Consultation outcome

Restricting promotions of products high in fat, sugar and salt by location and by price promotion: response to public consultation

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Executive summary

The aim of this policy is to restrict the promotion of foods high in fat, sugar and salt or because of their substitutes to help improve people's diets and reduce children's sugar intake.

Obesity is one of the biggest health problems this country faces. Two-thirds of adults are overweight or obese. 1 in 3 children aged 10 to 11 years old are overweight or living with obesity. Excess weight is a major risk factor for many diseases and conditions including cancer, heart disease and diabetes.

Regular consumption of food and drink high in calories, sugar and fat contributes to weight gain and obesity. Obesity is a complex issue with significant impact on health and wellbeing and increases the risk of already related diseases.

The COVID-19 pandemic has highlighted the impact that obesity can have on people's health and wellbeing. Data from the pandemic showed that people who were overweight or obese were more likely to be admitted to hospital and have an increased risk of dying from COVID-19 compared to various other factors. The impact of obesity on hospitalisations affected both individuals and the NHS.

There has been growing concern about the impact of sustained offers on unhealthy food and drink. Research has found that promotions of unhealthy food and drink can encourage people to buy more than they intended to buy and have an increased risk of dying from COVID-19 compared to various other factors. The impact of obesity on hospitalisations affected both individuals and the NHS.

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Supermarkets have made voluntary commitments in this space, for example pledges to no longer sell confectionery at checkouts and shopping lanes and to reduce the amount of sugar in food and drink products by volume. However, these commitments have not been consistently accepted by all scale and therefore do not support a level playing field for business to compete on.

In the Prime Minister's Obesity Strategy published in October 2020, the government announced its intention to ban promotions of products high in fat, sugar and salt in prominent locations in retail environments and consult on how this policy would be implemented. We then consulted from 11 January to 8 April 2021 and received 6611 responses from individuals, organisations and businesses. We published the Government response to the consultation on 28 December 2021.

Following consultation, the government announced in Tackling obesity: empowering adults and children to live healthier lifestyles in January 2021. It stated that its intention to introduce legislation to restrict promotions of foods high in fat, sugar and salt or because of their substitutes in retail outlets in England and online in England. The government intends to by regulations in mid 2022. We will identify the consulting further with Local authorities and business to ensure the regulations are fit for purpose and proportionate.

This policy will significantly impact on food retailers and manufacturers. It plays a key role in achieving the government's ambition to halve childhood obesity by 2030.

Summary of policy

Prevention of HFSS products will be restricted by location and volume price promotions.

Location restrictions will apply to store entrances, aisle ends and checkouts and their volume price promotions will be restricted in large stores (stores for other food categories, and shopping basket or operator paper).

Volume price restrictions will prohibit promotions of HFSS products such as "buy one get one free" or "3 for 2" offers or HFSS products.

Consultation outcome

The consultation sought views on government's proposal that the restrictions should apply to all businesses that sell food and drink to consumers, including food and drink, such as clothes shops and newsagents.

93% of respondents agreed that the restrictions should apply to all retailers that sell food and drink including franchises and the most common reasons given were that it would ensure a level playing field for business, that it would help to reduce the overall impact of HFSS products and that it would be the most cost effective way to implement the policy.

Regarding whether price restrictions should apply to stores/businesses, 44% of respondents agreed that the restrictions should apply to all businesses to ensure consistency and a level playing field. Not all respondents agreed with the proposal, 29% disagreed and 27% neither agreed nor disagreed. The most common reasons provided were that it would be too burdensome on small businesses and that it would be a deterrent to shop elsewhere. 32% agreed that the restrictions should apply to retailers who do not primarily sell food, or that the current proposals were too lenient and that it would be better to impose a stricter approach.

Government also sought views on a list of specific exemptions including for Intra-business (businesses) transfers (other than franchisees), independent retailers who sell one type of product, for example chocolates or sweet shops, and those selling food and drink in a small area, for example, kiosks such as chocolate or sweet shops in airports or train stations.

Regarding whether price restrictions should apply to intra-business, 44% agreed that the restrictions should apply to all businesses to ensure consistency and a level playing field. Not all respondents agreed with the proposal, 29% disagreed and 27% neither agreed nor disagreed. The most common reasons provided were that it would be too burdensome on small businesses and that it would be a deterrent to shop elsewhere. 32% agreed that the restrictions should apply to retailers who do not primarily sell food, or that the current proposals were too lenient and that it would be better to impose a stricter approach.

Regarding specialist retailers, 49% of respondents said that the price restrictions should apply to specialist retailers, the most common reasons given were because the consumer protection and health benefits would be the same regardless of the type of retailer, and because the restrictions should be not restrictive and that government should not intervene. 32% of respondents said that the restrictions should not apply to specialist retailers, the most common reasons given were that it would be too burdensome on small businesses and that it would be a deterrent to shop elsewhere. 19% of respondents said they neither agreed nor disagreed.

Regarding the small retail exemption, 49% of respondents said that the area is a sensible exemption to ensure the restrictions are proportionate and 32% of respondents said that the area is too generous and should be lower, such as 20 or less square metres. 19% of respondents said that 1,000 square feet should be used as a suitable smaller stores where they argued it would be more in line with the Tobacco and Retail Display Ban.

Discussion

The government has considered all the feedback received, government has decided that the restrictions will apply to all retailers in scope (which we are defining as 10 or more employees, see section 172 of the Companies Act 2006 for the definition of a business). The government has decided to exclude specialist retailers, for example, businesses primarily selling under the same name (where the total number of employees is less than 10) such as chocolate or sweet shops, or those selling food and drink only to retailers who are in scope (for example, clothes shops or clothes shops) to ensure that shopping environments do not incentivise people to buy more than they intended to buy and to ensure that the consumer choice remains intact.

Further data analysis and stakeholder engagement was conducted and, as a result, government has decided that the restrictions will apply to all employees and not just employees in the 10 employee definition, for the price and location restrictions. We recognise that smaller businesses may find implementation of the restrictions more challenging than larger businesses, however, we have decided that the restrictions should be inclusive. Stores (more than 50 employees) have a greater turnover and more staff, and therefore have more opportunity to implement the restrictions and have more to lose regulatory compliance. Smaller businesses, such as convenience stores and small businesses represent a small proportion (less than 20% in terms of sales) of the market and have less opportunity to implement the restrictions and have less to lose from non-compliance with the price policy. We will provide detailed guidance to support businesses to prepare for and implement the restrictions and enforcement.

The restrictions will between apply to springs groups or arrangements where the total number of employees is 10 or more. We will provide detailed guidance to support businesses to prepare for and implement the restrictions and enforcement.

With respect to specialist retailers who only sell a specific type of HFSS product, for example, chocolate or sweet shops, the government has decided that restrictions would be impossible to implement and would likely lead to significant disruption to their businesses. This, however, is not the case for other specialist retailers, for example, those selling food and drink only to retailers who are in scope, for example, clothes shops and clothes shops and specialist retailers, such as chocolate or sweet shops, for example, kiosks such as chocolate or sweet shops in airports or train stations.

Overall, for volume and location promotions, 67% and 68% of respondents, respectively, agreed that the proposed restrictions would be proportionate due to the negative health effects associated with these products. Respondents also noted that the restrictions would be proportionate because they would be consistently applied to all businesses. Around 67% of organisations were happy to apply the restrictions to all businesses, and around 67% of organisations were happy to apply the restrictions to all businesses. Around 67% of organisations were happy to apply the restrictions to all businesses.

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Introduction

The impact of obesity

Obesity is one of the biggest health problems this country faces. Over a fifth of children aged 4 to 5 years old and 1 in 3 children aged 10 to 11 years old are overweight and living with obesity. Excess weight is a major risk factor for many diseases and conditions including cancer, heart disease and diabetes.

Regular consumption of food and drink high in calories, sugar and fat contributes to weight gain and obesity. Obesity is a complex issue with significant impact on health and wellbeing and increases the risk of already related diseases.

The COVID-19 pandemic has highlighted the impact that obesity can have on people's health and wellbeing. Data from the pandemic showed that people who were overweight or obese were more likely to be admitted to hospital and have an increased risk of dying from COVID-19 compared to various other factors. The impact of obesity on hospitalisations affected both individuals and the NHS.

There has been growing concern about the impact of sustained offers on unhealthy food and drink. Research has found that promotions of unhealthy food and drink can encourage people to buy more than they intended to buy and have an increased risk of dying from COVID-19 compared to various other factors. The impact of obesity on hospitalisations affected both individuals and the NHS.

Supermarkets have made voluntary commitments in this space, for example pledges to no longer sell confectionery at checkouts and shopping lanes and to reduce the amount of sugar in food and drink products by volume. However, these commitments have not been consistently accepted by all scale and therefore do not support a level playing field for business to compete on.

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Products in scope of the restrictions

The Nutrient Profiling Model (Nutrient Profiling Model) is an added tool to define whether a product is HFSS.

Prepacked food and drink in the following categories will be in scope of the restrictions: soft drinks, cakes, chocolate confectionery, sugar confectionery, ice cream, savoury snacks, breakfast cereals, potatoes, yoghurts, desserts, breakfast cereals, potatoes, yoghurts and desserts, sugar, juice based drinks with added sugar, pizza, ready meals, meat products, processed potatoes, pastries, sweet biscuits, chocolate products, ice cream and similar products.

The restrictions will also apply to free refills of sugar-sweetened drinks in the out of home sector (for example restaurants, coffee shops etc).

Businesses in scope of the restrictions

The restrictions will apply to retailers in scope of retailers (with 50 or more employees) including online grocery stores. The following businesses will be exempt from the restrictions:

- small retailers (less than 50 employees)

Exemptions for volume price restrictions:

- micro and small businesses (fewer than 50 employees)

Exemptions for location restrictions:

- micro and small businesses (fewer than 50 employees)
- small retail area (for example, convenience stores, kiosks, small food stores) open if they are part of a business employing less than 50 employees
- specialist retailers that sell one type of food product category, for example chocolates or sweet shops

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The role of diet and calorie overconsumption

Data shows that children and adults in the UK are not eating balanced diets and are consuming too much of the wrong kind of food and too much overall.

Data specifically shows that children between 5 to 18 years old consume on the Eatwell Guide (the Eatwell Guide) recommended proportions of HFSS, on average, compared with those with ideal body weights. children and up to three times the recommended amount of sugar, and children aged 4 to 10 years old have tripled their intake of sugar since the Eatwell Guide was first published in 1994. There is clear link between high sugar intake and excess weight in children, and children who have high sugar intakes are obese/at risk of being overweight. In addition to weight gain and obesity, consuming too much sugar and too many foods and drinks high in sugar can increase the risk of tooth decay, which is the most common reason for children aged 5 to 9 years old to be admitted to hospital.

Obesity is caused by consistently consuming more calories than we expend. Obesity is a complex issue with significant impact on health and devices obesity prevents and obesity related ill health over time.

Price and location promotions: evidence summary

It is clear from the academic literature that promotions are a cost-effective, clear and effective of influencing food preferences and purchasing behaviour. Research shows that promotions of unhealthy food and drinks are more likely to be purchased than healthier alternatives and are essential to help reduce population sugar and calorie intakes and help tackle obesity and related ill health. Research shows that HFSS are consumed far, and in sugar and fat and calorie intake.

Although promotions appear to be mechanisms to help consumers save money, data shows that they encourage people to purchase and consume more than they intended to buy, and that people who are exposed to more promotions appear to people from all socioeconomic groups, including those with lower incomes, are more likely to purchase and consume HFSS. Research shows that 40% of the food and drink products purchased being on promotion.[Insert FOOT]. The impact of promotions on HFSS purchases is clear, for example, research shows that people who are exposed to more price promotions purchase more fat, sugar and calories than those who are not exposed to price promotions. Research shows that 40% of the food and drink products purchased being on promotion.[Insert FOOT]. The impact of promotions on HFSS purchases is clear, for example, research shows that people who are exposed to more price promotions purchase more fat, sugar and calories than those who are not exposed to price promotions. Research shows that 40% of the food and drink products purchased being on promotion.[Insert FOOT]. The impact of promotions on HFSS purchases is clear, for example, research shows that people who are exposed to more price promotions purchase more fat, sugar and calories than those who are not exposed to price promotions.

Evidence from Cancer Research UK shows that shoppers who buy more of their food and drink on promotion tend to buy more of their products in greater volume, and are more likely to be overweight or living with obesity and related ill health.

The shopping environment and the promotions that people are exposed to are marketed to us, with simple factors like it being advantageous for retailers to encourage us to buy more than we intended to buy. Research shows that such or intensity promotions and the impact on consumer behaviour of this policy are set out in appendix 3.

Research is consistently showing the consumption of HFSS food and drink have been limited or unsuccessful in the past. The Public Health Responsibility Deal (the Responsibility Deal) was a voluntary commitment between unsuccessful in encouraging voluntary commitments to reformulate or voluntary agreement on promotions. The evaluation of the PHE shows that the Responsibility Deal was unsuccessful in encouraging voluntary commitments to reformulate or voluntary agreement on promotions. Research shows that 40% of the food and drink products purchased being on promotion.[Insert FOOT]. The impact of promotions on HFSS purchases is clear, for example, research shows that people who are exposed to more price promotions purchase more fat, sugar and calories than those who are not exposed to price promotions. Research shows that 40% of the food and drink products purchased being on promotion.[Insert FOOT]. The impact of promotions on HFSS purchases is clear, for example, research shows that people who are exposed to more price promotions purchase more fat, sugar and calories than those who are not exposed to price promotions.

Rationale for intervention

It is clear that promotional offers can influence and shape food purchases, and they often encourage people to buy more than they intended to buy and eat more than they intended to eat. The Public Health Responsibility Deal was a voluntary commitment between unsuccessful in encouraging voluntary commitments to reformulate or voluntary agreement on promotions. The evaluation of the PHE shows that the Responsibility Deal was unsuccessful in encouraging voluntary commitments to reformulate or voluntary agreement on promotions. Research shows that 40% of the food and drink products purchased being on promotion.[Insert FOOT]. The impact of promotions on HFSS purchases is clear, for example, research shows that people who are exposed to more price promotions purchase more fat, sugar and calories than those who are not exposed to price promotions. Research shows that 40% of the food and drink products purchased being on promotion.[Insert FOOT]. The impact of promotions on HFSS purchases is clear, for example, research shows that people who are exposed to more price promotions purchase more fat, sugar and calories than those who are not exposed to price promotions.

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Consultation outcome

Consultation response

- what product categories and price points are in scope of the restrictions?
- what product categories and price points should be in scope of the restrictions?
- Should the restrictions apply to all businesses that sell food and drink to consumers, including food and drink, such as clothes shops and newsagents?
- Should the restrictions apply to all retailers that sell food and drink including franchises and the most common reasons given were that it would ensure a level playing field for business, that it would help to reduce the overall impact of HFSS products and that it would be the most cost effective way to implement the policy.
- Should the restrictions apply to all businesses to ensure consistency and a level playing field. Not all respondents agreed with the proposal, 29% disagreed and 27% neither agreed nor disagreed. The most common reasons provided were that it would be too burdensome on small businesses and that it would be a deterrent to shop elsewhere. 32% agreed that the restrictions should apply to retailers who do not primarily sell food, or that the current proposals were too lenient and that it would be better to impose a stricter approach.
- Should the restrictions apply to all businesses to ensure consistency and a level playing field. Not all respondents agreed with the proposal, 29% disagreed and 27% neither agreed nor disagreed. The most common reasons provided were that it would be too burdensome on small businesses and that it would be a deterrent to shop elsewhere. 32% agreed that the restrictions should apply to retailers who do not primarily sell food, or that the current proposals were too lenient and that it would be better to impose a stricter approach.
- Should the restrictions apply to specialist retailers, the most common reasons given were because the consumer protection and health benefits would be the same regardless of the type of retailer, and because the restrictions should be not restrictive and that government should not intervene. 32% of respondents said that the restrictions should not apply to specialist retailers, the most common reasons given were that it would be too burdensome on small businesses and that it would be a deterrent to shop elsewhere. 19% of respondents said they neither agreed nor disagreed.
- Should the small retail exemption, 49% of respondents said that the area is a sensible exemption to ensure the restrictions are proportionate and 32% of respondents said that the area is too generous and should be lower, such as 20 or less square metres. 19% of respondents said that 1,000 square feet should be used as a suitable smaller stores where they argued it would be more in line with the Tobacco and Retail Display Ban.

Discussion

Government has considered all the feedback received, government has decided that the restrictions will apply to all retailers in scope (which we are defining as 10 or more employees, see section 172 of the Companies Act 2006 for the definition of a business). The government has decided to exclude specialist retailers, for example, businesses primarily selling under the same name (where the total number of employees is less than 10) such as chocolate or sweet shops, or those selling food and drink only to retailers who are in scope (for example, clothes shops or clothes shops) to ensure that shopping environments do not incentivise people to buy more than they intended to buy and to ensure that the consumer choice remains intact.

Further data analysis and stakeholder engagement was conducted and, as a result, government has decided that the restrictions will apply to all employees and not just employees in the 10 employee definition, for the price and location restrictions. We recognise that smaller businesses may find implementation of the restrictions more challenging than larger businesses, however, we have decided that the restrictions should be inclusive. Stores (more than 50 employees) have a greater turnover and more staff, and therefore have more opportunity to implement the restrictions and have more to lose regulatory compliance. Smaller businesses, such as convenience stores and small businesses represent a small proportion (less than 20% in terms of sales) of the market and have less opportunity to implement the restrictions and have less to lose from non-compliance with the price policy. We will provide detailed guidance to support businesses to prepare for and implement the restrictions and enforcement.

The restrictions will between apply to springs groups or arrangements where the total number of employees is 10 or more. We will provide detailed guidance to support businesses to prepare for and implement the restrictions and enforcement.

With respect to specialist retailers who only sell a specific type of HFSS product, for example, chocolate or sweet shops, the government has decided that restrictions would be impossible to implement and would likely lead to significant disruption to their businesses. This, however, is not the case for other specialist retailers, for example, those selling food and drink only to retailers who are in scope, for example, clothes shops and specialist retailers, such as chocolate or sweet shops, for example, kiosks such as chocolate or sweet shops in airports or train stations.

Having considered industry feedback, we have decided that stakeholder engagement with regard to exemptions based on the size of a store, the number of employees in a store, or the type of product sold, will be required. In order to ensure that the restrictions are proportionate, we have decided that the Sampling Factor by ad is in scope of the location restrictions. Stakeholder engagement will be required on whether over 185 (i.e.=1,000 sq ft) are excluded from the policy.

Which food and drink products should be in scope of the restrictions? Consultation questions: 5, 15 to 17, 24 to 26, 32

Consultation feedback

The consultation proposed that the restrictions should apply to HFSS products in the following categories: soft drinks, cakes, chocolate confectionery, sugar confectionery, ice cream, savoury snacks, breakfast cereals, potatoes, yoghurts, desserts, breakfast cereals, potatoes, yoghurts and desserts, sugar, juice based drinks with added sugar, pizza, ready meals, meat products, processed potatoes, pastries, sweet biscuits, chocolate products, ice cream and similar products.

Overall, 67% of respondents agreed, 17% and 16% of respondents, respectively, disagreed or neither agreed nor disagreed with the proposed categories. Respondents noted that the restrictions should be inclusive and that the restrictions should be applied to these categories. Around 67% of organisations were happy to apply the restrictions to these categories, and around 67% of organisations were happy to apply the restrictions to these categories. Around 67% of organisations were happy to apply the restrictions to these categories.

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Figure 1: responses by individuals, businesses and organisations

86% of responses were from individuals, 9% from organisations (non-governmental organisations, charities, public health bodies) and 5% from businesses (retailers, manufacturers, out of home businesses, food/drink industry trade bodies).

Overall, there was support for introducing restrictions for promotions of products high in fat, sugar and salt or because of their substitutes in retail environments. Respondents also noted that restrictions should be inclusive and that restrictions should be applied to these categories. There were noticeable differences between views from individuals and organisations. 67% of organisations were happy to introducing restrictions and promotions of products high in fat, sugar and salt or because of their substitutes in retail environments. Respondents were also supportive of the proposed categories of products in scope of the restrictions.

HFSS: the nutrients thresholds for determining which products are in scope of the price restrictions but strongly agreeing the location restrictions, and specialist retailers who only sell a specific type of HFSS product, for example, chocolate or sweet shops, for example, kiosks such as chocolate or sweet shops in airports or train stations. Some respondents noted that the restrictions should be inclusive and that restrictions should be applied to these categories. Around 67% of organisations were happy to apply the restrictions to these categories, and around 67% of organisations were happy to apply the restrictions to these categories. Around 67% of organisations were happy to apply the restrictions to these categories.

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Looking specifically at industry responses, 57% and 50% of businesses, for the two options respectively, said they would be likely to change their product category, depending on the level of enforcement. Of those who chose the intervene and restrict promotions or that the scope was too broad, not all businesses responded to the question on how they would change their product category. Of those who did, 16% said they would change product portfolio, promotions, 10% and 34% of businesses respectively said the restrictions would make it difficult to run promotions and 9% said it would make their offerings different with Scotland's product composition and 9% said it would concentrate on SHPO. These categories are defined as products that are not permitted to be sold in promotions, products that are not sold in stores, following, consumption of products, consumer behaviour, sales volumes, pudding and dairy desserts, morning goods (for example pastries), ice cream, and other. Some of these responses suggest that the SHPO product further influences consumer behaviour and purchasing decisions.

Consideration also varied by views on whether non-prepacked products, for example, bakery products, should be included. Some felt it would not affect businesses the restrictions and rather, should be exempt from the price and promotion restrictions. Others felt it would affect sales, with 16% of the sample said it would increase footfall and sales, and 10% said it would decrease footfall. 42% and 43% of respondents were in favour of including non-prepacked products in the SHPO, with 15% and 14% respectively, in opposition and the remaining are neutral. Some businesses felt that the exclusion from non-prepacked products may be equally HFSS as prepacked products. Between 10% and 15% of respondents felt that non-prepacked products should be in scope. We must consider unintended consequences of the proposed restrictions, the government should not intervene and the likely consequences of the proposed restrictions on the wider food system and economy.

Consideration of the concerns raised about the wide scope of the consultation proposal and any potential unintended consequences of the proposed restrictions on businesses. Having conducted further analysis and extensive stakeholder engagement, we have made the decision to exclude from the SHPO product category bakery goods, including pastries, cakes, and other baked goods, cultural relatives and are heavily processed, and therefore are the categories in scope of the SHPO. Further information on the rationale for this decision is shown in table 1. This is largely dependent on the ability to identify included in PHEL's paper and calculator restaurant programmes and dishes subject to the SHPO restrictions. Consideration of the proportionality of the SHPO and the potential unintended consequences of the proposed restrictions whether these products can or cannot be promoted due to the lack of nutritional information available.

The restrictions will therefore apply to the following product categories, in the following categories: soft drinks, cakes, chocolate confectionery, sugar confectionery, ice cream, savoury snacks, breakfast cereals, pudding and dairy desserts, morning goods (for example pastries), and other. Sugar, juice based drinks with added sugar, pizza, ready meals, meal centres, and other prepared products are not in scope of the SHPO. Sugar, juice based drinks, ready meals, pizza, and other prepared products are not in scope of the SHPO as these are HFSS products.

Many businesses felt that only discretionary products should be in scope of the restrictions. However, this would not capture all products of most concern, such as those that are HFSS but are not discretionary and would be a burden between discretionary and non-discretionary products sold within scope of the SHPO. Some businesses also raised concerns about the impact on consumer behaviour, for example, if consumers purchase products that are in scope of the SHPO, consumers may be more inclined to purchase more impact and mitigate for any unintended consequences in future.

Table 1 comparison of product categories in scope of the consultation stage proposal and the revised proposal following consultation and Hendricks food classification.

Products in scope of the restrictions at the consultation	Products in scope of the restrictions post consultation
Soft drinks	Soft drinks
Sugar confectionery	Sugar confectionery
Chocolate confectionery	Chocolate confectionery
Cakes	Cakes
Ice cream	Ice cream
Savoury snacks	Savoury snacks
Breakfast cereals	Breakfast cereals
Pizza	Pizza
Pudding and dairy desserts	Pudding and dairy desserts
Morning goods	Morning goods
Breakfast cereals	Breakfast cereals
Ice cream	Ice cream
Pitted dried fruits with added sugar	Pitted dried fruits with added sugar
Jam/marmalade/honey with added sugar	Jam/marmalade/honey with added sugar
Pizza	Pizza
Ready meals and meal centres	Ready meals and meal centres
Ready meals and meal centres	Ready meals and meal centres including breakfast meals
Other ready meals and meal centres	Other ready meals and meal centres
Cook chilled	
Pies and pasties	
Breakfast additions	
Savoury biscuits, crackers and crispbreads	
Sandwiches and wraps	
Tablet sweets and fudgeons	
Pancakes	
Dairy based desserts and other desserts	
Dairy based desserts and other desserts	
Prepared fruit salad	
Prepared fruit salad	
Prepared fruit salad	
Sauces	
Sweet spreads	

How should HFSS products be defined? Consultation question: 27

Consultation feedback

The consultation proposed that the 2004/05 Nutrient Profiling Model (NPM) should be used to define HFSS.

Overall, most respondents were in favour of using the NPM, with 40% of respondents in favour, 16% in opposition and the remaining 44% being neutral. Some felt it was a robust model, with some stating it was the most thorough they were unfamiliar with the details of the NPM. It is needed to be a robust model that is fit for purpose. Some felt it was important that it aligned with the use of the NPM across Europe. Some felt it was important that government currently to review this policy in future with a view to using the latest version of the NPM. Some felt it was important that the model should be updated to reflect the latest science and evidence. Some felt it was important that the model, the most common reasons provided were that it is very strict/ more strict than other models, it is too simplistic, it does not take into account nutritious ingredients or it would impact negatively on the food industry. Of a cold in their products. Some businesses suggested the traffic light system should be used instead, with some stating it is more simple and others stating it is simpler, should be introduced instead.

Some UK drinks businesses and the sector trade body requested that the 5.5% threshold of sugar for HFSS drinks be increased to 8.5% to allow UK drinks can be protected. to allow those drinks that have been reformulated to be marketed to be able to be HFSS. Increasing the threshold to 8.5% would

Should the consultation proposal be adopted?

Consultation question: 27

Consultation feedback

Respondents were concerned the consultation feedback and likely implications, government should be using the Nutrient Profiling Model (NPM). The most appropriate method to define HFSS products for the purpose of the SHPO restrictions. Consideration of the NPM and its use in other jurisdictions and the consultation feedback and the most appropriate approach would be clarity.

The NPM is based on a scientific evidence and it is already used by industry to determine which products can or cannot be advertised to children. Consideration of the NPM and its use in other jurisdictions and the consultation feedback and the most appropriate approach would be clarity. Consideration of the NPM and its use in other jurisdictions and the consultation feedback and the most appropriate approach would be clarity.

The government does not propose to use the revised NPM as it has not yet been published. We will review the promotions policy under review to monitor and review the impact of the restrictions and the wider impact on the food industry consultation.

We recognise that for some products which are inherently HFSS, reformulation to achieve the SHPO threshold may be challenging. However, there are other incentives, such as consumer demand for healthier products, which may drive reformulation. We will review the impact of the proposals, which is a commitment we have made in the consultation response, and will take action if required.

The option to use the front of pack nutrition labelling scheme to define products in scope was also considered. Some respondents felt it should be considered appropriate as it does not consider the overall nutritional profile of a product, for example, it does not take into account if a product is a source of fibre or protein, which may be beneficial to some of the policy.

Regarding the suggestion made by UK drinks businesses, we can confirm consideration the government decided that the 5.5% threshold is not an appropriate threshold for HFSS drinks. Sugar is a key driver of overweight and obesity and therefore plays a significant role in the overall assessment of the nutritional quality of a product. Drinks that are below the 5.5% threshold are not in scope of the SHPO restrictions. Drinks that are above the 5.5% threshold are in scope. Consideration of the proportionality of the SHPO and the potential unintended consequences of the proposed restrictions, the government approach is more likely to render the policy effective and easier to implement.

Which price promotions should be in scope of the restrictions? Consultation questions: 12 to 14, 18 to 19

Consultation feedback

The consultation proposed that only volume price promotions, for example multibuy offers like 'buy one get one free', 'buy 2 for £2', and 'extra free' should be in scope of the SHPO restrictions.

There was overall support for the restrictions to apply to volume promotions, with 50% of respondents in favour, 14% in opposition, and 36% neutral. Some popular comments regarding why they were in favour of the policy, were that it would help to promote HFSS products and are linked to overconsumption and obesity. Some felt it would be easier to implement than other options.

Respondents were also in favour of including other price promotions in line with the proposal, and 57% of respondents are neutral. 28% of businesses agreed with the proposal, and 15% were in opposition. Some felt it would be easier to implement than other options. Some felt it would be easier to implement, they were understanding, particularly among large retailers and some trade bodies, that it would be easier to implement than other options. Consideration of the proportionality of the SHPO and the potential unintended consequences of the proposed restrictions, volume promotions is an appropriate way forward.

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Which location promotions should be in scope of the restrictions? Consultation questions: 15 to 17, 20 to 23

Consultation feedback

The consultation proposed that checkout areas, end of aisles and store entrances should be in scope of the restrictions.

There was overall support for the restrictions to apply to these in-store locations, with 50% in favour, 14% in opposition, and 36% neutral. The most frequent justifications respondents gave for their answers were that these locations are prime locations for impulse purchases, and that they are frequently used for promotions of HFSS products. Some respondents felt it would be easier to implement than other options (50% in support) and organisations in the food industry felt it would be easier to implement than other options, in particular large retailers and some trade bodies, that it would be easier to implement for consumers.

However, businesses were heavily against location restrictions, saying they would cause significant operational challenges particularly for small sized retailers, and the consumer would be unable to find products.

Consultation response

Following consultation feedback, government decided that restrictions in the location sector and media restrictions will not be included in the SHPO. Offers in the out of home sector are generally targeted to multiple consumers and are not in the control of the retailer. It is also difficult to apply a factor to ensure consumers are not exposed to HFSS offers and it is a practical problems with calculating the HFSS on a prepackaged food due to the variation in product ranges. Restrictions in the out of home sector as could options for adults to consume HFSS products in a venue, such as a nightclub or pub, and they aim to reduce the cost of a single meal. Consideration of the proportionality of the SHPO and the potential unintended consequences, it will be in scope of the restrictions.

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Policy options presented in the consultation: which options for restricting price and location promotions will best deliver the aims of the policy? Consultation questions: 24 to 26, 31 to 33

Consultation feedback

The consultation asked for views on the best way to implement the restrictions on price promotion of HFSS products. We consulted on the following options:

- option 1: require retailers to ensure that all their volume price promotions are in scope of the restrictions (preferred option)
- option 2: alternative suggestion by retailers to implement the restrictions to ensure that at least 80% of their sales from volume price promotions are on products that are not in scope of the restrictions

Respondents from the retail sector were in favour of option 1 (preferred option), with 57% of respondents saying that it will have a bigger impact, it would be easier to implement, it would be fairer for consumers and it would be fairer to operate it. We received no responses from other respondents. Looking specifically at businesses, the most common answer was that they preferred option 1, with 50% in favour, 14% in opposition, and the remaining 36% neutral. Some felt it would be easier to implement, it would be fairer, it also easier to implement, monitor and enforce and it provides a clear message to consumers and retailers. Consideration of the proportionality of the SHPO and the potential unintended consequences of the proposed restrictions, the government approach is more likely to render the policy effective and easier to implement.

How should the restrictions be implemented? Consultation questions: 31 to 33, 35 to 36

Consultation feedback

In the consultation we asked for views on the length of the implementation period. Looking solely at businesses, including major retailers and trade bodies, the most common answer was that 12 months is the most appropriate implementation period. Other suggestions were 18 months and 24 months, the second most frequent suggestion.

We also asked for views on who would be responsible to implement the restrictions. Although many responses, particularly from industry, suggested that it should be implemented by retailers, some also said that manufacturers, food service businesses and trade associations that retailers setting the product should be responsible to implement the restrictions, as retailers cannot control what products are sold in their stores, or displayed in their stores.

We also asked what support businesses will need to implement the restrictions. Many responses, particularly from industry, said that they need government support and guidance on how to implement the restrictions, and business on implementation and clarity on the enforcement regime.

Consultation response

Consultations with stakeholders suggested that the time to assess food and drink products against the nutrient profiling model and make product changes would require a significant amount of time, planning and resource. Consideration of the proportionality of the SHPO and the potential unintended consequences of the proposed restrictions, the government decided that these restrictions will be a crucial requirement for businesses, however, we do recognise that it will take time for businesses to implement the policy. We will ensure that the restrictions will apply to a specified time period from 1 April 2022. This includes a minimum of 6 months implementation period, and a maximum of 18 months. We will ask the food industry to implement before the restrictions come into force. We will also pay our intention to develop guidance on complying with the regulations in advance of laying the regulations before Parliament. Consideration of the proportionality of the SHPO and the potential unintended consequences of the proposed restrictions, the government decided that retailers will be responsible for ensuring stock that features working such as "VA extra" to be sold by relevant businesses with Sport 2022.

This restriction does not prohibit manufacturers from labelling their products with "VA extra" or similar wording, but it does mean that it will be illegal for retailers to sell a single-use product.

We will conduct a post implementation review of the promotion restrictions, which will include a review of the impact on consumer behaviour, retailers and consumers and monitor their effectiveness in reducing HFSS overconsumption.

How should the restrictions be enforced? Consultation question: 30

Consultation feedback

The consultation asked for views on the enforcement of the proposed restrictions, and whether they should be enforced by Trading Standards or by an enforcement authority specifically for the SHPO restrictions. The most common responses were that:

- it would be appropriate for local authorities and Trading Standards to be responsible for enforcement, but there will be a need for additional funding and resources
- the process authorities currently use for other regulations, such as arrangements between businesses and local authorities to be used for enforcement
- there was an appreciation of government's proposed enforcement regime that allows for warnings and fines, not leading straight to prosecution, and that it would be important to ensure that the fines are a deterrent, however, being not so excessive that it would cause businesses to close
- the enforcement regime should promote a level playing field, and clear guidance will be needed

Consultation response

We recommended the above feedback and further industry engagement, government are proposing that the local authorities lead the enforcement of this policy.

- local authorities will be responsible to enforce the policy
- an enforcement process that focuses on supporting compliance rather than immediately issuing fines or prosecuting
- giving a range of enforcement options to local authorities, for example, the option of civil penalties as an alternative to criminal penalties

The government is considering the most appropriate implementation policies to proportionate and fair and assists unnecessary criminal offences, and will be consulting on the details of the enforcement regime in 2021. We will therefore consult shortly on our proposed enforcement approach. If we wish to be involved in this consultation, please see the consultation response. We will also be consulting on the SHPO fines, which will be proportionate to fair to ensure and deterrent. We will also be consulting on the restrictions and other stakeholders will be able to provide their views on appropriate enforcement options.

Outcome and next steps

Government has carefully considered all the consultation responses and engaged further with industry and health organisations to refine its thinking and test steps on the proposal. Government decided to legislate to restrict the promotion of HFSS products in prominent locations in stores (checkouts, end of aisles and store entrances) in medium and large retailers, and to restrict price promotions.

Government intends to use powers in the Food Safety Act 1990 (FSA) to secure regulations that implement the SHPO. Subject to being passed by Parliament, we will then allow at least a 6 month implementation period before the restrictions come into force. We will ask the food industry to implement before the restrictions come into force. We will also pay our intention to develop guidance on complying with the regulations in advance of laying the regulations before Parliament. Consideration of the proportionality of the SHPO and the potential unintended consequences of the proposed restrictions, the government decided that retailers will be responsible for ensuring stock that features working such as "VA extra" to be sold by relevant businesses with Sport 2022.

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Annex 1: additional consultation feedback

Exemptions requested for specific product categories or types of product

Cakes: in consultation were requested to include bakery goods within trade bodies. These were carefully considered, and the outcome is included above.

- dairy products (for example yoghurts): an exemption was requested by dairy producers, as they felt that dairy products are not a major contributor to overconsumption of HFSS products
- fruit products (for example dried fruit): an exemption was requested by producers of dried fruit, as they felt that dried fruit is a healthier snacking option than other snacks

consuming calcium rich products for children's development. We recognise the importance of consuming dairy products; they are included in the Eatwell Guide and form part of a healthy, balanced diet. Unsweetened dairy products (dairy products without added sugar) typically pass the 2004/05 NPM set out in annex 5, so they will be allowed to be promoted by price and location. Therefore, we decided that an exemption for unsweetened dairy products is not required. Sweetened dairy products such as yoghurts with added sugar and flavoured milk drinks are among the top sugar contributors to children's diets and are heavily promoted. Their high sugar content outweighs the benefits of calcium content, which is reflected in Government dietary advice to consume unsweetened dairy products, particularly for children. Therefore, we decided that an exemption for sweetened dairy products is not appropriate. However, businesses will be able to promote them if they pass the NPM
- crisps and savoury snacks: an exemption was requested by crisps and savoury snacks sector representative bodies based on the argument that these products do not contribute to children's calorie intakes and therefore to obesity in childhood. Data shows that these products are significant contributors to calorie and salt in children's and adults' diets and are heavily promoted. Furthermore, these products should be consumed in moderation and should not be part of children's daily diets. We therefore decided that an exemption for crisps and savoury snacks is not justified or appropriate, and they are in scope of the promotion restrictions. However, businesses will be able to promote crisps and savoury snacks if they pass the NPM
- fruit juices/smoothies: an exemption was requested by one manufacturer due to the high fibre and vitamin content of these products, the likely health benefits, and the fact that they may count towards 1 of your recommended 5 portions of fruit and vegetables a day. Pure unsweetened fruit juices/ smoothies are not in scope of the restrictions, so they can be promoted by price and location. However, fruit juices/smoothies with added sugar, which are also in scope of the SDIL (as defined in annex 3), are among the top contributors to children's sugar intakes. Therefore, we decided that an exemption for these products is not appropriate, and they are in scope of the promotion restrictions. However, businesses will be able to promote them if they pass the NPM
- morning goods (as defined in annex 3): an exemption was requested by the sector representative body based on the argument that these products do not contribute to children's calorie intakes and therefore to obesity in childhood. Data shows that morning goods are significant contributors to sugar and calories and are heavily promoted. Again, these products should be consumed in moderation and should not be part of children's daily diets. Therefore, we decided that an exemption for the morning goods category is not justified or appropriate, and they are in scope of the promotion restrictions. However, businesses will be able to promote morning goods if they pass the NPM
- cooking sauces: an exemption was requested by a cooking sauces manufacturer and the sector representative body based on the argument that these products do not significantly contribute to children's calorie intakes and therefore to obesity in childhood. We recognise that although sauces are regularly consumed by families and children, this product category is not among the highest calorie contributors to diets. Therefore, we decided that cooking sauces are not in scope of the promotion restrictions
- seasonal products and seasonal promotions: an exemption was requested by retailers, manufacturers and industry representative bodies based on the argument that promotions are vital for sales of seasonal products. While we understand the importance of promotions to maximise sales, there are multiple seasonal promotion points running through the year including, but not limited to: Christmas, Diwali, Valentine's Day, Easter, Mother's Day, Father's Day and Halloween. This means that seasonal promotions can occur for the majority of the year. Seasonal products (for example Christmas chocolate, Easter eggs) can be found on the shelves and in key prominent locations in stores, such as end of aisle, checkouts and store entrances, up to three months before Christmas or Easter for example, and we also know that consumers typically buy these products as soon as they are available in shops and offered on promotion. A 2019 survey from the Royal Society for Public Health (RSPH)[footnote 42] found that 50% of the UK public bought and consumed at least one Easter-related chocolate, treat or cake three weeks before Easter. The polling also showed that 77% of people think supermarkets start selling Easter related treats too early and 38% said that the heavy promotion of seasonal products makes their diets less healthy. This is felt particularly among parents, with 57% saying promotional Easter egg displays, given prime locations near the checkouts, led to pester power from their children. In addition, chocolate and sweet confectionery are among the top sources of sugar in children's diets and this includes those products that are branded 'seasonal' but tend to be offered throughout the year. Therefore, we decided that an exemption for seasonal products is not justified or appropriate, and they are in scope of the promotion restrictions. However, businesses will be able to promote seasonal products if they pass the NPM
- retailers in travel hubs: An exemption was requested by the relevant trade body based on the argument that these outlets are not linked to obesity in childhood because children are unlikely to frequent airports regularly. We understand this point; however, we also recognise that travel hubs such as train stations can often be part of families' daily commutes, and promotional offers of HFSS products whether by price or location may lead to impulse purchases. HFSS promotions specifically for chocolate and sweets tend to be widespread in travel hub retailers. In addition, having exemptions for different businesses would cause implementation challenges and confusion for businesses and consumers, and would most likely create overly complicated enforcement requirements for local authorities. Furthermore, retailers in travel hubs are unlikely to be above the 185.8 sq m (2,000 sq ft) threshold and therefore are unlikely to be in scope of the location restrictions. Therefore, we decided that a specific exemption for retailers in travel hubs is not justified. Those retailers that are medium or large businesses (based on the number of employees), for example those that are part of a chain, are in scope of the price restrictions, and those that are above the 185.8 sq m (2,000 sq ft) threshold are in scope of the location restrictions as well

Equality Act, consultation questions: 52 to 55

Overall, there was limited feedback in response to the equality related questions. For the majority of free text responses, it was difficult to ascertain whether the respondent believed the policy would have a positive or negative impact, or the free text did not provide an explanation or justification for the answer given. However, we have analysed the responses that were relevant and appropriate and presented the outcomes in the following section.

Obesity in childhood is linked with overweight and obesity in adulthood, which in turn can lead to type 2 diabetes, heart and liver disease and some types of cancer. Research has also shown that people who contract COVID-19 are more likely to suffer worse symptoms and are at increased risk of dying if they are living with obesity. Measures that aim to reduce obesity, such as restricting promotions of HFSS products, will also have a positive impact on population health outcomes. Therefore, we do not consider that there are any negative or disproportionate impacts on equality, and we have fully considered the need to advance equality and foster good relations with regard to this policy.

A detailed equalities assessment for this policy was published alongside this consultation response.

Do you think that the proposed policy to restrict promotions of HFSS products by location and by price is likely to have an impact on people on the basis of their age, sex, race, religion, sexual orientation, pregnancy and maternity, disability, gender reassignment and marriage/civil partnership?

We assessed the impact of this proposal with regard to the Public Sector Equality Duty (PSED) under section 149(1) of the Equality Act 2010, to review the estimated effect on groups with protected characteristics.

Although the majority of respondents said that they do not think this policy will have an impact on the basis of protected characteristics, there was some concern from individuals on the potential impact of this policy specifically regarding age and certain disabilities including diabetes.

With regard to the comments about age, some respondents said that the HFSS products in scope are commonly consumed by children; therefore, introducing promotion restrictions will have an impact in relation to age. It was unclear why respondents would regard this as a negative impact on children. We think that the policy will have a beneficial impact on children, as it is intended to. The policy is expected to lead to a reduction in overconsumption of HFSS products that are linked with excess calorie and sugar intake and, over time, weight gain and obesity, as well as other negative health outcomes such as tooth decay.

With regard to diabetes, there were some concerns about the potential difficulties that people with diabetes may face if they cannot easily and quickly access high sugar products in case of a low blood sugar episode, due to promotional restrictions being in place for such products. A similar comment was made with regard to people with cystic fibrosis, who often require a higher calorie diet, and the promotion restrictions may inconvenience them in accessing high calorie products. Having considered both these points, we do not think that the proposed policy will result in any significant inconvenience for people with diabetes or people with cystic fibrosis, as the restrictions will only apply to specific categories of HFSS products. The restrictions will also only apply to specified locations within stores and only to multibuy price promotions. HFSS products will still be accessible and sold in stores. This policy is intended to reduce impulse purchases of such products which can lead to overconsumption. It is not aimed at inconveniencing consumers. Furthermore, reducing consumption of HFSS products is in line with government dietary advice including for people living with diabetes and people with cystic fibrosis.

We are also aware of the potential impact of any policy that encourages sugar reformulation on people with phenylketonuria (PKU), who are intolerant to aspartame. This genetic condition is classed as a disability.

Aspartame is a sweetener that manufacturers typically use to replace sugar in reformulated sweetened beverages, and it can also be used in foods. Although one objective of restricting HFSS promotions is encouraging reformulation we do not expect this new requirement to cause any significant increase in aspartame in food and drink. Many of the products in scope of the proposed restrictions are already being challenged to reformulate their products through the Soft Drinks Industry Levy, as well as PHE's sugar and calorie reduction programmes. Respondents to the consultation did not raise concern over the impact that this policy could have on individuals with PKU.

The Family Test, which requires consideration of the potential impacts on family relationships and functioning in the process of developing new policy, was also considered in the development of this proposal and this policy is not believed to have any significant impact at the level of the family. Some consultation responses from individuals mentioned that families tend to use multibuy promotions to save money and therefore the proposed restrictions may have a negative impact on family budgets. This policy is not intended to disadvantage families' budgets. On the contrary, one of the aims is to ensure more healthier products are offered on promotion to ensure families have access to healthier food and drink wherever they shop. We believe that shifting the balance of promotions to healthier products (including products that are lower in calories, saturated fat, salt or sugar or higher in fruit, vegetables or fibre) will help parents to make healthier choices for their children and therefore may be considered beneficial in supporting parents in their responsibility to support the health and development of their children.

We have also considered the implications for the Secretary of State's duties as set out in the NHS Act 2006. We consider that the proposal would be compatible with these duties.

Do you think this proposal would help achieve any of the following aims?

- eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
- advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- fostering good relations between persons who share a relevant protected characteristic and persons who do not share it

A minority (7.9%) of respondents said that the proposal could help achieve against these aims with the rest broadly split between saying that the proposal would not help and not answering the question. Respondents could provide free text responses to justify their answer. The vast majority of respondents did not provide free text responses. For those that did, the most common themes were that the policy would have a positive health impact including reducing health inequalities and that the policy would help reduce discrimination of individuals living with obesity.

Socio-economic background, consultation question: 56

Do you think that the proposed policy to restrict promotions of HFSS products by location and by price would be likely to have an impact on people from lower socio-economic backgrounds?

A significant number of respondents believed this policy could have an impact on people from lower socio-economic backgrounds. Just under 50% of respondents said that the proposed restrictions are likely to have a negative impact on people from lower socio-economic background, due to the likely increase in food prices and the impact on people's budgets. 14%, mainly health organisations and charities, said that the proposal would have a positive impact across the population because it will encourage a healthier diet and will have the biggest benefits for people from lower socio-economic backgrounds, thereby reducing socio-economic barriers.

Some businesses said the restrictions would lead to an increase in the cost of food. It is not the intention of this policy to increase the cost of food for consumers and any decision to increase prices remains at the discretion of retailers and manufacturers and not a requirement from government. In addition to reducing overconsumption of HFSS products, the aim of this policy is to shift the balance of promotional offers towards healthier products and maximise the availability of those products in stores to help people make healthier choices. We are only focusing on those products that are of concern for obesity because they contribute significant amounts of sugar and calories to diets and are heavily promoted. In addition, we are only targeting volume price promotions that require the consumer to purchase more in order to take advantage of the discount. These types of promotions have been shown to specifically encourage and stimulate over-purchasing to a larger extent compared to simple price reductions. These promotions are also heavily used to promote HFSS products and have been shown to lead to increased purchases of these types of products.

Data from the National Diet and Nutrition Survey (NDNS) shows that people from lower socio-economic backgrounds tend to have less healthy diets. Population wide measures that aim to improve the food environment and encourage healthier diets, such as the promotion restrictions for HFSS products, are estimated to have a positive impact across the population and therefore help reduce health inequalities.

Therefore, we do not think that the policy will have a negative or disproportionate effect on people from lower socio-economic backgrounds.

Further evidence

The consultation asked respondents if there is any further evidence or data they wish to submit for consideration in the final impact assessment. The majority of respondents either reiterated points they made elsewhere in the consultation or made points that were common in the responses of others. Some businesses and organisations included additional information in response to this question, for example evidence or research, which was carefully considered and used in the development of the final impact assessments for this policy.

Impact assessment questions, consultation questions: 37 to 51

The impact assessment posed specific questions which consultation respondents were encouraged to answer. These questions and the feedback received, where it was appropriate to share, are outlined in the impact assessment accompanying this publication.

Annex 2: policy detail

Businesses in scope

HFSS promotion restrictions will apply to any medium or large business (50+ Employees) in England that sells prepacked food or drink directly to the public.

Franchise arrangements, where the number of employees operating under the same business name exceeds 50, will also be required to implement the restrictions.

The price and location restrictions will also apply to online retailers (including retailers that sell food and drink in stores as well as online for example Tesco, Sainsbury's and the other major retailers, and retailers that only operate online for example Ocado, Amazon).

The restrictions will also apply to retailers who do not primarily sell food or drink (that is, DIY shops, clothes shops).

It is the responsibility of the retailer selling the food or drink to ensure the restrictions are implemented in their store(s) or online websites.

Exemptions for price restrictions:

- micro and small businesses (\<50 employees)

Exemptions for location restrictions:

- micro and small businesses (\<50 employees)
- stores that are smaller than 185.8 sq m (2,000 sq ft) (even if they are part of a medium or large business with 50+ Employees)
- specialist retailers that only sell one type of food product category, for example chocolatiers or sweet shops.

Products in scope

The restrictions will apply to prepacked products in the following product categories (a description of these categories and products included is provided in annex 3):

- soft drinks
- cakes
- chocolate confectionery
- sugar confectionery
- ice cream
- morning goods
- puddings
- sweet biscuits
- breakfast cereals
- yoghurts
- sweetened milk-based drinks
- sweetened juices
- pizza
- ready meals
- meal centres, including breaded and battered products
- crisps and savoury snacks
- chips and potato products

Prepacked is defined as in article 2(2)(e) of the retained Food Information to Consumers Regulation (EU) No. 1169/2011as amended by The Food (Amendment) (EU Exit) Regulations 2019 and The Food (Amendment) (EU Exit) Regulations 2020[footnote 43]: "prepacked food means any single item for presentation as such to the final consumer and to mass caterers, consisting of a food and the packaging into which it was put before being offered for sale, whether such packaging encloses the food completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging; 'prepacked food' does not cover foods packed on the sales premises at the consumer's request or prepacked for direct sale".

The restrictions will also apply to imported products (products that are manufactured outside the UK) if they are sold in England.

The restrictions will not apply to:

- any products outside the categories specified above
- any non-prepacked products, either within or outside the categories specified above with the exception of free refills of sugar-sweetened soft drinks in out-of-home settings, which will be covered by the restrictions. Non-prepacked is defined as: Foods that are not prepacked under the above definition (and are therefore exempt from ingredient / nutrition labelling requirements) can fall in a few different categories:
- prepacked for direct sale – these are foods which are prepacked by a business for sale on the premises where the food is packed, or a vehicle / stall owned by the business, for example a takeaway curry from a street vendor or sandwiches made and packed on-site
- packed on the consumers request, for example takeaway leftovers from a restaurant or fish and chips 'to-go' when there is a dine-in option
- unpackaged food, for example a meal in a restaurant or a burrito from a street vendor

Annex 3: descriptions of product categories in scope

Product category descriptions as defined by Public Health England

Breakfast cereals

Includes all breakfast cereals, for example ready to eat cereals, granola, muesli, porridge oats, instant porridge, and other hot oat cereals.

Excludes cereals bars, breakfast biscuits, and toaster pastries, which are included in the biscuits category. Excludes cereal drinks, which will be assessed separately as part of the Soft Drinks Industry Levy.

Yoghurts

Includes all sweetened dairy yoghurt and fromage frais products, including non-dairy alternatives (such as soya, goat, sheep products) and all yoghurts containing low/non-caloric sweeteners. Excludes natural yoghurt and unsweetened yoghurt and fromage frais.

Excludes dairy desserts (such as mousse, custard, fruit fool, chocolate confectionery-based desserts, crème caramel and panna cotta), which are included in the puddings category. Excludes frozen yoghurt, which is included in the ice cream category. Excludes yoghurt and dairy drinks.

Biscuits

Includes all types of sweet biscuits including cereal bars and toaster pastries; breakfast biscuits; rice cakes; gluten free biscuits; in-store bakery products; two-finger Kit Kats (all other sizes are included in chocolate confectionery) and other similar individually wrapped, single serve biscuit bars. Excludes all other wrapped chocolate bars with/without biscuit, which are included in chocolate confectionery.

Excludes savoury biscuits and crispbreads.

Cakes

Includes all types of cakes, ambient and chilled, including cake bars and slices, American muffins, flapjacks, Swiss rolls, and seasonal products such as Christmas cake.

Excludes frozen gateaux, which are included in the puddings category.

Morning goods

Includes morning goods such as croissants, crumpets, English muffins, pancakes, buns, teacakes, scones, waffles, Danish pastries, fruit loaves.

Excludes plain bread and rolls.

Puddings

Includes all types of ambient (including canned), chilled and frozen large and individual pies, tarts and flans (fruit and other), cheesecake, gateaux, dairy desserts, sponge puddings, rice pudding, crumbles, fruit fillings, powdered desserts, custards, jellies, meringues, seasonal products such as Christmas puddings. Includes puddings sold as a lone item and/or with accompaniments (for example custard, cream, ice cream).

Ice cream

Includes all types of ice cream, dairy and non-dairy, choc ices, ice cream desserts eg Arctic roll, ice cream containing lollies, milk ice lollies, ice lollies; low fat/low calorie ice cream; sorbet; frozen yoghurt. Includes ice cream served on its own, as part of a composite dish (for example an ice cream sundae) or as an accompaniment to a pudding.

Chocolate confectionery

Includes chocolate bars, filled bars, assortments, carob, diabetic and low-calorie chocolate, seasonal products for example Easter eggs, chocolate produced for Christmas and Halloween.

Sweet confectionery

Includes boiled sweets, gums, pastilles, fudge, chews, mints, rock, liquorice, toffees, chewing gum, sweet and sweet & savoury popcorn, nougat and halva, seasonal products, for example sweets produced for Christmas, Halloween etc. Excludes sugar free sweets and chewing gum.

Sweetened milk-based drinks

Milk based drinks sweetened with added sugar (not naturally occurring in the milk).

Sweetened fruit-based drinks

Juice based drinks sweetened with added sugar (not naturally occurring fruit or vegetable sugar) that are subject to the Soft Drinks Industry Levy (SDIL). See below for details of products in scope of the SDIL.

Pizza

All pizzas - includes chilled, frozen, prepared and cooked in store for retailers and manufacturers and as sold in the out of home sector, all toppings and types of bases. Excludes plain pizza bases and garlic bread

Crisps and savoury snacks

Includes all standard potato crisps, extruded, sheeted and pelleted snacks, poppadum's, pork scratchings, salted popcorn, prawn crackers, vegetable crisps, pitta chips, pretzels, baked crisps, multigrain crisps, bagged savoury crackers or biscuits, pulse-based crisps etc

Chips and potato products

Potato or sweet potato chips, fries, wedges, waffles, shapes/smiles, lattices, rostis, crispy potato slices; hash browns; croquettes; roast potatoes etc

Excludes Bombay potatoes, dauphinoise, dumpling, gratin, jacket potato, mash, potatoes with butter, parmentier potatoes etc

Ready meals with carbohydrate accompaniment (potato, rice, noodles, pasta, etc.) – fish, meat and meat alternatives

Includes all chilled, frozen or ambient Chinese, Indian, Thai, Italian, Mexican, traditional and vegetarian (vegetable or meat alternative based) etc meals with a carbohydrate accompaniment (for example pasta, rice, noodles, potatoes, bread etc); pasta, rice or noodle based ready meals; canned spaghetti or other pasta in a tomato sauce with sausages; jacket potatoes with added cheese, ham etc; burger or sausage in bun; potato topped pies.

Meal centres without carbohydrate accompaniment (potato, rice, noodles, pasta, etc.) – fish, meat and meat alternatives

All breaded or battered fish, shellfish, meat & poultry products for, example fish fingers, fish cakes, scampi, nuggets, Kievs, poppers, goujons, southern fried products, crisp bakes, breaded Quorn or other meat alternative products etc

All fresh, chilled, frozen or ambient fish, shellfish, meat, poultry or meat alternatives in sauce, topped with cheese etc. Excludes all plain, unprocessed or cooked unflavoured fish, shellfish, meat, poultry or meat alternatives. Also excludes products in a glaze, marinade, dressing or with a rub applied and smoked fish.

Drinks in scope of the Soft Drinks Industry Levy (SDIL)

In 2016 the government announced the introduction of the Soft Drinks Industry Levy to help reduce children's sugar intakes by encouraging manufacturers to reformulate their drinks. The levy came into effect on 6 April 2018.

A drink is liable for the Soft Drinks Industry Levy if it meets all of the following conditions:

- it has had sugar added during production, or anything (other than fruit juice, vegetable juice and milk) that contains sugar, such as honey
- it contains at least 5 grams (g) of sugar per 100 millilitres (ml) in its ready to drink or diluted form
- it is either ready to drink, or to be drunk it must be diluted with water, mixed with crushed ice or processed to make crushed ice, mixed with carbon dioxide, or a combination of these
- it is bottled, canned or otherwise packaged so it's ready to drink or be diluted
- it has a content of 1.2% alcohol by volume (ABV) or less

A list of what is classed as sugar for the purposes of the levy can be found in the guidance published by HM Revenue & Customs[footnote 44].

The levy does not apply to drinks that are:

- at least 75% milk
- a milk replacement, like soya or almond milk
- an alcohol replacement, like de-alcoholised beer or wine
- made with fruit juice or vegetable juice and do not have any other added sugar
- liquid drink flavouring that is added to food or drinks like coffee or cocktails
- infant formula, follow on formula or baby foods
- formulated food intended as a total diet replacement, or dietary food used for special medical purposes

A more detailed explanation of the products excluded from the levy can be found in the guidance published by HM Revenue & Customs.

Annex 4: definitions of price and location promotions

The price promotion restrictions will only apply to the volume price promotions outlined below[footnote 45]:

- multibuy promotion – a promotion that requires the shopper to buy one or more items to benefit from a discounted price compared to the price when bought separately. For example, ‘buy one get one free’, ‘3 for 2’; as well as types that state a fixed price or saving, for example ‘3 for £10’ or ‘buy 6 and save 25%’)
- extra free promotion – a promotion that occurs when an enlarged pack

- sliced bread, or pre-sliced loaf, or bread rolls where a whole pack (or slice) is created by the manufacturer and where the pack (also) states that a proportion of the product is free. For example, an extra-large packed sliced loaf "Premium Kites Free". This does not prevent a manufacturer from labelling products with volume promotions but restricts medium and large retailers from offering these for sale
- free refills of sugar sweetened drinks – a promotion that occurs when a drink, for example soft drink, tea or coffee is sold in stores, or on sale, free of charge, after being consumed

The location promotion restrictions will only apply to the in-store locations outlined below. We will be testing these definitions further in the enforcement consultation to ensure they are fit for purpose ahead of implementation:

- checkout area: the till point or a self-checkout area and the surrounding floor space within an area where 2 meters (7.0ft) radius, as well as the queueing areas leading to the till point or self-checkout including food stands with grab-and-go baskets and/or food preparation [footnote 40]
- end-of-aisle display: the point of purchase advertising of products placed at the ends (front and/or back) of shelf rows in stores, or on separate units adjacent to the ends of shelf rows, for example island bin displays
- store entrance display: the display of products on units/shelves placed at the ends (either side) of the store entrance(s), lobby or entrance area including either:

1) displays within a distance inside the store that is less than or equal to 5 per cent of the square meterage of the store premises up to a maximum of 225 square metres (for example, a store equal to 5 square metres (100 square feet) for a store that is 185.8 sq m (2,000 sq ft).

1.) or the area defined by the distance from the mid-point of the entrance door into the store in any direction where the distance is calculated as follows: the square root of 5% of the store area, for example for a store that is 185.8 sq m (2,000 sq ft) the restricted area would be square root of (0.05 x 185.8) which is equal to 3.05 metres, meaning the restricted area would be approximately 3 metres from the mid-point of the door in any direction into the store.

These 2 options for defining store entrances will be tested through the enforcement consultation to ensure the definition and approach are clear and fit for purpose.

The location promotion restrictions will apply to the online locations outlined below. We will be testing these definitions further in the enforcement consultation to ensure they are fit for purpose ahead of implementation:

- the entry page of the website or process page
- where the customer views their basket or proceeds to make a payment
- HFSS products appearing when customers are browsing other product categories; products highlighted on pages related to other product categories

Annex 5: The 2004/05 Nutrient Profiling Model (NPM)

The 2004/05 Nutrient profiling model (NPM) was developed by the Food Standards Agency (FSA) to provide Ofcom, the broadcast regulator, with a tool to differentiate foods on the basis of their nutritional composition[footnote 41]. Ofcom uses the outputs from the model to regulate the television advertising of foods to children.

It scores foods based on their nutritional content. The nutrients considered are split into two categories – A and C. The score 'C' nutrients is subtracted from the score for 'A' nutrients to give the final score. A higher score indicates a less healthy food.

'A' nutrients consist of energy, saturated fat, total sugar and sodium. 'C' nutrients consist of fruit, vegetables and nut content, fibre and protein. Therefore, a food scoring highly on 'A' nutrients is not automatically classified as less healthy, only if it additionally scores little on 'C' nutrients.

Foods scoring 4 or more points, or drinks scoring 1 or more points, are classified as 'less healthy'. These 'less healthy' products provide the definition for HFSS food and drink used in this consultation.

All food and drinks are scored, there are no exemptions.

Calculations

There are three steps to working out the score: calculating 'A' points, calculating 'C' points and combining these into an overall score.

Calculating 'A' points

Total 'A' points are calculated by the following formula: (points for energy) + (points for saturated fat) + (points for sugars) + (points for sodium). The points for each nutrient are determined based on the amount of each per 100g of the food or drink, according to Table B.1 below.

Table B.1: points scored by 'A' category nutrients per 100g

Points	Energy (kJ)	Saturated Fat (g)	Total Sugars (g)	Sodium (mg)
0	≤335	≤1	≤4.5	≤90
1	>335	>1	>4.5	>90
2	>670	>2	>9.0	>180
3	>1005	>3	>13.5	>270
4	>1340	>4	>18.0	>360
5	>1675	>5	>22.5	>450
6	>2010	>6	>27.0	>540
7	>2345	>7	>31.0	>630
8	>2680	>8	>36.0	>720
9	>3015	>9	>40.0	>810
10	>3350	>10	>45.0	>900

A maximum of 10 points can be awarded for each nutrient.

Calculating 'C' points

Total 'C' points are calculated by the following formula: (points for fruit, veg and nut content) + (points for fibre [either NSP or AOAC]) + (points for protein). The points for each nutrient are determined based on the amount of each per nutrient per 100g/percentage nutrient component of the food or drink, according to Table B.2 below.

Table B.2: points scored by 'C' category nutrients per 100g

Points	Fruit, Vegetable and Nuts (%)	NSP Fibre (g) (a)	or AOAC Fibre (g) (b)	Protein (g) (c)
0	≤40	≤0.7	≤1.9	≤1.6
1	>40	>0.7	>1.9	>1.6
2	>60	>1.4	>3.8	>3.2
3	>80	>2.1	>5.6	>4.8
4	-	>2.8	>7.5	>6.4
5	>80	>3.5	>9.4	>8.0

(a) NSP fibre information should be used if possible. However, if this is not available then AOAC fibre information should be used.

(b) If a food or drink scores 11 or more points for 'A' nutrients then it cannot score points for protein unless it also scores 5 points for fruit, vegetables and nuts.

A maximum of 5 points can be awarded for each nutrient/food component. Note the restrictions on points for protein.

Combining points into an overall score

Overall score for a food is dependent on how many 'A' points it scores and how many points for fruit, veg and nuts it scores. There are three possible situations.

Less than 11 'A' points

If a food satisfies this criterion then the overall score is calculated as follows:

Total 'A' points minus total 'C' points = (energy + saturated fat + sugars + sodium) – (fruit, veg and nuts + fibre + protein)

11 or more 'A' points and 5 points for fruit, vegetables and nuts

If a food satisfies this criterion then the overall score is calculated as the above case.

11 or more 'A' points and less than 5 points for fruit, vegetables and nuts

If a food satisfies this criterion then the overall score is calculated as follows:

Total 'A' points minus points for fruit, veg and nuts and points for fibre = (energy + saturated fat + sugars + sodium) – (fruit, veg and nuts + fibre)

Note that in this case foods are not allowed to score for protein.

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