



Department  
of Health &  
Social Care

# **Consultation on restricting promotions of products high in fat, sugar and salt by location and by price**

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# Policy Overview

The Government intends to introduce legislation to restrict promotions of products high in fat, sugar or salt (HFSS) in England by location and by price in retail settings (such as supermarkets and other shops) and in the out of home sector (such as restaurants, coffee shops, fast food outlets), as well as in any establishment in which food and drink is prepared and sold so that it is ready for consumption by the final consumer.

The aim of the policy is to reduce overconsumption of HFSS products that contribute to children being overweight and obese through:

- a) restricting volume based types of price promotions of pre-packaged HFSS food and drink products that specifically encourage overconsumption, such as multi-buy offers (e.g. buy one get one free) and free refills of sugary soft drinks.
- b) restricting the placement of all HFSS food and drink products (whether pre-packaged or non-pre-packaged) at key selling locations such as store entrances, checkouts and aisle ends which can lead to pester power and impulse purchases of HFSS products.

We also want to shift the balance of promotions towards healthier options and maximise the availability of healthier products that are offered on promotion, to make it easier for parents to make healthier choices when shopping for their families.

# The impact of obesity

Childhood obesity is one of the biggest health problems this country faces. Nearly a quarter of children in England are obese or overweight by the time they start primary school aged five, and this rises to one third by the time they leave aged 11<sup>i</sup>. The proportion of children who are overweight or obese in the UK overall is amongst the highest in Western Europe<sup>ii</sup>. Children are becoming obese at earlier ages and staying obese for longer<sup>iii</sup>.

Obesity can have serious consequences for children's health. The number of children admitted to hospital for obesity and related conditions has quadrupled in the last decade<sup>iv</sup>. Individuals who are obese in their early years are more likely to become obese adults, putting them at a higher risk of ill-health, such as heart disease, type 2 diabetes, several types of cancer and fatty liver disease, and premature death<sup>v, vi</sup>.

Obesity also has huge costs to society. It has been estimated that the indirect cost to the UK economy from obesity related conditions is around £27 billion per year<sup>vii</sup> with some estimates placing this figure much higher. It is estimated that obesity-related conditions are currently costing the NHS £6.1 billion per year<sup>viii</sup>.

# The role of diet and calorie overconsumption

Data shows that children in the UK have unbalanced diets. Children consume too much sugar, saturated fat and salt and too many calories, but not enough fibre, fruit and vegetables.

Data specifically shows that children between 11-18 years old consume up to three times the recommended maximum amount of sugar<sup>ix</sup>. On average, compared with those with ideal body weights, overweight or obese children consume between 146 and 505 kcals more than they need per day for boys, and between 157 and 291 kcals per day for girls<sup>x</sup>. There is a clear link between high sugar intake and excess calorie consumption, which increases the risk of weight gain and obesity<sup>xi</sup>. In addition to weight gain and related ill health, consuming too much sugar and too many foods and drinks high in sugar can lead to tooth decay, which is currently the most common reason for child hospital admissions<sup>xii</sup>.

Despite the complexity of its drivers, at its root obesity is caused by consistently consuming more calories than we use to maintain our bodies and through physical activity. Taking action to help reduce this excess calorie consumption will decrease obesity prevalence and obesity related ill health.

# The role of price and location promotions

It is clear from the academic evidence that marketing and promotions in stores are extensive, deep and effective at influencing food preferences and purchases<sup>xiii</sup>. Price and location promotions are a significant feature of the British grocery landscape and are employed to encourage shoppers to make certain buying choices.

Although promotions appear to be mechanisms to help consumers save money, data shows that they actually increase consumer spending by encouraging people to buy more than they need or intended to buy in the first place. Price promotions appeal to people from all demographic groups and frequently lead people to buy more of the promoted category than expected. Evidence from Public Health England suggests these promotions increase the amount of food and drink people buy by around 20%<sup>xiv</sup>. Furthermore, in 2015 promotions in Britain reached record levels and were the highest in Europe, with around 40% of expenditure on food and drinks consumed at home being spent on products on promotion.<sup>xv</sup>

Consumers do not stockpile these extra purchases to take advantage of the lower price instead they increase their consumption. When large or moderate amounts of convenient ready-to-eat foods were stockpiled in people's homes, consumption was found to be substantially greater in homes with large stockpiles over the first week. Once the relative difference in the quantity available within homes had fallen, this difference disappeared<sup>xvi</sup>.

Evidence also shows that multibuy type promotions in particular cause a greater sales uplift compared to other types of price promotions such as simple price reductions<sup>xvii</sup>.

The shopping environment plays an important part in the way products are marketed to us, with simple factors such as the location of products within stores significantly affecting what we buy. An observational study in England, for example, found that end of aisle displays (after controlling for the effect of price, price promotion and number of display locations) increased sales of carbonated drinks by over 50%<sup>xviii</sup>.

Despite some progress which has been made by a number of retailers<sup>xix</sup>, families are often faced with HFSS products while queueing at the checkout or when entering a store. Furthermore, children are uniquely vulnerable to the techniques used to promote sales<sup>xx</sup>. These effects can then be transmitted into the purchasing behaviours of parents through 'pester power'.<sup>xxi</sup> A study into Australian parents' experiences of food marketing directed towards children found that most of the items requested by children were unhealthy foods and 70% of parents purchased at least one food item requested during the shopping trip<sup>xxii</sup>.

In contrast to the retail sector, there is a lack of studies investigating the use of price and location promotions in the out of home sector. However, there is evidence to suggest that price promotions in particular are being offered by a variety of out of home businesses. Furthermore, the fact that numerous websites <sup>xxiii</sup> exist to aggregate such offers, suggests widespread use of these types of promotion. We would welcome any further evidence on this as part of the consultation.

Given the evidence on how effective price and location promotions are at encouraging purchases, it is not surprising that PHE have previously suggested that reducing and rebalancing promotions towards healthier products would improve people's diets<sup>xxiv</sup>.

Moreover, there is strong public demand for action to restrict promotions of HFSS products. In a 2016 survey by Which?, just over half of people polled said that supermarkets should offer more healthy food in promotions, and this was named as the top action shoppers wanted from retailers<sup>xxv</sup>. A YouGov survey also showed that 66% of people support reducing price promotions of unhealthy food<sup>xxvi</sup>. More than 90% of respondents to a nationwide survey believe that HFSS foods at checkouts contribute to obesity; 78% of shoppers said they found junk food at checkouts 'annoying'; and 83% of them had been pestered by children to buy food at checkouts with 75% giving in and buying something through 'pester power' <sup>xxvii</sup>.

Voluntary commitments to restrict promotions of HFSS food and drink have been limited in the past. The Public Health Responsibility Deal encouraged industry to take voluntary action but due to market competition law a common voluntary agreement on promotions was not reached<sup>xxviii</sup>. Feedback from industry stakeholders has been clear that consistent sector-wide action to restrict promotions of HFSS products is not possible through voluntary measures.

Introducing legislation across the market ensures that a level playing field is created within the retail sector as well as across the food industry as a whole, and that forward-thinking businesses are not penalised for taking action.

# Scope of the policy

## Products

The top sugar contributors in children's diets are: sugar sweetened soft drinks, breakfast cereals, yoghurts, biscuits, cakes, confectionery, morning goods (e.g. pastries), puddings, ice cream, sweet spreads, fruit based drinks and milk based drinks with added sugar. These products are either included in PHE's sugar reduction programme or in scope of the soft drinks industry levy (SDIL). The products that contribute significantly to children's calorie intakes (excluding the above products), and where there is scope for substantial reformulation and/or portion size reduction, are: ready meals, pizzas, meat products, savoury snack products, sauces and dressings, prepared sandwiches and composite salads<sup>xxix</sup>. These products are included in PHE's calorie reduction programme. Please see Annex 3 for the full list of products included in the reformulation programmes.

Our aim is to restrict promotions of those products that contribute the most sugar and calories to children's diets. Therefore, we propose that the restrictions should only apply to products which are classed as HFSS and are included in the PHE's sugar and calorie reduction programmes (referred to in this consultation as 'PHE's reformulation categories') and to drinks which are in scope of the SDIL.

We propose that the 2004/5 Nutrient profiling model (NPM) should be used to define HFSS food and drink products because it is based on scientific evidence and it is already used by industry to determine which products can and cannot be advertised to children. Please see Annex 4 for further details on the 2004/5 NPM.

We know that not all products included in the reformulation categories and the SDIL would be classed as HFSS, either due to the nature of the products (for example natural plain yoghurts within the yoghurts category) or due to reformulation efforts to improve the nutritional quality of the products (for example sugar free soft drinks). It is not our intention to restrict promotions of those non HFSS products.

Furthermore, it is not our intention to restrict promotions of all other products outside these categories such as unprocessed meat, oily fish, dairy, fruit and vegetables and other food and drink that is included in Government's dietary guidelines as an essential part of a healthy balanced diet; in fact, our aim is to maximise promotions of these products.

As part of this consultation we invite views on the products that should be in scope of the restrictions and on the most appropriate model to define HFSS food and drink.



## Price promotions

It is not our aim to increase the cost of food for consumers. Therefore, it is not our intention to restrict all types of price promotions. We are proposing to only target volume based types of promotions that require the consumer to purchase more in order to take advantage of the discount, for example multibuy promotions like buy one get one free, or buy X for £Y. These types of promotions have been shown to specifically encourage and stimulate over-purchasing to a larger extent compared to simple price reductions. Please see Annex 1 for further details on the types of price promotions in scope. As part of this consultation we invite views on the types of price promotions that should be in scope of this policy.

Our intention is twofold; we want to reduce children's overconsumption of those HFSS products which contribute the most sugar and calories to children's diets, and we also want to maximise the availability of healthier products that are offered on promotion, to make it easier for parents to make healthier choices when shopping for their families.

As part of this consultation we ask for stakeholder views on the best way to implement the restrictions on price promotion of HFSS products. We are consulting on the following two options:

### Option 1:

Require retailers to ensure that all their volume based price promotions on food and drink are on healthier products.

This would mean that no volume based price promotions may be on HFSS products included in PHE's reformulation categories and in scope of the SDIL.

Therefore, volume based price promotions of food and drink could only be on:

- Non HFSS products included in PHE's reformulation categories and in scope of the SDIL (for example natural plain yoghurts within the yoghurts category or sugar free soft drinks).
- All other food and drink outside of PHE's reformulation categories (whether HFSS or non HFSS products) as these are the product categories included in Government's dietary guidelines for example fruit and vegetables, unprocessed meat and fish, vegetable oils, cheese, nuts etc.

### Option 2:

Our aim is to reduce overconsumption of HFSS products but also to encourage businesses to promote healthier products and to further incentivise reformulation.

Therefore, we are open to alternative suggestions from stakeholders on the best way to implement this policy to achieve these aims.

For example, we have explored the possible impact of requiring retailers to ensure that at least 80% of their sales from volume based price promotions on all food and drink per year are on healthier products.

This would mean a maximum of 20% of a retailer's sales from volume based price promotions on all food and drink per year may be on HFSS products included in PHE's reformulation categories and in scope of the SDIL.

The other 80% could include:

- Non HFSS products included in PHE's reformulation categories and in scope of the SDIL (for example natural plain yoghurts within the yoghurts category or sugar free soft drinks)
- All other food and drink outside of PHE's reformulation categories (whether HFSS or non HFSS products) as these are the product categories included in Government's dietary guidelines for example fruit and vegetables, unprocessed meat and fish, vegetable oils, cheese, nuts etc.

As part of this consultation we invite views on the above proposals as well as alternative suggestions. We also invite alternative suggestions to our proposals for restricting location promotions which are set out later in this document.

## **Eating outside the home**

It is not our intention or the aim of this policy to make it more expensive for families eating out as a treat. We recognise that the way consumers respond to promotions in retail settings and out of home settings is different. Promotional offers in out of home settings are generally targeted to multiple individuals eating out together as a group and therefore are less likely to encourage over-purchasing and overconsumption in the same way as supermarket multibuy type promotions. Therefore, we propose that we only target price promotions of pre-packaged HFSS products in the retail and out of home sector.

We are not targeting price promotion offers of non-pre-packaged food and drink in the out of home sector such as 'kids eat free', other similar meal offers for children, free desserts/sides, or offers like '2 courses for £X'. We are also not targeting combination offers like meal deals in retail or out of home settings as they are generally targeted as lunch options for adults and they aim to reduce the cost of a single meal, therefore they do not tend to encourage overconsumption as is the case with volume based 'multibuy type'

promotions. Please see Annex 1 for further details on the types of price promotion in the out of home sector.

However, we are proposing that free refills of sugary soft drinks that are in scope of the SDIL are in scope of the policy. Data shows that soft drinks are the top sugar contributor to children's diets <sup>xxx</sup> and this type of promotion encourages overconsumption as it is aimed only at one individual. As part of this consultation we invite views on the types of promotions that should be in scope of this policy.

## Location promotions

As part of this consultation we ask for views on the best way to implement the restrictions on location promotion of HFSS products.

### Option 1:

Our proposal is to restrict the placement of HFSS products included in PHE's reformulation categories and in scope of the SDIL at key selling locations in stores.

By 'location promotions' we mean the placement of HFSS products at the following key selling locations: checkout areas, end of aisle displays and front of store. We invite views on the best way to define these in store locations and whether online shopping should also be in scope of the restrictions.

We also recognise that the location restrictions may pose additional challenges to very small stores that do not have distinct checkout, front of store and aisle end areas or where the nature of the store makes the implementation of the restrictions unworkable. Therefore, as part of this consultation we invite stakeholder views on whether small size stores should be out of scope of this policy and how they should be defined.

### Option 2:

Our aim is to reduce overconsumption of HFSS products but also to encourage businesses to promote healthier products and to further incentivise reformulation. Therefore, we are open to any alternative suggestions from stakeholders on the best way to implement this policy to achieve these aims.

## Summary of policy aims

The aim of the policy is twofold:

- reduce children's overconsumption of HFSS products likely to lead to excess calorie consumption and weight gain and, over time, obesity. Obesity in childhood increases children's risk of becoming obese adults and the risk of developing type 2 diabetes, heart disease, fatty liver disease and a number of cancers.
- acknowledging that businesses may wish to continue using promotions as a marketing device, we want to shift the balance of promotions towards healthier options and maximise the availability of healthier products that are offered on promotion, in order to make it easier for parents to make healthier choices when shopping for their families.

It is intended that the restrictions should apply in the retail and out of home sector.

It is neither the Government's intention nor the aim of this policy to increase the cost of food for families. It is also not the Government's intention to increase the costs for families eating out as a treat. This is why we are proposing that the price restrictions should only apply to volume based promotions of pre-packaged products in the retail and out of home sector that require consumers to purchase more than they intended to in order to benefit from the discount, and to free refills of sugary soft drinks that encourage overconsumption as they are aimed at one individual.

The Government intends to lay secondary legislation restricting price and location promotions of HFSS food and drink items in England in late 2019. Subject to consultation there will be an implementation period before the regulation comes into force, giving industry sufficient time to prepare for implementing the policy. It is intended that regulations will come into force no earlier than late 2020. The proposed policy set out in this consultation only applies to England. We will work closely with devolved administrations in Wales, Scotland and Northern Ireland to ensure our approaches are aligned as much as possible.

# Our proposals in more detail

- The Government intends to introduce legislation to restrict promotions of HFSS products by location and by price in the retail and out of home sector, that is any establishment in which food and drink is prepared and sold so that it is ready for consumption by the final consumer.
- We propose that the restrictions should apply to all retail businesses which sell any food and drink products, including their franchises and online outlets.
- We propose that the restrictions should also apply to retailers that do not primarily sell food and drink, such as clothes retailers and newsagents, to reduce the pester power that parents face due to the prominent display of HFSS products, even when they are not purchasing food and drink.
- We propose that the 2004/5 Nutrient profiling model (NPM) should be used to define HFSS food and drink products because it is based on scientific evidence and it is already used by industry to determine which products can and cannot be advertised to children.
- We propose that the price restrictions should apply only to ‘volume based promotions’ which are defined in this document as ‘multibuy’ promotions and ‘extra free’ promotions of pre-packaged HFSS products, because evidence shows that these types of volume promotions encourage overconsumption of HFSS products and cause a greater sales uplift compared to simple price reductions.
- We propose that the price restrictions should also apply to free refills of sugar-sweetened beverages in the out-of-home sector, if they are in scope of the SDIL, as soft drinks as the biggest source of sugar in children’s diets. We propose that free refills of drinks should only be allowed for non HFSS drinks.
- We propose that the price restrictions should apply to pre-packaged HFSS products which fall into the categories included in PHE's sugar and calorie reduction programmes, as well as sugar sweetened beverages which are in scope of the SDIL, as these products are the top contributors of sugar and calories in children’s diets.
- We ask for stakeholders’ views on the best way to implement the price restrictions: whether all volume based price promotions should be on healthier products or whether an alternative option should be considered, for example at least 80% of a retailer’s sales per year from volume based price promotions on food and drink should be on non-HFSS products.

- We ask for stakeholders' views on the best way to implement the location restrictions: We propose that the location restrictions should apply to store entrances, ends of aisles and checkout areas, including online checkouts, because evidence shows that these locations are effective at increasing sales of HFSS products by up to 50% and can lead to pester power towards parents. We are also open to alternative suggestions from stakeholders.
- We propose that the location restrictions should apply to all HFSS products (whether pre-packaged or non-pre-packaged) which fall into the categories included in PHE's sugar and calorie reduction programmes, as well as sugar sweetened beverages which are in scope of the SDIL, as these products are the top contributors of sugar and calories in children's diets.
- The Department of Health and Social Care will provide guidance and methodology that will help businesses determine which products can or cannot be promoted by location and by price.
- As part of this consultation we invite views on whether specific businesses or products should be out of scope of the location and price restrictions.
- DHSC is considering how this requirement would be enforced and will work closely with businesses and local government to ensure compliance is monitored in a way that is fair and not overly burdensome.

# Consultation questions

## Businesses and products affected

1. Do you think that the restrictions suggested in this consultation should apply to all retail businesses in England that sell food and drink products, including franchises? Yes/No. Please explain your answer.
2. Do you think there are any other retailers that the restrictions suggested in this consultation should apply to? Yes/No. If yes, please explain which retailers and why.
3. Do you think there are any retailers that the restrictions suggested in this consultation should not apply to? Yes/No. If yes, please explain which retailers and why.
4. Do you think that the restrictions should also apply to retailers that do not primarily sell food and drink, for example, clothes retailers and newsagents? Yes/No. Please explain your answer.
5. Do you think that the restrictions should also apply to imported products within the specified product categories in scope? Yes/No. Please explain your answer.
6. Do you think that the restrictions should also apply to online shopping? Yes/No. Please explain your answer.
7. If the restrictions applied to online retailers, how could this work in practice?
8. Who should be responsible for making sure the price restrictions are followed: the retailer that sells the products or the manufacturer that makes them? Retailer/Manufacturer. Please explain your answer.
9. Who should be responsible for making sure the location restrictions are followed: the retailer that sells the products or the manufacturer that makes them? Retailer/Manufacturer. Please explain your answer.

## Price promotion restrictions

10. Which of the following options do you think is the most appropriate for achieving the aims of this policy:

Option 1 - Require retailers to ensure that all their volume based price promotions on food and drink are on healthier products.

Option 2 - We are open to alternative suggestions from stakeholders as to how this policy could be implemented in order to reduce overconsumption of HFSS products but also to encourage businesses to promote healthier products and to further incentivise reformulation. For example, we have explored the possible impact of requiring retailers to ensure that at least 80% of their sales from volume based price promotions on all food and drink per year are on healthier products.

Neither

Please explain your answer.

11. If you are proposing an alternative option, please explain how your preferred option would better deliver the aims of this policy, how it would be delivered and whether there would be any practical and/or implementation issues that we should be aware of.
12. Do you think that the price restrictions should apply to 'multibuy' promotions and 'extra free' promotions of pre-packaged HFSS products (see Annex 5)? Yes/No. Please explain your answer.
13. Do you currently use or do you know about any official definitions of these types of price promotions? Yes/No. If yes, please provide them below.
14. Do you think there are any other types of price promotion that should be restricted that we have not mentioned? Yes/No. If yes, please explain which types of promotion and why.
15. Do you think that the price restrictions should apply to pre-packaged products which fall into the categories included in Public Health England's (PHE) sugar and calorie reduction programmes and in the Soft Drinks Industry Levy (SDIL), and are classed as high in fat, sugar or salt (HFSS) (see Annex 3)? Yes/No. Please explain why.
16. Do you think any other product categories should be included in these restrictions? Yes/No. If yes, please explain which product categories and why.
17. Do you think any of these categories should not be included? Yes/No. If yes, please explain which product categories and why.
18. Do you think that the price restrictions should also apply to free refills of sugar-sweetened beverages in the out-of-home sector, if they are in scope of the SDIL, including where they could be a part of a meal deal? Yes/No. Please explain your answer.



19. For food and drink consumed outside of the home, are there other types of price promotion that should be restricted? Yes/No. If yes, please explain which promotions we should consider and why.

## Location restrictions

20. Which of the following options do you think is the most appropriate to achieve the aims of this policy:

Option 1 - We propose that the location restrictions should apply to the following locations: store entrances, ends of aisles and checkout areas (see Annex 2).

Option 2 - We are open to alternative suggestions from stakeholders as to how this policy could be implemented. If you are proposing an alternative option, please explain how your preferred option would better deliver the aims of this policy, how it would be delivered and whether there would be any practical and/or implementation issues that we should be aware of.

Neither

21. Do you think that the location restrictions should apply to all of the following locations: store entrances, ends of aisles and checkout areas? Yes/No. Please explain your answer.
22. Do you currently use or do you know about any official definitions for these locations? Yes/No. If yes, please provide them below.
23. Do you think there are other locations inside stores where the restrictions should apply to? Yes/No. If yes, please explain which locations and why.
24. Do you think that the location restrictions should apply to all products (whether pre-packaged or non-pre-packaged) which fall into the categories included in PHE's sugar and calorie reduction programmes and in the SDIL, and are classed as HFSS (see Annex 3)? Yes/No.
25. Do you think any other product categories should be included in these restrictions? Yes/No. If yes, please explain which product categories and why.
26. Do you think any of these product categories should not be included? Yes/No. If yes, please explain which product categories and why.

## Definitions

27. Do you think that the 2004/5 Nutrient profiling model (NPM) provides an appropriate way of defining HFSS products within the food and drink categories proposed for inclusion in this policy (see Annex 4)? Yes/No. If you answered no, what other ways could we use? Please explain your suggestions.
28. Do you think that micro, small, medium and large businesses should be defined by how many employees they have, as defined in the EU recommendation 2003/361 (see Annex 5)? Yes/No.
29. Do you think we should consider other ways to define businesses apart from the number of employees, such as floor space/size or turnover? Yes/No. If yes, please explain which methods you think we should consider and why.

## Businesses and products out of scope

30. Should the price restrictions apply to the businesses and products below (see Annex 5):

- Microbusinesses - we recognise it may be too difficult for micro businesses to apply the restrictions
- Specialist retailers - we recognise it may be impractical for retailers that only sell one type of product to apply the restrictions
- Products that are non- pre-packaged - we recognise it may be impractical for retailers to apply the restrictions when nutritional information is not displayed on the pack for certain products that are sold loose
- Meal deals in the retail or out of home sector - we recognise they are generally aimed at adults and they aim to reduce the cost of a single meal
- Any other price promotion activity in the out of home sector - we recognise promotions in these settings serve a different purpose to supermarket multibuy promotions and are generally aimed at groups of people eating out together

Yes/no. Please explain your answer.

31. Should the location restrictions apply to the businesses and products below (see Annex 5):

- Very small stores that do not have distinct checkout, front of store and aisle end areas, even if they are part of a chain – we recognise it may be impractical for small outlets to apply the restrictions because they may not have distinct areas

- Specialist retailers – we recognise it may be impractical for retailers that only sell one type of product to apply the restrictions
- Non-pre-packaged products – we recognise it may be impractical for retailers to apply the restrictions when nutritional information is not displayed on the pack for certain products that are sold loose

Yes/no. Please explain your answer.

32. Are there any other businesses and/or products that should be out of scope of the price and location restrictions? Yes/No. If yes, please explain which businesses and/or products and why.

## Policy implementation

33. How much time would businesses need to prepare for implementation? Please explain your answer.

34. DHSC will provide guidance and methodology that will help businesses to know which products can or cannot be promoted. What other support is needed to put this policy into practice?

35. Would these restrictions cause any implementation or other practical issues for particular businesses that we have not considered in this consultation? Yes/No. If yes, please explain what the likely issues are and provide evidence and suggestions of how the issues could be mitigated for these businesses.

36. We welcome views through the consultation on possible approaches to enforcement. Do you have any suggestions for how we can enforce the restrictions in a way that is fair to businesses?

## Impact Assessment questions

To assess the potential impact of the proposed policies, we have produced two Impact Assessments (IA). These documents can be found on the main consultation page on Gov.uk. The IAs include modelling of a range of options to restrict promotions of HFSS products by location and by price. Through this modelling we established the best options to pursue and seek stakeholders' views on. As a result, we are not consulting on all the options that were modelled in the IAs.

The following questions will help us gather further evidence and gain insight into the issues raised in the impact assessments.

Please note that any information you provide may be used in our final IA that will be published.

## General IA questions

37. We have calculated illustrative transition costs in both impact assessments. Do these calculations reflect a fair assessment of the costs that would be faced by your organisation/business? Yes/No. If no, please provide any further evidence which could be used to improve our estimates.

If you are referring to a specific calculation in one of the IAs, please state which one(s).

38. Are you aware of any other data sources on sales in the out-of-home food market and the nutritional content of the products sold? Yes/No. If yes, please provide details of the information contained in the data set and the provider.

39. Are you aware of any other data sources available which would improve our estimates of the number of food retailers and out-of-home food outlets? Yes/No. If yes, please provide details of the information contained in the data set and the provider.

40. How will these proposals affect the relationships between manufacturers and retailers (e.g. sales agreements, sales targets, the future relationships and profitability)? Please provide further evidence which could be used to improve our understanding.

41. Is it reasonable to assume that retailers and out of home businesses are inspected by Trading Standards every 3.5 and 2 years, respectively? Yes/No. If no, please provide further evidence which could be used to improve our estimates.

42. Is there any additional evidence that would improve our understanding of the level of compensating behaviour which might occur? Yes/No. If yes, please provide further evidence which could be used to improve our estimates.

43. Do you have any further evidence or data you wish to submit for us to consider for our final impact assessment or any specific comments on the methodology or assumptions made? Yes/No. If yes, please provide further evidence which could be used to improve our estimates.

If you are referring to a specific IA question or calculation, please state which one(s).

## Location restrictions IA

44. Is our assessment of the major supermarkets' approach to placing HFSS food and drinks at checkouts accurate? Yes/No. If no, please provide further evidence which could be used to improve our understanding.
45. Is there evidence to suggest that smaller retailers are voluntarily restricting the placement of HFSS food and drinks in stores? Yes/No. If yes, please provide further evidence which could be used to improve our understanding.
46. Is there any additional evidence that would improve our estimates of the use of location promotions within the domestic retail or out of home markets, the sales uplift they provide and proportion of sales they represent? Yes/No. If yes, please provide further evidence which could be used to improve our estimates.

## Price restrictions IA

47. Is it reasonable to assume that businesses will switch to using price cuts instead of volume offers to promote HFSS products? Yes/No. If no, please provide further evidence which could be used to improve our understanding.
48. To what extent are price promotions offered in the out of home sector? Please provide evidence which could be used to improve our understanding.
49. Do consumers respond in a similar way to price promotions offered in the out of home sector and those offered in supermarkets? Please provide further evidence which could be used to improve our understanding.
50. Is the approach used in the impact assessment suitable for assessing the impact on consumers and specifically for assessing the impact on consumer surplus? Yes/No. If no, please provide further evidence which could be used to improve our estimates.
51. How would retailers adjust their promotion strategies to meet the 80/20 target?

## Equalities Assessment questions

To assess the potential impact of the policies proposed in Chapter 2 of the Government's Childhood Obesity Plan against the Government's duties under the Equality Act 2010 a separate Equality Analysis has been produced.

52. 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? Yes/No. If yes, please explain your answer and provide relevant evidence.

53. Do you think that any of the proposals in this consultation 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?

Yes/No

54. If you answered yes to the previous question, please explain which aims it would help achieve and how.

55. If you answered no to the previous question, could the proposals be changed so that they are more effective? If yes, please explain what changes would be needed.

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? Yes/No. If yes, please explain your answer and provide relevant evidence.

## Further points

57. Is there anything else that you would like to tell us or any more information that you would like to provide for this consultation?

# Annex 1: Types of price promotions in the retail and out of home sector

Price promotions fall into two main categories<sup>xxxi</sup> volume offers and reference pricing.

Volume offers include:

- Multi-buy offers - where the discount is obtained by purchasing more than one unit, such as in 'buy one get one free' and '3 for 2' offers
- Combination offers - where a discount is given when individuals purchase a specified combination of products, as is the case in meal deals for example
- Linked offers - where the consumer is offered a free or discounted product when they purchase another product, such as a half price drink when they buy a sandwich
- Extra for the same price/extra free - when the consumer is given more for the same price, such as 50% extra free

The second category of price promotions is reference pricing, i.e. pricing that demonstrates good value by referring to another price, typically of higher value. This category includes:

- Was/now prices - which compare an advertised price to a price the retailer has previously charged
- After promotion or introductory prices - which compare the current price to a price that the retailer intends to charge in the future
- Recommended retail prices (RRP) - which compare the advertised price to one recommended by the manufacturer or supplier and
- External reference prices - which compare an advertised price to a price charged by another retailer for the same product

For the purposes of this Impact Assessment, we use price promotions to cover all types of promotional offers on food, temporary price reductions (price cuts) to describe all promotions falling under the reference pricing category above and volume promotions to describe all volume offers.

Typical price promotions in the out of home sector include:

- offering free meal components with the purchase of a main meal, for example “free sides” or “free dessert”

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- offering free meals for children under a certain age during a specific amount of time during the year for example “kids eat free”
- multibuy promotions that require the shopper to buy one or more items to benefit from the discounted price, generally aimed at a group of individuals, for example “2-for-1 pizza”
- Combination offers such as “2 courses for £12.95”
- free drinks refills with the purchase of a meal

Under the proposals set out in this consultation, pre-packaged HFSS products should not be offered on:

- multibuy promotions of pre-packaged HFSS food and drink
- extra free promotions of pre-packaged HFSS food and drink
- free drink refills with the purchase of a meal in out of home settings



## **Annex 2: Types of location promotions in the retail and out of home sector**

- Checkout area: the till point or a self-checkout area and the surrounding floor space area, as well as the queueing areas leading to the till point or self-checkout.
- End of aisle display: the point of purchase advertising of products placed at the ends of shelf rows in stores, or on separate units adjacent to the ends of shelf rows.
- Store entrance display: the display of products on units/shelves placed at/in the vicinity of the store entrance(s), including in front of or surrounding the entrance(s).

Under the proposals set out in this consultation, HFSS products should not be placed at the above locations in retail and out of home settings.

# Annex 3: Products included in the Soft Drinks Industry Levy and the Calorie and Sugar Reduction Programmes

## 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 the 6th of 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 detailed list of what is classed as sugar for the purposes of the levy can be found in the guidance published by HM Revenue & Customs<sup>xxxii</sup>.

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.

## Calorie Reduction Programme

On average both children and adults are consuming too many calories on a regular basis. Amongst the government's commitments in 'Childhood obesity: A plan for action' was for Public Health England to lead a structured and closely monitored programme to improve every day food and drink. As part of this PHE developed the calorie Reduction Programme to encourage manufacturers to revise and reformulate their products to lower the amount of calories they contain.

- Products within the following categories are included in this programme:
- Bread with additions (e.g. olives, cheese etc.)
- Crisps and savoury snacks
- Savoury biscuits, crackers and crispbreads
- Potato products (e.g. chips, croquettes, mashed potato etc.)
- Sausages (raw and cooked) and sausage meat products, frankfurters, hotdogs and burgers
- Meat, fish and vegetarian pastry pies and other pastry products
- Cooking sauces and pastes
- Table sauces and dressings
- Pasta/ rice/ noodles with added ingredients and flavours
- Ready meals with carbohydrate accompaniment (potato, rice, noodles, pasta, etc.) – fish, meat and meat alternatives
- Meal centres without carbohydrate accompaniment (potato, rice, noodles, pasta, etc.) – fish, meat and meat alternatives

- Prepared dips and composite salads as meal accompaniments (e.g. coleslaw, potato salad, guacamole, salsa etc.)
- Pizza
- Egg products/ dishes (e.g. quiche)
- Food to go e.g. sandwiches, boxed main meals, salads etc.

These products have been included because they contribute significantly to children's calorie intakes and there is scope for substantial reformulation and/ or portion size reduction. A more detailed list of the products included in the scheme and the reformulation targets can be found in the guidance published by Public Health England<sup>xxxiii</sup>.

## **Sugar Reduction Programme**

A further commitment in the 'Childhood obesity: a plan for action' was to launch a broad structured sugar reduction programme to remove sugar from everyday products. All groups of the population, particularly children, are consuming far too much sugar. This increases the risk of excess calorie consumption and weight gain, which, over time, can lead to obesity.

The sugar reduction programme challenges manufacturers to revise and reformulate their products to reduce the amount of sugar they contain. A list of product categories included in the programme is below:

- Breakfast cereals
- Yoghurt and fromage frais
- Biscuits
- Cakes
- Morning goods
- Puddings
- Ice cream
- Sweet confectionary
- Chocolate confectionary

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- Sweet spreads
- Milk based drinks and fruit juices which are exempt from the SDIL

These products have been included because they contribute significantly to children's sugar intakes. A more detailed list of the products included in the scheme and the reformulation targets can be found in the guidance published by Public Health England<sup>xxxiv</sup>.

DHSC analysis of 2014 Kantar data suggests that the products included in PHE's sugar and calorie reduction programmes and within scope of the SDIL account for around 38% of GB food sales.

## Annex 4: The 2004/5 Nutrient profiling model

The 2004/5 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. 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 for ‘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 drink 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 ten points can be awarded for each nutrient.

## Calculating 'C' points

Total 'C' points are calculated by the 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 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 (grams) (a)	or AOAC Fibre (grams) (a)	Protein (grams) (b)
0	≤40	≤0.7	≤0.9	≤1.6
1	>40	>0.7	>0.9	>1.6
2	>60	>1.4	>1.9	>3.2
3	-	>2.1	>2.8	>4.8
4	-	>2.8	>3.7	>6.4
5	>80	>3.5	>4.7	>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 five 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

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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.



## Annex 5: Terms used in this consultation

**To note: the descriptions provided below are not legal definitions. As part of this consultation we welcome stakeholders' views on how these terms should be defined.**

HFSS products – Food and drink products high in fat, sugar or salt as defined by the FSA's 2004/5 Nutrient profiling model (NPM).

Pre-packaged food and drink products – food and drink products that are prepared and packaged before being offered for sale.

Non-pre-packaged food and drink products - food and drink sold loose, for example loose bakery products sold in coffee shops, products from a supermarket's delicatessen counter etc.

Retail sector/retail business – Businesses that sell goods through stores, on the internet, etc. to the public.

Out of home sector – Businesses that sell food and drink products to be consumed outside the home or on the go, for example restaurants, coffee shops, take-aways.

Franchise – A type of license that a party (franchisee) acquires to allow them to have access to a business's (the franchiser) proprietary knowledge, processes, and trademarks in order to allow the party to sell a product or provide a service under the business's name.

Promotion – The publicising of a product via marketing techniques to increase sales or public awareness.

Price promotion – A special offer available in retailers which is specifically characterised by there being a discount on the usual selling price.

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 size is created by the manufacturer and where the pack label states that a proportion of the product is free. For example, an extra-large packet stating “50% extra free”.

Meal deal promotion – Type of price promotion linking products together for the purpose of satisfying customer demand for a meal suggestion at a discounted price. This promotion requires purchase of 2 or more products as part of a meal at a special discount compared to the price when bought separately. A typical example is ‘sandwich + drink + snack for £3’.

Free refill – A promotion that occurs when a drink, for example soft drink, tea or coffee is allowed to be filled again, free of charge, after being consumed.

Imported product – A product which is manufactured outside the UK and imported in the UK for sale.

Specialist retailer – A retailer that exclusively sells one type of products, such as chocolatier, sweets shop, cheese shop.

Type of business: Micro, small, medium and large businesses are defined by the number of employees, as defined in the EU recommendation 2003/361.

- Micro (< 10 employees)
- Small (10-49 employees)
- Medium (50-249 employees)
- Large (250+ employees)

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