

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

RESPONDENT INFORMATION FORM

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Are you responding as an individual or an organisation?

- Individual
 Organisation

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

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

Multi-agency partnership

If you are responding on behalf of a retailer or out of home provider, please state the size of this business:

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

Full name or organisation's name

Glasgow Food Policy Partnership and Glasgow Centre for Population Health

Phone number

Address

Glasgow Centre for Population Health
Olympia Building
2-16 Orr Street, Bridgeton, Glasgow

Postcode

G40 2QH

Email

Jill.Muirie@glasgow.ac.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

QUESTIONNAIRE

Section 1. Foods that would be subject to restrictions

Question 1

Which food categories should foods promotion restrictions target?

- Option 1: Discretionary food categories (paragraph 61)
- Option 2: Discretionary foods + ice-cream and dairy desserts (paragraph 62)

We believe that only targeting discretionary foods is the most sensible way forward in the first instance at least, as it lessens the complexity of implementation and communication of the new guidelines as well as conveying the broader message of the importance of reducing the size and frequency of HFFS snacks. We don't feel that it is necessary to include all the additional foods that are part of the UK-wide reformulation programme, as we believe we should be encouraging and promoting a healthy diet (in line with the Eat Well plate) rather than relying on reformulating products. Further, we don't believe that the use of artificial sweeteners to be the answer when reformulating products, as the evidence suggests this might lead to other health problems (1).

It would seem sensible not to include ice-cream and dairy desserts as discretionary foods because of their potential nutritional contribution to dietary intake (and specifically calcium) and the likelihood they will be consumed as part of a meal rather than a snack. However, we do recognise that it is possible that the public may feel there are mixed messages if the ice cream version of a confectionery bar can be promoted in different ways to its non-ice cream version. Perhaps a threshold of percentage of sugar in an ice-cream or dairy dessert could be used to determine which products are included in these restrictions?

However, we feel that breakfast cereals that are very high in sugar (and, sometimes, fat) (2) should also be considered as these are heavily marketed to children and often use popular characters or branding to increase their attractiveness to children. There is good evidence that a breakfast cereal that has a low glycaemic index (GI) is more likely to enable children to perform at their optimum during morning lessons at school and so there is good reason to limit the promotion of the sugary (high GI) breakfast cereals that may inhibit their learning in the short term, as well as contributing to poor health in the longer term (3).

1. Debras C, Chazelas E, Sellem L, Porcher R, Druésne-Pecollo N, Esseddik Y et al. Artificial sweeteners and risk of cardiovascular diseases: results from the prospective NutriNet-Santé cohort BMJ 2022; 378 :e071204 doi:10.1136/bmj-2022-071204
2. Cheyne AD, Dorfman L, Bukofzer E, Harris JL. Marketing sugary cereals to children in the digital age: a content analysis of 17 child-targeted websites. Journal of Health Communication 2013;18(5):563-582. DOI: 10.1080/10810730.2012.743622.
3. Ingwersen J, Defeyter MA, Kennedy DO, Wesnes KA, Scholey AB. A low glycaemic index breakfast cereal preferentially prevents children's cognitive performance from declining throughout the school morning. Appetite 2007;49(1):240-244. Available at: <http://www.sciencedirect.com/science/article/pii/S0195666306006398>.

- Option 3: Categories that are of most concern to childhood obesity (paragraphs 63-64)
- Option 4: All the categories included in the UK-wide reformulation programmes (paragraph 65)
- Other (please specify)
- Don't know

Please explain your answer.

Question 2

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

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

Please explain your answer.

No.
We don't have any specialist knowledge in using this system but we do not think there is any reason to target non HFSS products (see our answer to question 1).

Question 3

If nutrient profiling were used, do you agree with the proposal to only target pre-packed products and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge? (see paragraphs 73-74 for further information):

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

Please explain your answer.

If nutrient profiling were used, we would answer, Yes.

This sounds like a sensible approach, as it would be very difficult for smaller businesses to give correct information on the loose bakery items and in addition would create a large amount of work for those involved.

For the reasons highlighted on question 1, we suggest that unlimited artificially sweetened soft drinks are also included in the promotion restrictions.

Section 2. Price promotions

Question 4

What are your views on the proposal to include the following within the scope of multi-buy restrictions:

Extra Free:

- Agree
- Disagree
- Don't know

Meal Deals:

- Agree
- Disagree
- Don't know

Please explain your answers.

Agree with both.
We believe it is important to keep the restrictions as simple to understand and implement and to be as consistent as possible so we agree that restrictions should also extend to multi buys and 'extra free' deals.

Question 5

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

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

Please explain your answer.

Agree.
We agree that restrictions should extend to unlimited refills on soft drinks.

We also believe that this should include soft drinks with added sugar and soft drinks without sugar but with added sweeteners ('diet drinks') as we do not believe that promoting 'unlimited' consumption of artificially flavoured soft drinks should be encouraged.

Question 6

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

- Yes
- No
- Don't know

Please explain your answer.

Yes.

See answer to question 5. We believe that unlimited amounts of artificially sweetened soft drinks ('diet drinks') should also be included in restrictions.

Question 7

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

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

Please explain your answer.

Agree.

Temporary Price Reductions are common and they should be included in the restrictions.

Question 8

Are there any other forms of price promotion that should be within scope of this policy?

- Yes
- No
- Don't know

Please explain your answer.

Yes.

We believe that multi-packs, upsizing and online promotions should also be included in the scope of this policy. As above, this is for reasons of consistency and simple interpretation of the rules.

Section 3. Location and other non-price promotions

Question 9

Should the location of targeted foods in-store be restricted at:

Checkout areas, including self-service:

- Yes
- No
- Don't know

End of aisle:

- Yes
- No
- Don't know

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

- Yes
- No
- Don't know

Island/ bin displays:

- Yes
- No
- Don't know

Please explain your answers.

Yes to all.

Our reason are, again, to ensure consistency and clarity in interpreting the restrictions.

Question 10

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

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

Please explain your answer.

No others that we can think of, but again we wish to emphasise that there should be consistency and clarity in the implementation of these restrictions.

Question 11

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

Home page:

- Yes
- No
- Don't know

Favourite products page:

- Yes
- No
- Don't know

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

- Yes
- No
- Don't know

Shopping basket:

- Yes
- No
- Don't know

Checkout page:

- Yes
- No
- Don't know

Please explain your answers.

Yes to all. To ensure clarity and consistency of implementation and parity across online and in person retail.

Question 12

Should any other online locations be included in restrictions?

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

Please explain your answer.

Yes.

All online locations including in apps, such as supermarket apps and fast food apps (e.g. Just Eat, Deliveroo). This is important to ensure clarity and consistency of implementation and parity across online and in person retail.

Question 13

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

- Yes
 No
 Don't know

Please explain your answer.

Upsizing should also be included – it should not be cheaper to buy larger volumes of HFSS foods. We also would like to see there being flexibility in the policy to include new forms of promotion as they develop.

Section 4. Places that would be subject to restrictions

It is proposed that promotions would apply to any place, both physical premises and online, where pre-packed targeted foods are sold to the public. This would include:

- **Retail** such as supermarkets, convenience stores, discounters and bargain stores (including online sales)
- **Out of home** such as takeaway, home delivery services, restaurants, cafes, coffee shops, bakeries, sandwich shops and workplace canteens (including online sales)
- **Wholesale** outlets where there are also sales made to the public (including online sales)
- **Other outlets** such as clothes shops, tourist shops and pharmacies (including online sales)

Question 14

Which places, where targeted foods are sold to the public, should promotions restrictions apply to?

Retail:

- Yes
 No
 Don't know

Out of home:

- Yes
- No
- Don't know

Wholesale (where sales are also made to the public):

- Yes
- No
- Don't know

Other outlets:

- Yes
- No
- Don't know

- Don't know

Please explain your answers.

Yes to all.
There should be consistency in the restrictions – they should apply in all locations. We agree that exclusions can apply where sales are not in the course of business (e.g. bake sales for charity), but we do not understand the proposed exclusion of wholesale outlets to trade – restrictions should apply consistently.

Question 15

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

- Yes
- No
- Don't know

Please explain your answer.

It is proposed that the restrictions would not apply to: other wholesale outlets (where sales are only to trade); and where sales are not in the course of business, for example food provided through charitable activities, for example bake sales.

Question 16

Are there other places/ types of business which should not be within the scope of the restrictions?

- Yes
- No
- Don't know

Please explain your answer.

Section 5. Exemptions to restrictions

Question 17

Do you agree with our proposal to exempt specialist businesses that mainly sell one type of food product category, such as chocolatiers and sweet shops, from location restrictions?

- Yes
- No
- Don't know

Please explain your answer.

Yes.

We believe it is important to keep the restrictions as simple to understand and implement and to be as consistent as possible, so we believe that specialist businesses should be covered by all the restrictions other than the location restrictions which we accept are likely to be particularly difficult.

Question 18

If exemptions are extended beyond our proposal to exempt specialist businesses that mainly sell one type of food product category, should exemptions be applied on the basis of:

	Yes	No	Don't know
Number of employees	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Floor space	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
None	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Don't know	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answer.

No exemptions, however some smaller businesses may need support to implement the policy.

Question 19

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

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

Please explain your answer.

We believe that the restrictions must apply in all locations and that none should be exempt based on size.

Question 20

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

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

Please explain your answer.

Not applicable.

Question 21

Are there any other types of exemptions that should apply?

- Yes
- No

Don't know

Please explain your answer.

Section 6. Enforcement and implementation

Question 22

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

Yes

No

Other (please specify who)

Don't know

Please explain your answer.

We don't feel best placed to answer this.

Question 23

If local authorities were to enforce the policy, what resources (for example staffing/funding) do you think would be required to support enforcement?

Please explain your answer.

Enforcement will need to be funded but we are unsure how much funding would be required.

Question 24

What do you think would be an appropriate lead-in time to allow preparation for enforcement and implementation of the policy?

6 months

12 months

18 months

24 months

Other (please specify)

Don't know

Please explain your answer.

We do not feel we have the knowledge required to answer this helpfully.

Question 25

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

Please explain your answer.

The limited resources within local authorities needs to be considered in relation to enforcement. Enforcement will require to be adequately resourced.

Section 7: Legislative framework

Question 26

Do you agree that Scottish Ministers should be able to make provision in secondary legislation, following consultation, to regulate in relation to specified less healthy food and drink and to arrange for enforcement (including the setting of offences and the issuing of compliance notices and fixed penalty notices)?

- Yes
- No
- Don't know

Please explain your answer.

Section 8. Impact Assessments

Question 27

What impacts, if any, do you think the proposed policy would have on people on the basis of their: age, sex, race, religion, sexual orientation, pregnancy and maternity, disability, gender reassignment and marriage/civil partnership?

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

Comment

We have not identified differential potential impacts in relation to the protected characteristics listed.

Question 28

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

Comment

It is possible that people on low incomes will find fewer low cost food products are available however by limiting the restrictions to HFSS products and not wider products, we believe such an impact will be limited and may encourage a shift to purchasing foods with greater nutritional value. We do not, however, have evidence for this and would like to see monitoring of the impacts of the restrictions, once implemented, on different population groups, including those people living with socio-economic disadvantage, particularly during a period of economic difficulty.

Question 29

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

Comment

There is a possible unintended impact on people with Type 1 Diabetes who may need to access high sugar foods. People with type 1 diabetes can meet disability definitions and therefore a protected characteristic. A failure to consider this within the HFSS may have the potential to be discriminatory as often sugary drinks/food are the quick response to hypo's which if untreated or managed inappropriately can have a negative short, mid and long term impact on the health.

Question 30

Please tell us about any other potential unintended consequences (positive or negative) to businesses, consumers or others you consider may arise from the proposals set out in this consultation.

Comment

None

Question 31

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

Comment

None