**Promotions BRIA – Industry Engagement Questions**

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# **Introduction**

We are conducting a Business and Regulatory Impact Assessment (BRIA) on the proposals set out in the Scottish Government consultation, [Reducing Health Harms of Foods High in Fat, Sugar or Salt](https://consult.gov.scot/health-and-social-care/reducing-health-harms-of-foods/user_uploads/reducing-health-harms-of-foods-high-in-fat-sugar-or-salt-final-version-.._.pdf).

Business and Regulatory Impact Assessments (BRIAs) help to assess the likely costs, benefits and risks of any proposed primary or secondary legislation, voluntary regulation, codes of practice, or guidance that may have an impact on the public, private or third sector.  
  
This is in line with our Better Regulation agenda, which aims to reduce unnecessary burdens on business by ensuring all regulation follows the Better Regulation principles of being:

* proportionate
* consistent
* accountable
* transparent
* targeted only where needed.

Please note that any information we receive may be subject to the Freedom of Information (Scotland) Act 2002. The Act, which applies to the Scottish Government, provides that any person who requests information from a Scottish public authority which holds it, is entitled to be given that information by the authority. This right is subject to certain conditions and exemptions, which are set out in the Act. This can include restricting the release of commercially sensitive information unless its release is in the public interest.

**Responding to this BRIA**

It is our intention to collate the information from responses and present an overall report.

We understand that the scope of the questions is large and may prove difficult to complete – please complete what sections you can, and let us know if you or your company will not be able to participate.

Please forward your completed response to [mona.vaghefian@gov.scot](mailto:mona.vaghefian@gov.scot) by Wednesday 9th January 2019.

# **Summary of the policy**

|  |
| --- |
| The following is based on the executive summary of the consultation paper *Reducing health harms of foods high in fat, sugar or salt*. You are encouraged to also complete the consultation, which is available online at <https://consult.gov.scot/health-and-social-care/reducing-health-harms-of-foods/> Among other things, the consultation asks about any exemptions that should be considered and the support sellers, distributors and manufacturers would need to implement the restrictions effectively. |

1. The primary aim of the policy is to reduce the public health harm associated with the excessive consumption of calories, fat, sugar and salt, including the risks of developing type 2 diabetes, various types of cancer and other conditions such as cardiovascular disease.

2. We would also be looking to the policy to help reduce diet-related health inequalities, including in relation to socioeconomic disadvantage.

***Foods***

3. The food and drink categories listed in the next paragraph are typically high in fat, sugar or salt, and yet provide little or no nutritional benefit necessary for a healthy diet. These foods[[1]](#footnote-1) are optional and are therefore referred to as ‘discretionary foods’. In Scotland, discretionary foods are frequently consumed and have a significant negative impact on our diet, providing 20% of calories, 20% of fats and 50% of sugar.[[2]](#footnote-2)

4. We are considering targeting discretionary categories.[[3]](#footnote-3) These are:

* confectionery
* sweet biscuits
* crisps
* savoury snacks[[4]](#footnote-4)
* cakes
* pastries
* puddings
* soft drinks with added sugar.

5. The consultation paper also seeks views on whether we should treat ice-cream and dairy desserts[[5]](#footnote-5) as a category of discretionary foods. If the category were considered discretionary, we would include it in the above list of targeted categories.

6. In seeking to reduce population-level intakes of calories, fat, saturated fat, free sugar[[6]](#footnote-6) and salt, we are considering restricting the in-store promotion and marketing of discretionary foods.

7. We would seek expert, technical advice on defining the full category definitions and any exclusions of particular foods/products from those definitions.

***Price Promotions***

8. In relation to foods subject to the restrictions, we are considering restricting, where they are sold to the public:

* multi-buys
* sale of unlimited amounts for a fixed charge.

9. We are not considering restricting:

* temporary price reductions
* multi-packs.

***Other Forms of Promotion and Marketing***

10. In relation to the foods subject to restrictions, we are considering restricting other forms of promotion or marketing where they are sold to the public. The following illustrates such restrictions (it is not an exhaustive list):

* placement at checkouts, end-of-aisle, front of store, island/bin displays, etc.[[7]](#footnote-7)
* promotion of value (e.g. promotion of price, size or volume)
* shelf-edge displays and signage
* in-store advertising
* upselling (e.g. being asked if you want an additional product at the till or to increase the size of it)
* coupons (whether physical or electronic) being accepted (10p/20% off etc.)
* purchase rewards (e.g. toys, vouchers, loyalty card points, reduced price for another product, competition entry)
* free samples
* branded chillers and floor display units.

11. We are considering prohibiting:

* outlets from being able to sell or lease display spaces for foods subject to the restrictions
* manufacturers and distributors from providing promotional or marketing material and from making arrangements for the display of foods subject to the restrictions.

12. We are not considering restricting:

* packaging (except in relation to promotion of value)
* position on shelf/number of products on display (except in relation to selling/leasing space)
* number of aisles or location of aisles for foods within outlet (except for positioning restrictions)
* size/volume of foods.

***Places***

13. We are considering applying the restrictions to any place where targeted foods are sold to the public in the course of business. They would therefore apply, among other places, to retail and Out of Home outlets and wholesale outlets where there are also sales made to the public.

14. They would not apply to:

* other wholesale outlets (where sales are only to trade), because any promotion or marketing would not directly encourage the public to purchase the foods.
* activities such as charity ‘bake sales’, because they are not conducted in the course of business.

15. The consultation paper seeks views on whether, and if so to what extent, restrictions should be applied online.

***Exemptions***

16. The consultation paper seeks views on whether:

* positioning restrictions (e.g. in relation to display at checkouts) should be exempted where there is no reasonable alternative to displaying foods elsewhere
* food marked as discounted because it is close to expiry should be exempt from positioning and ‘promotion of value’ restrictions
* other exemptions to restrictions should be considered.

\*\*\*

**General Questions (All)**

# If you are responding as a trade association, where applicable please provide information on behalf of your sector, where possible.

# **Please describe the nature and scope of your business in Scotland.**

# **How many staff do you employ across the UK (by headcount and FTE)?**

* Micro (0-9 employee headcount)
* Small (10-49 employee headcount)
* Medium (50-249 employee headcount)
* Large (250+ employee headcount)

# **What proportion of those staff are based in Scotland?**

# **Which categories of discretionary food do you produce, sell or distribute?**

|  |  |
| --- | --- |
| confectionery |  |
| sweet biscuits |  |
| crisps |  |
| savoury snacks |  |
| cakes |  |
| pastries |  |
| puddings |  |
| soft drinks with added sugar |  |
| ice cream and dairy desserts. (The consultation paper seeks views on whether ice-cream and dairy desserts should be considered as a category of discretionary foods). |  |

# **What is your annual turnover in Scotland? What percentage of your total turnover does this represent?**

# **Approximately what proportion of your Scottish annual turnover derives from discretionary foods?\***

|  |  |
| --- | --- |
| 0 - <5% |  |
| 5 - <10% |  |
| 10 - <25% |  |
| 25 - <50% |  |
| 50 - <75% |  |
| 75 - 100% |  |

\* If you produce, sell or distribute ice cream and / or and dairy desserts, please also provide a figure for this category alone.

# **What does this equate to in monetary terms?\***

\* If you produce, sell or distribute ice cream and / or and dairy desserts, please also provide a figure for this category alone.

# **Of this, what is the split between physical and online sales?\***

\* If you produce, sell or distribute ice cream and / or and dairy desserts, please also provide a figure for this category alone.

# **On a scale of 1 to 5, where 1 is ‘Not at all’ and 5 is ‘Significantly’, please indicate the extent to which you employ the following marketing methods to promote the discretionary foods you produce, sell or distribute:**

|  |  |
| --- | --- |
| **Marketing method** | **Extent (on a scale of 1-5)** |
| Multi-buys |  |
| Sale of unlimited amounts for a fixed charge |  |
| Placement at:  Checkouts  End-of-aisle  Front of store  Island/bin displays  Other |  |
| Promotion of value (e.g. promotion of price, size or volume) |  |
| Shelf-edge displays and signage |  |
| In-store advertising |  |
| Upselling |  |
| Free samples or products of foods |  |
| Upselling |  |
| Coupons |  |
| Purchase rewards |  |
| Branded chillers and floor display units |  |

# **On a scale of 1 to 5, where 1 is ‘Not at all’, and 5 is ‘Significantly’, please indicate the extent to which you believe your business may be impacted by the restriction of the following marketing methods for the discretionary foods you produce, sell or distribute:**

|  |  |
| --- | --- |
| **Marketing method** | **Extent (on a scale of 1-5)** |
| Multi-buys |  |
| Sale of unlimited amounts for a fixed charge |  |
| Placement at:  Checkouts  End-of-aisle  Front of store  Island/bin displays  Other |  |
| Promotion of value (e.g. promotion of price, size or volume) |  |
| Shelf-edge displays and signage |  |
| In-store advertising |  |
| Upselling |  |
| Free samples or products of foods |  |
| Upselling |  |
| Coupons |  |
| Purchase rewards |  |
| Branded chillers and floor display units |  |

For each relevant restriction, why are you concerned?

What could help mitigate any of the impacts outlined above?

# **Taken as a whole, how would the proposals impact you, in relation to the following (impacts can be either positive or negative):**

1. Changes in product range
2. Changes in turnover due to change in
3. Demand for your products
4. Prices of products
5. Shifting spend to alternative types of advertising/marketing or promoting different items
6. Changes in employment
7. Changes in the business model
8. Changes in growth across the UK
9. Any other supply chain impacts?
10. Any other impact?

(Where possible, please provide evidence and quantification of these impacts).

What could help mitigate any of the impacts outlined above?

# **Would there be any one-off costs to you in implementing the package of proposals?**

# If so:

# what would these costs comprise of?

# What aspects of the proposals would lead to these costs?

# would these costs be offset by any savings?

# what would these be?

# (Where possible, please provide evidence and quantification of these impacts)

What could help mitigate any of the impacts outlined above?

# **Would there be any on-going costs to you in implementing the package of proposals?**

# If so:

# what would these costs comprise of?

# what aspects of the proposals would lead to these costs?

# would these costs be offset by any savings?

# what would these be?

# (Where possible, please provide evidence and quantification of these impacts)

What could help mitigate any of the impacts outlined above?

# **Do you envisage any competition issues for you arising from the proposals are they are set out, including, where applicable, the potential of the legislation to directly or indirectly:**

1. limit the number or range of suppliers
2. the availability of suppliers to compete
3. suppliers’ incentives to compete vigorously
4. the choices and information available to consumers.

Please explain your answer.

# **What impact would different regulatory regimes for the marketing of discretionary foods in Scotland and the rest of UK have on your business – positive, negative or neutral?**

1. What would the impact be and why?
2. Are there any particular aspects that would cause this impact?
3. Is it possible to quantify the impact?

# **Do you anticipate any particular impacts on you if the proposed restrictions are, *or are not*, applied online? Please explain your answer.**

# **Once the policy is finalised, how much lead-in time would you require before the policy comes into force? Please explain your answer.**

# **Do you have any other comments?**

# **Supplementary Questions: Retailers**

1. **What is the duration of contracts you may have with manufacturers or distributors concerning the in-premise promotion or marketing of their products?**

1. **With regards to (i) selling/leasing of display spaces and (ii) branded chillers and floor display units, for each:**
   1. What proportion of your retail space is leased in this way?
   2. What proportion of your income is derived from it?
   3. What annual income do you derive?
2. **What would be the impact of the restrictions in 2(i) and (ii) on you?**

Where possible, please provide evidence and quantification of these impacts.

1. **The consultation proposes that positioning restrictions (e.g. in relation to display at checkouts) should be exempted where there is no reasonable alternative to displaying foods elsewhere.** Do you have any comments on how this proposed exemption would impact your business?

1. **Do you anticipate any particular challenges for the retail sector, not covered elsewhere?** Please provide a quantification of impacts, where possible.

# **Supplementary Questions: Out of Home sector**

1. **The consultation proposes that positioning restrictions (e.g. in relation to display at checkouts etc.) should be exempted where there is no reasonable alternative to displaying foods elsewhere.**   
     
   Please comment on how this proposed exemption would impact your business, providing quantification of impacts where possible.
2. **Do you anticipate any particular challenges for the Out of Home sector, not covered elsewhere?**   
     
   Please provide a quantification of impacts, where possible.

# **Supplementary Questions: Manufacturers**

1. **What proportion of your discretionary food sales are (i) in Scotland (ii) elsewhere in the UK (iii) beyond UK?**
2. **What is the duration of any existing contracts you have with retailers for the in-store promotion/marketing of discretionary foods?**
3. **What is your annual spend on (i) purchasing/leasing of display spaces and (ii) branded chillers and floor display units?**
4. **What would be the impact of the restrictions in 3(i) and (ii) on you?**

Where possible, please provide evidence and quantification of these impacts.

1. **Do you anticipate any particular challenges for manufacturing sector, not covered elsewhere?**Where possible, please provide evidence and quantification of these impacts.

# **Supplementary Questions: Wholesalers/ Distributors**

1. **What proportion of your discretionary food sales are (1) in Scotland (2) elsewhere in the UK (3) beyond UK?**

1. **What is the duration of any existing contracts you have with retailers for the in-store promotion/marketing of discretionary foods?**
2. **What is your annual spend on (a) purchasing/leasing of display spaces and (b) branded chillers and floor display units?**
3. **What would be the impact of the restrictions in 3(a) and (b) on you?**

Where possible, please provide evidence and quantification of these impacts

1. **If you operate both as a “Trade to Trade” and “Trade to Public” wholesaler, how will the implementation of the proposals affect your business?**
2. **Do you anticipate any particular challenges for distributing sector, not covered elsewhere?**

Where possible, please provide evidence and quantification of these impacts

# **Supplementary Questions: Industry Bodies**

1. **Are you aware of any additional data on the number of businesses in your sector operating in Scotland?**

Or any other relevant data sources that would be useful in assessing the impact of the proposals?

1. **Do you see any particular challenges for your sector, not covered elsewhere?**

1. “foods” is the collective term used in this paper for food and drink. [↑](#footnote-ref-1)
2. Food Standards Scotland (2018)*, The Scottish Diet - It needs to change 2018 update***,** <http://www.foodstandards.gov.scot/downloads/Situation_report_-_the_Scottish_diet_-_it_needs_to_change_-_2018_update_FINAL.pdf> [↑](#footnote-ref-2)
3. The food categories considered within the definition of ‘discretionary foods’ differs slightly in data sources , but is sufficiently close for the purposes of this paper. [↑](#footnote-ref-3)
4. Savoury snacks include, among other things corn snacks, wheat snacks, prawn crackers, and poppadums. [↑](#footnote-ref-4)
5. Dairy desserts include, among other things, yogurts, custards and rice puddings. [↑](#footnote-ref-5)
6. Targeting discretionary food and drink will target free sugars as almost all the sugars in them will be free. [↑](#footnote-ref-6)
7. This would include anywhere any space sold to a manufacturer or distributor for the promotion or marketing of a targeted food. [↑](#footnote-ref-7)