying businesses selling targeted food to the public would be within scope, however, we know from other proposals in the consultation that a qualifying business is one with 50 or more employees, and as we have highlighted, the vast majority of private out of home businesses in Scotland are micro and small businesses with fewer than 50 employees. Therefore, it is likely a large number of businesses featured on these platforms would be out with scope of the regulations. This would be problematic for implementation. It also creates an unequal playing field for businesses, as some will be exempt and some would be subject to the regulations, with smaller businesses more likely to lose out as a result.

Question 19 – Are the arrangements for franchises and symbol groups sufficiently described for the purpose of implementation and enforcement?

Yes

We welcome the proposals for franchises and symbol groups. This means these outlets will now be within scope of the regulations, as the employee count is based on the total number of

³⁹ Ibid

⁴⁰ Scottish Government (2021) Diet and Healthy Weight: Out of Home Action Plan
<https://www.gov.scot/publications/diet-and-healthy-weight-out-of-home-action-plan/>

employees across the whole group rather than individual stores. It is clear from the description in the consultation document that this is case.

Including franchise and symbol groups as within scope of the regulations could also positively contribute to reducing inequalities. Evidence from Food Standards Scotland show that symbol groups accounted for a higher nutritional volume purchased in C2DE households (more deprived) than in ABC1 households, and C2DE households also had a higher spend in symbol groups⁴¹. Including these premises within the regulations helps to create a level playing field for consumers, where all consumers are protected from exposure to price and location promotions on unhealthy HFSS and have equal opportunity to access promotions on healthier and staple foods. Failure to include them could result in more deprived groups continuing to be exposed to more promotions of unhealthy food, further limiting access to more healthy food options, and widening inequality.

Question 20 – Do you foresee any impacts on the ability of businesses to trade either within the UK market or internationally from any of the proposed measures?

No

Introducing comprehensive price and location promotions regulations in Scotland covering as many types of promotions as possible and all types of food and drink businesses creates a level playing field for all food and drink businesses which promotes and encourages competition, rather than stifling it. It would ensure that some businesses are not negatively impacted over others.

Question 21 – Please provide any additional comments on the businesses proposed to be within scope of the policy

As outlined in response to question 17, we would like to see the regulations extended to include micro and small businesses with fewer than 50 employees, with support given to them to meet the requirements of the regulations. As these small businesses make up the vast majority of food and drink businesses in Scotland, exempting them from regulations will significantly undermine the overall effectiveness of the regulations and their impact in achieving improved health outcomes.

Section 5: Exemptions from location restrictions

Question 22 – Are the proposed exemptions from location restrictions based on business type clear and sufficiently defined to enable implementation and enforcement?

Yes

The exemptions are largely clear.

The proposals state that specialist shops, such as confectioners, should be exempt from location restrictions – we support and welcome this proposal. 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

⁴¹ Food Standards Scotland (2022) Take Home Retail Purchase and Price Promotions in Scotland
https://www.foodstandards.gov.scot/downloads/FSS_-_NSP_-_Kantar_Retail_Purchase_and_Promotion_2021_Data_-_Slide_Deck_-_FINAL_FOR_PUBLICATION_-_29_November_2022_%281%29.pdf

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.

For clarity, the regulations should be updated to explicitly state that specialist shops are not exempt from price promotion restrictions, rather than just stating they are exempt from location promotion restrictions. Explicitly stating outlining in the regulations that specialist shops are required to comply with price promotions regulations ensures clarity for all stakeholders involved.

Question 23 – Are the exemptions from location restrictions based on individual store relevant floor area clear and sufficiently defined to enable implementation and enforcement?

States that stores with a relevant floor area of less than 185.8 square metres (2,000 square feet) would be exempt/not within scope of location restrictions

Yes

It is largely clear. The proposals on store size/floor area detailed on page 34 in the consultation appear to match the regulations in England.

We do not support exemptions on the basis of floor space and call on the Scottish Government not to introduce such exemptions. These would create loopholes, enabling unscrupulous companies to undermine the regulations.

We are concerned that there could be some confusion over which rules apply to which businesses and which one takes precedent when two contrary rules apply to a business. For example, a symbol or franchise store would be within scope (i.e. not exempt) of the regulations based on employee numbers but could be out with scope (i.e. exempt) if the floor space of their premise is less than the prescribed dimensions outlined. It needs to be clarified which rule would apply/take precedence in this instance. This creates a possible loophole and risks undermining the overall effectiveness of the policy, as it could be argued to be effectively exempting a (large) number of symbol and franchise stores, with floor space less than that prescribed in the consultation.

Question 24 – Please provide any additional comments on proposed exemptions from locations restrictions

For the restrictions to be effective, there needs to be as few exemptions as possible. It is welcome there are limited exemptions detailed in the consultation.

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.

Section 6: Enforcement and Implementation

Question 25 – Do you agree with the proposed use of administrative sanctions for enforcement of the policy?

Yes

Administrative sanctions are appropriate but the fixed penalty notices need to be set at a level which acts as an effective deterrent to non-compliance.

We suggest using a stepped approach for fixed penalty notices, whereby the level of fine increases with each fine issued, up to a maximum. This could be a more effective deterrent for non-compliance. We also suggest varied fines for different entities in the supply chain depending both on size and role in relation to providing promotions information, for example.

Question 26 – Do you agree with the maximum penalties proposed for the offences in relation to enforcement of the policy?

Yes

The proposed maximum penalty is £2,500. The proposed level of fine and administrative sanctions (compliance notices and fixed penalty notices) seems appropriate. As outlined in our response to question 25, we would like to see a stepped approach to fixed penalty notices, whereby the level of the fine increases with each fine issued, up to a maximum, to act as a more effective deterrent for non-compliance, and also to see varied fines, depending on the business's role in bringing forward promotions.

We note the consultation details the expectation is that local authorities, specifically their environmental health officers, will enforce the regulations. This is welcome. 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. There are concerns over the capacity of local authorities to be able to undertake the enforcement. Local authorities report being understaffed, with limited capacity and resources to be able to undertake enforcement effectively. Pages 43 to 51 of the partial BRIA outlines the cost per environmental health officer for carrying out the enforcement – these costs are significant and could reach as much as £4,426,545 over a 25-year period. If local authorities are expected to undertake enforcement, it's vital they are sufficiently resourced by the Scottish Government to be able to do so. Findings from an evaluation of the location promotions regulations in England reported that despite generally high levels of awareness of the legislation, training opportunities and the number of inspections carried out was low, with limited staff time and resources cited as the main reasons. This resulted in no improvement notices being issued in the areas covered by the study, even though breaches of the regulations were identified⁴². This encapsulates the need for sufficient resources and training for enforcement officers to be able to effectively and efficiently implement the policy to deliver desired outcomes.

⁴² Obesity Health Alliance and Food Active (2023) Location, location, location. Exploring the impact and implementation of the promotion of high in fat, sugar and salt products by locations legislation in England https://foodactive.org.uk/wp-content/uploads/2023/11/Location_Location_Location_Winter2023_FINAL.pdf

There is also an issue with officers being able to calculate the NPM score during an inspection, both in terms of the information and time available. 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. The NPM is also acknowledged as not being the most straightforward tool to use and understand. Whilst it is expected/a legal requirement for premises to know and be aware of all the ingredients in the products they sell, this information may be held by the manufacturer or wholesaler, and not available from quick glance at the label. Furthermore, a scoring system such as the UK NPM also makes it very difficult to have true transparency, as it is very challenging for independent or third sector organisations to calculate the score for products. Such a scoring system would instead leave power in the hands of the food industry.

Question 27 – Is the proposed 12 month period following the introduction of regulations sufficient to prepare for:

a. Implementation – Yes

b. Enforcement – Yes

12 months is sufficient for both implementation and enforcement. Industry have known this policy has been coming for years and so should be prepared for it. It is therefore reasonable to expect them to be able to comply with 12 months. Any longer than this could undermine the objectives and overall effectiveness of the policy.

If the proposals were to be extended to include micro and small businesses of fewer than 50 employees, which we would like to see, we recognise some of these businesses may need more time and support to comply with the regulation. Therefore, for these micro and small businesses, an implementation period of longer than 12 months may be required.

Section 7 - Other comments

Question 28 – Please outline any other comments you wish to make on this consultation

Types of promotions and impact on business

The most effective and fairest approach is for regulations to create a level playing field for all food and drink businesses. The introduction of mandatory measures will create this level playing field across all food and drink businesses in all sectors within scope of the regulations - retail, out of home, online and wholesale.

The regulations should include as many times of price and location promotions as possible to ensure maximum effectiveness. Modelling evidence outlined in the partial BRIA outlines the economic monetary value benefits from reduced calorie consumption associated with the regulations for just multi-buy promotions and then for all promotion types. This includes costs such as costs to the NHS, quality adjusted life years (QALYs), economic output, and social care costs. The analysis shows the economic benefits are much greater for all promotions, than just multi-buys, acutely demonstrating why all types of promotions need to be covered by the regulations to achieve the maximum beneficial outcomes for individuals, economy, health systems, and society.

Cost of living, health impacts and inequalities

We recognise the rising cost of living is a significant concern for many people at this time. Food prices consistently remain one of the top areas of concern for consumers, with 87% of people reporting this as a concern, and 53% reporting that healthy eating is too expensive⁴³. Yet, the evidence is clear, as outlined throughout our response, that price and location promotions do not save consumers money, and instead encourage consumers to purchase and consume more than intended. Recently published data from Food Standards Scotland shows that total spend on food and drink is higher on price promotion than not on price promotion. Per kilogram, the average spend on price promotion (£2.16 per kg) was higher than average spend not on promotion or off promotion (£1.67 per kg)⁴⁴. This highlights that, on average, it's more expensive to purchase food and drink on price promotion than not on promotion.

Furthermore, inequalities are likely to be reduced, because the most disadvantaged groups are likely to gain the biggest benefits⁴⁵. Any groups or individuals in Scotland could potentially benefit from the proposed regulations through (1) spending less on, (2) buying less of and consequently (3) consuming less of the products within scope of the regulations.

The proposed regulations 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 quintile⁴⁶. Furthermore, more deprived households are actually more price-sensitive, and will therefore experience disproportionately greater health benefits, thus potentially narrowing the inequalities gap.

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. The proposed policies to restrict promotions would have a positive impact on the socioeconomically disadvantaged, reducing the gap between rich and poor.

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 expectancy⁴⁷. If we wish to see a thriving, productive healthy

⁴³ Food Standards Scotland (2024) Food in Scotland Consumer Tracking Survey Wave 16

https://www.foodstandards.gov.scot/downloads/Food_in_Scotland_Consumer_Tracker_Survey_Wave_16_report.pdf

⁴⁴ Food Standards Scotland (2024) Monitoring Retail Purchase and Price Promotions in Scotland 2019- 2022

https://www.foodstandards.gov.scot/downloads/Monitoring_Retail_Purchase_and_Price_Promotions_in_Scotland_2019-2022.pdf

⁴⁵ 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

⁴⁶ 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/economicmodelling-reducing-health-harms-foods-high-fat-sugar-salt-final-report/documents/economic-modelling-reducing-health-harms-foods-high-fat-sugar-salt-final-report/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>

⁴⁷ 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

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. Despite arguments to the contrary, which argue that restricting promotions of HFSS products would have a disproportionate impact on the socioeconomically disadvantaged, evidence clearly shows promotions actively 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 consumption⁴⁸.

Regulating promotions in this way is essential in a cost of living crisis to deliver a healthy population and healthy workforce, and ensure healthier options are the easiest and most affordable options for everyone.

Economic costs of obesity

Evidence shows there are high economic and other costs from obesity that could be addressed by taking legislative actions, such as restricting promotions of HFSS products.

Analysis carried out by Nesta puts the full cost of obesity in Scotland in 2022 at £5.3 billion, equivalent to 3% of Scotland's GDP in 2022. This cost is not experienced equally with those living in the two most deprived quintiles absorbing almost 50% (48%) of these costs, compared to only 14% in the least deprived quintile.

Modelling work undertaken as part of this study found that significant obesity reduction impacts can be achieved from only a small reduction in daily calorie consumption. It found that a 188-kcal reduction per day – less than the calories in an average 500ml bottle of carbonated soft drinks – would be enough to halve the prevalence of obesity over as little as three years and can increase the number of healthy years lived⁴⁹. This demonstrates the real impact such restrictions could have in contributing to reducing overall rates of obesity in the population.

Public support for regulations

Contrary to arguments put forward by some sections of the food and drink industry, there are high levels of public support for government action to improve the food environment, and an increased recognition by the public of the impact of industry actions on their food and drink choices.

Survey evidence shows that 70% of people in Scotland agree that the government should take action to prevent obesity in Scotland, and more than two-thirds (67%) agreed that unhealthy foods seem to be on promotion more than healthy food⁵⁰. Additional polling evidence also shows that the vast majority of respondents (87%) supported interventions to ensure special

⁴⁸ 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

⁴⁹ Nesta (2023) Counting the cost of obesity in Scotland. The economic and social costs of obesity in Scotland and what is needed to improve our health <https://www.nesta.org.uk/feature/counting-the-cost-of-obesity-in-scotland/>

⁵⁰ Food Standards Scotland (2024) Food in Scotland Consumer Tracking Survey Wave 16 https://www.foodstandards.gov.scot/downloads/Food_in_Scotland_Consumer_Tracker_Survey_Wave_16_report.pdf

offers and promotions are applied to healthy foods and everyday essentials when shopping in-store and online, while only 5% of respondents opposed such measures. Specifically, when looking at regulating promotions, more people were in favour of restricting price promotions of unhealthy foods in shops and online: 57% supported, 26% opposed⁵¹. A 2023 report commissioned by The Health Foundation found 86% of people in Scotland wanting greater action to tackle health inequalities, and more than half supporting specific interventions on promotions of HFSS products⁵². These polling findings demonstrate there are high levels of public support for government intervention and a recognition that action needs to be taken to change our food environment to improve public health.

About us

The Scottish Obesity Alliance serves as a forum for organisations to collaborate to influence policy and practice obesity prevention in Scotland. For any enquiries related to this submission, please contact info@scottishobesityalliance.org

⁵¹ <https://www.obesityactionsotland.org/campaigns-and-policy/food-environment/public-support-for-healthy-weight-policies/>

⁵² The Health Foundation (2023) Health Inequalities in Scotland: Public Engagement Research
<https://www.health.org.uk/sites/default/files/2022-12/health-inequalities-panel-report-diffley-nov2022.pdf>