

**To: Communities and Housing Policy Board**

**On: 21 May 2024**

---

**Report by: Director of Environment, Housing and Infrastructure**

---

**Heading: Consultation on proposed regulation for restricting promotions of food and drink high in fat sugar and salt**

---

## **1. Summary**

- 1.1 National statistics show that Scotland has increasingly higher levels of overweight, obesity and poor diet within the population, which can have serious consequences on health. The association between poor diet, excess weight and health outcomes such as heart disease, type 2 diabetes and certain cancers is well established.
- 1.2 In 2022, 72% of adults in the most deprived areas of Scotland were either overweight or obese, in comparison to 61% of adults in the least deprived areas. One third of children were also at risk of being overweight.
- 1.3 The cost of treating overweight and obesity in Scotland is estimated to be in the region of £363 - £600 million, although wider related costs such as loss of productivity is suggested to be between £0.9 - £4.6 billion.
- 1.4 The food environment heavily incentivises and promotes low-cost foods which over-contribute to energy, fat, saturated fat, salt and free sugar intakes.
- 1.5 The Scottish Government have launched a consultation on proposals to restrict the promotion of food and drink high in fat, sugar and salt.
- 1.6 The consultation will run for 12 weeks closing on the 21 May 2024, it will outline the detail of proposed regulations aimed at creating a food environment which better supports healthier choices.

- 1.7 The proposals include restricting multi buys, unlimited refills or selling at certain locations in stores, such as checkouts.
  - 1.8 The outcomes of the consultation will help develop new regulations that are to be laid before the Scottish Parliament.
- 

## 2. Recommendations

It is recommended that the Communities and Housing Policy Board:

- 2.1 Approves the consultation proposals, and proposed response, as detailed within Appendix A, and
  - 2.2 Notes that a further report will be brought to a future meeting of the Board when the plan has been finalised with an update on implications for the Service.
- 

## 3. Background

- 3.1 Approximately two out of three adults in Scotland [are living with overweight or obesity](#). In 2022, 72% of adults in the most deprived areas of Scotland were living with overweight or obesity, compared to 61% of adults in the least [deprived areas](#). [One third of children](#) were at risk of overweight or obesity in 2022.
- 3.2 Dietary intakes fall short of the majority of the [Scottish Dietary Goals](#) (SDG), with little improvement towards achieving them over the past 20 years. This places a huge burden on both the NHS and society as a whole. The [approximate costs of treating overweight and obesity](#) in Scotland are estimated to be in the region of £363-£600 million, with wider related costs such as loss of productivity suggested to be between £0.9- £4.6 billion.
- 3.3 The food industry, including retail, manufacturing, wholesalers and out of home sectors, have a vital role to play in the shift towards a food environment which supports healthier and sustainable options for consumers.
- 3.4 To improve dietary intake, changes in the composition, sales, advertising, marketing, availability, affordability, and distribution of food in the retail and out of home environments will be required.
- 3.5 The Scottish Government have launched a consultation on proposals to restrict the promotion of food and drink high in fat, sugar and salt.
- 3.6 The consultation will run for 12 weeks closing on the 21st of May 2024. It will outline proposed regulations aimed at creating a food environment which better supports healthier choices.

- 3.7 The intention is to use powers in the [Food Safety Act 1990](#) and the [Food \(Scotland\) Act 2015](#) to provide enforcement of the Regulations. It is intended that local authority Environmental Health Services (as food authorities) will be responsible for enforcing the proposed Regulations.
- 3.8 A full copy of the consultation and the proposed consultation response are attached as an appendix.
- 

## Implications of the Report

1. **Financial** – none
2. **HR & Organisational Development** – The new legislation will require to be enforced by Environmental Health staff. Whilst recognised as an important role in the wider public health remit, this will create additional work for officers.
3. **Community/Council Planning** –  

*Our Renfrewshire is fair* – Deprivation has been shown to have a major impact on health with those living in the most deprived areas having poorer health outcomes than those in less deprived areas. This work to reduce obesity and improve diets will help to address these inequalities within Renfrewshire.

*Tackling inequality, ensuring opportunities for all* – Obesity has a bigger impact on those in deprived areas, including children. There are well established links between obesity and poor health outcomes such as heart disease, type 2 diabetes and certain cancers. By improving obesity levels and poor diet in Renfrewshire we aim to ensure our children get the best possible start in life, tackle health inequalities and promote healthy lifestyles.
4. **Legal** – none
5. **Property/Assets** – none
6. **Information Technology** – none
7. **Equality & Human Rights** –  

The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report because for example it is for noting only. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
8. **Health & Safety** – none

9. **Procurement** – none
10. **Risk** - none
11. **Privacy Impact** – none
12. **COSLA Policy Position** – none
13. **Climate Risk** – none

---

**List of Background Papers**

**None**

---

**Author:** *Gwyneth Heaney, Climate and Public Protection Manager*

**Email:** [Gwyneth.heaney@renfrewshire.gov.uk](mailto:Gwyneth.heaney@renfrewshire.gov.uk)

### **Restricting promotions of food and drink high in fat, sugar or salt-Consultation on details of the proposed regulations**

#### **Foods subject to restriction**

In this section, we are seeking views on the food categories that we propose to include in promotions restrictions. Further information on previous consultation responses, and how our proposals compare with UK Government regulations and Welsh Government consultation proposals are set out in Section 1 of the [consultation paper](#).

#### **Food categories**

We propose that the food categories within scope of promotions restrictions are:

**Soft drinks with added sugar** (including soft drinks such as cola or lemonade, as well as juice based and milk based drinks with added sugar, fruit juices and smoothies with added sugar).

**Savoury snacks** (including crisps, corn puffs, tortilla chips, savoury crackers or rice cakes such as pretzels, papadums, salted popcorn and prawn crackers).

**Breakfast cereals** (including ready-to-eat cereals, granola, muesli, porridge oats and other oat-based cereals).

**Confectionery** (including chocolates and sweets).

**Ice cream, ice lollies, frozen yogurt, water ices** and similar frozen products.

**Cakes and cupcakes** (including swiss rolls, tray bakes and cake bars).

**Sweet biscuits and bars** based on one or more of nuts, seeds or cereal.

**Morning goods** (including croissants, pains au chocolat and similar pastries, crumpets, pancakes, buns, teacakes, scones, waffles, Danish pastries and fruit loaves).

**Desserts and puddings** (including pies, tarts and flans, cheesecake, gateaux, dairy desserts, sponge puddings, rice pudding, crumbles, fruit fillings, powdered desserts, custards, jellies and meringues).

**Sweetened yoghurt and fromage frais**

**Pizza**

**Roast potatoes, chips and other similar potato products**

**Ready meals** (including ready to cook or reheat meals intended to be consumed as a complete meal, or meal centres, such as ready to heat stews, curries, bolognese or pies, in addition to breaded or battered vegetable, meat, fish or poultry products.)

## Defining food categories

We propose to be consistent with the food category descriptors set out in [Schedule 1 of the UK Government regulations for England](#) (see Annex D of the [consultation paper](#)) as far as possible.

## Identifying food and drink products within scope of restrictions

We propose that promotions restrictions will only apply to pre-packed food and drink products that are high in fat, sugar or salt (HFSS) as defined by the 2004/05 nutrient profiling model (NPM).

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

Yes

No

Don't know

Please explain your answer

As the policy appears to target larger retailers who operate across borders, alignment will reduce impact on business and assist with implementation & enforcement.

2. Do the food category descriptors set out in Schedule 1 (and included in Annex D of the consultation paper) sufficiently describe the food categories within scope of regulations?

Yes

No

Don't know

Please explain your answer

These appear to describe the products sufficiently.

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

Please give us your views

Products such as: sandwiches, sushi and some salads should be considered for inclusion as these would fall within the definition of HFSS.

## Price promotions

Price promotions refer to special offers where there is a reduction in the usual price of a product. These may be time-limited or conditional on some other requirement, such as purchasing another item(s) or being a member of a loyalty scheme. It does not include other marketing and promotional strategies such as product placement or advertising.

We propose that the following types of price promotion will be within scope of restrictions:

### **Multi-buys**

Multi-buy means:

- i) where the purchase of multiple items is cheaper than purchase of each individual item separately. Examples include: 2 for £1, 3 for 2, buy 6 and get 25% off.
- ii) where a promotion indicates that an item, or part of an item, is free. Examples include: buy one, get one free and 50% extra free.

We propose that multi-buy restrictions will apply to targeted foods which are pre-packed and are high in fat, sugar or salt (HFSS) (as defined by the 2004/05 NPM).

### **Unlimited refills**

Unlimited refill in this consultation means a promotion that offers the consumer at least one refill of the same drink or another drink (within scope of the restrictions) for free (including top ups) after the consumption of the first drink.

We propose that unlimited refills for a fixed charge on soft drinks with added sugar that are HFSS or "less healthy" [as defined by the nutrient profiling model (NPM)], whether pre-packed or non-pre-packed, will be restricted. Non-pre-packed refills of other targeted foods are not proposed to be within scope of the policy at this time.

### **Meal deals**

Meal deals are a form of multi-buy promotion where the purchase of multiple items is cheaper than the purchase of individual items separately, which could encourage consumers to purchase more in order to obtain a discount.

We propose that a meal deal promotion is:

*an offer of a discounted price for multiple items promoted as intended to be consumed together as, or as part of, a meal by one, or by two or more people. Examples include lunchtime meal deals and dine in offers.*

We have proposed three different options for the inclusion of meal deals within scope of these restrictions. The options are outlined in section 2 of our consultation.

### **Temporary price reductions**

Temporary price reductions (TPRs) are short term reductions in the price of food and drink products. Most retailers will run such offers on specific items for a typical duration of 2-4 weeks before reverting back to the full price but this can vary.

We propose to broadly define TPRs as follows:

*Temporary price reductions are a promotion where the normal price of an item is discounted for the duration of a defined, time limited period before reverting back to the item's usual price.*

Further information can be found in Section 2 of [our consultation](#)

4. Is the proposed description of the following sufficiently clear for the purpose of implementation and enforcement:

	Yes	No	Don't Know
a) Multibuy?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Extra free?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answer

The description appears to be sufficient.

5. Is the proposed timescale of 12 months at paragraph 53 of the consultation sufficient to allow price promotions on packaging to be phased out?

Yes

No

Don't know

Please explain your answer

It is agreed that this is a suitable lead in period.

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

Please give us your views

Upselling is part of the meal deal, so may restrict sales of certain items and businesses may be keen to retain these deals. This may encourage re-formulation and manufacture of healthier food options.

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



- Option 1 - Meal deals cannot contain high in fat, sugar or salt targeted foods.
- Option 2 - Meal deals can contain up to one high in fat, sugar or salt targeted food.
- Option 3 - Meals deals cannot contain targeted high in fat, sugar or salt 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 promotes the healthy option for the population. If meal deals can contain targeted or one high fat/ sugar or salt, this does not drive change in the population or educate consumers on the best healthy options. This may encourage manufacturers to reformulate and create healthier products. Consumers should, however, be able to get value for money without adverse health implications.

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

- Yes
- No
- Don't know

Please explain your answer

The definition appears clear.

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

Please give us your views

Whilst this may have an effect on retailers as TPR's are used to increase sales and are used loss leaders, etc.. they may also be used to use up over production, overstocking etc. so could lead to more waste.

TPR's can have an adverse effect on producers, as retailers can pass the cost of the reduction back to them, so as an unintended consequence, the proposal may assist producers.

### **Location restrictions: in store**

We propose to restrict the location of targeted foods in prominent places in physical premises where they are sold to the public.

We propose that targeted foods could not be placed in store at:

#### **Checkout areas**

Meaning:

- i. any area within 2 metres of the checkout facility, which is the facility intended to be used by consumers to make a purchase, including a self-checkout terminal and a counter at which a cash register is used. Targeted high in fat, sugar or salt (HFSS) foods would be able to be placed in an aisle (but not at the end of an aisle) even if it is within 2 metres of a checkout.
- ii. any area within 2 metres of a designated queuing area or queue management system. Targeted HFSS foods would be able to be placed in an aisle (but not at the end of an aisle) even if it is within 2 metres of a checkout.

#### **End of aisles**

Meaning a display at the end of (but not within) an aisle, where the aisle end is adjacent to a main customer route through the store. Includes displays on a separate structure, such as an island bin, pallet, free standing unit, side stack or clip strip connected or adjacent to, or within 50cm of, such an aisle end.

#### **Store entrances**

Meaning any point within the prohibited distance of the midpoint of any public entrance to the store's main shopping area. (Prohibited distance - the smaller of 15m or the following:  $\sqrt{0.03 \times a}$ )

#### **Covered external area**

Meaning a covered area outside and connected to a store's main shopping area, through which the public passes to enter the main shopping area (such as a foyer, lobby or vestibule).

#### **Free standing displays**

Meaning free standing displays of products away from other products to increase their visibility. Display locations can include the middle of an aisle, along main customer routes through store, and other highly noticeable places. This would include displays using free standing structures such as pallets, fridges, freezers, island bins, aisle units and gondolas.

The location restrictions would apply to pre-packed targeted foods. Promotions of non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge would also be within scope of location restrictions.

More information can be found in Section 3 of [our consultation](#).

10. Are the proposed descriptions of the following prominent in-store locations sufficiently clear for implementation and enforcement?

	Yes	No	Don't know
a) checkout?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) end of aisle?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) store entrances?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) covered external area?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) Free-standing displays?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answers

The descriptions appear sufficiently clear for implementation and enforcement.

11. Do you agree with the proposed approach to applying store entrance criteria to dedicated food areas within stores, as described at paragraphs 97-99 of our consultation?

Yes

No

Don't know

Please explain your answer

We agree with the proposed approach.

12. Do you agree with the proposed description for relevant floor area?

Yes

No

Don't know

Please explain your answer

We agree with the proposed description.

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

Please give us your views

**Location restrictions: online**

We propose that restrictions on the placement of targeted high in fat, sugar or salt (HFSS) foods would apply to equivalent locations online as follows:

(1) on a **home page**, whether or not the consumer enters the online marketplace via the home page. “Home page” means any of: (i) an online marketplace’s highest level public page; (ii) the highest level public page of an online marketplace’s grocery section.

(2) whilst a consumer is **searching for or browsing products**: (i) other than targeted foods; (ii) in targeted food categories unless:

- a consumer browses or searches for a general category of product which includes the targeted food e.g. seasonality or nutritional or dietary characteristics.
- a search term entered by the consumer matches in whole or in part the name under which the targeted food is marketed or an ingredient listed on the packaging of the targeted food.
- 

(3) on a **favourite products page** unless the consumer has previously purchased the targeted food (whether in store or online) or intentionally identified it as a favourite product. “Favourite products page” means a page opened by a consumer for the purpose of browsing products they have previously purchased or intentionally identified as favourite products.

(4) on **pages not opened intentionally by the consumer** (such as “pop-ups” or a “brand burst”).

(5) on a **checkout page**, meaning a page shown to a consumer as part of the checkout process, such as a page listing items the consumer has so far selected for purchase or a page dealing with payment, collection or delivery.

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

	Yes	No	Don't know
a) Home page	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Favourites page	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) pages not opened intentionally by the consumer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Checkout pages	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answers

Provides clear guidance and should ensure a level playing field for retail sales whether in-store or on-line.

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

Yes

No

Don't know

Please explain your answer

This should cover all online activity and platforms such as: Just eat, Uber Eats and other social media social media for example, Facebook, X, etc.

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

Please give us your views

**Businesses in scope**

We propose that price and location restrictions (both instore and online) will apply to a *qualifying business*. This would include retail, out of home, wholesale and other businesses as set out at paragraph 109 of the consultation paper.

Proposed exemptions from location restrictions are explored in more detail in section 5 of the consultation.

We propose that a qualifying business would be:

(i) a business which offers pre-packed targeted foods, (and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge) for sale to the public in the course of business (whether in-store or online);

(ii) a business with 50 or more employees

We propose that the restrictions would not apply to:

- wholesale outlets (where sales are only to trade);
- where sales are not in the course of business, for example food provided through charitable activities, for example bake sales;
- care homes; and
- schools

Manufacturers would not be considered a qualifying business unless they are selling pre-packed targeted foods directly to consumers.

We propose that concessions are separate businesses which operate in a designated area within the premises of a qualifying business if they operate their own payment facilities.

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.

More information can be found in Section 4 of [our consultation](#).

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

Yes

No

Don't know

Please explain your answer

The types of businesses within the scope appear to be sufficiently described for the purpose of implementation and enforcement.

18. Is the proposed extension of restrictions to online sales, including through online aggregator sites and apps, (see paragraph 116 of the consultation paper) sufficiently described for the purpose of implementation and enforcement?

Yes

No

Don't know

Please explain your answer

They appear to be sufficiently described.

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

Yes

No

Don't know

Please explain your answer

They appear to be sufficiently described.

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?

Yes

No

Don't know

Please explain your answer

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

Please give us your views

It was disappointing that takeaway businesses were not included within the scope as they too, offer meal deals etc and the types of food offered are mainly HFSS. There are higher concentrations of these outlets in more deprived areas. In 2018, Public Health England reported that there were 5 times more of these outlets than in affluent areas. This adds to the health deficit in more deprived areas. In addition, an unintended consequence of not including smaller retailers is that those in the same poorer areas will continue to be exposed to HFSS products and the negative health implications on this population.

### Exemptions from location restrictions

We recognise that the food business landscape is incredibly diverse, comprising outlets of various sizes and layouts, selling a range of products. Consequently, the extent to which businesses may be able to comply with location restrictions will also vary.

Therefore, in considering whether there should be any exemptions, we continue to be guided by the following key principles:

- Implementable: can the exemption be implemented in a proportionate way?
- Meaningful: the exemption does not undermine the overall aims and benefits of the policy.

We propose the following exemptions for qualifying businesses, as defined at paragraph 113 of our [consultation document](#), from location restrictions:

- **Business type** - Specialist businesses with a limited product range, such as chocolatiers and sweet shops, will be exempt from location restrictions.
- **Store size** - Stores with a relevant floor area of less than 185.8 square metres (2,000 square feet) would not be within the scope of the location restrictions. Relevant floor area is discussed in more detail, including a proposed definition, at paragraph 100-101 of the consultation paper.

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

Yes

No

Don't know

Please explain your answer

The definitions appear clear.



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

Yes

No

Don't know

Please explain your answer

They appear to be sufficiently defined.

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

Please give us your views

### Enforcement and implementation

In this section, we are seeking views on enforcement and implementation of the policy.

The intention is to use powers in the [Food Safety Act 1990](#) and the [Food \(Scotland\) Act 2015](#) to provide for enforcement of the Regulations.

We propose that local authorities will be responsible for enforcing the policy on the basis that they have experience of similar enforcement, have local knowledge and can incorporate enforcement of the policy into other inspection visits, where appropriate.

In addition, we propose:

- The enforcement process should be fair and proportionate, with a focus on supporting compliance;
- Relevant enforcement powers for handling non-compliance with legal requirements and relevant offences will be available to local authorities;
- Guidance will be issued to local authorities to support effective enforcement; and
- Guidance will be developed for industry to support effective implementation.
- A 12 month lead in time from when regulations are laid to them coming into force to allow preparation for enforcement and implementation of the policy.

Non-compliance with the requirements or restrictions set out in the Regulations will amount to an offence, the ultimate penalty for which could result in a criminal penalty.

The maximum criminal penalty proposed is that a person found guilty of an offence will be liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500). However, the intention is for local authorities to be able to issue administrative sanctions as an alternative to prosecution.

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

Yes

No

Don't know

Please explain your answer

Agree with the proposed use of administrative sanctions for the enforcement of the policy however, would recommend that consideration is given to the implementation of a licensing/pre-registration/certificate to trade scheme for food businesses. It is likely that such a measure would increase compliance in all areas of food law.

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

Yes

No

Don't know

Please explain your answer

Agree with the maximum penalties proposed for the offences in relation to enforcement of the policy.

27. Is the proposed 12 month period following the introduction of regulations sufficient to prepare for?

	Yes	No	Don't know
a) Implementation?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Enforcement?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answer

This appears to be a suitable lead time. Adequate resource would be required to allow staff training and educational campaigns for businesses prior to implementation.

## **Additional comments**

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

Please give us your views

It is agreed that local authorities have experience of similar enforcement, have the enforcement staff with local knowledge and may on some occasions, be capable of incorporating enforcement of the policy into other inspection visits. There must, however, be recognition that some Environmental Health Services are already finding it difficult to meet their current statutory obligations. It is therefore critical that local authorities are given the additional resources required if this policy is to succeed.