

Reducing Health Harms of Foods High in Fat, Sugar or Salt

Consultation Paper

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Scottish Government
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MINISTERIAL FOREWORD



On 2 July, I launched **A Healthier Future: Scotland's Diet & Healthy Weight Delivery Plan**¹. In it I set out how the Scottish Government will improve our nation's health by improving our diet and weight.

Scotland deservedly has a burgeoning reputation for the quality and provenance of our food such as our seafood, red meat, soft fruit and oats. But at the same time we have one of the poorest public health records in Europe. That is why we have an aspiration to become a Good Food Nation, where we are not only renowned for what we produce and sell but also what we consume.

Tackling Scotland's serious diet and weight problem requires actions on a number of fronts. Poor diet and overweight or obesity cause public health harm. So, it is clear we must take decisive action.

Failure to meet our dietary goals shows how hard it is for many of us to eat well and maintain a healthy weight. Not only is food much more energy dense and readily available, we also live increasingly sedentary lifestyles and are bombarded with seemingly ever-present messages that encourage us to over-consume. In many instances we over-consume and food and drink that should be occasional treats have become a daily habit for many of us.

In taking a multi-pronged approach, I recognise that no single measure will turn the situation around. A comprehensive suite of actions needs to be taken over the long term to make a real and lasting difference.

One key component is ending our nation's damaging relationship with junk food that is high in fat, sugar or salt, and reducing associated health harms. One of the ways we are seeking to do this is by restricting the promotion and marketing of some of the foods we need to eat less.

¹ Scottish Government (2018), *A Healthier Future: Scotland's Diet & Healthy Weight Delivery Plan*, <http://www.gov.scot/Publications/2018/07/8833>

Promotion and marketing works. That is why so much effort is expended on them. By restricting, at the point of purchase, the promotion and marketing of foods that have next to no beneficial nutritional value, it is reasonable to expect less of these foods will be purchased, improving, over time, our diet-related health.

This is a ground-breaking policy. No country has yet introduced such measures, so we cannot use the experience of others to demonstrate likely success. We should not let that dissuade us, nor should we shirk from this challenge. Scotland has a positive history of taking ambitious and pioneering action to protect the public's health. We were the first in the UK to introduce a smoking ban in public places, and we recently became the first country in the world to introduce a minimum unit price on alcohol.

We consult because we want better policy – and better outcomes as a result. We want to ensure the steps we propose taking are proportionate and are likely to deliver beneficial outcomes. Your responses will inform the consideration of legislation and impact assessments. I thank you in advance for your response.



JOE FITZPATRICK MSP
Minister for Public Health, Sport and Wellbeing

1. EXECUTIVE SUMMARY

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 foods² 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.³

4. We are considering targeting discretionary categories.⁴ These are:

- confectionery
- sweet biscuits
- crisps
- savoury snacks⁵
- cakes
- pastries
- puddings
- soft drinks with added sugar.

5. Views are sought on whether we should treat ice-cream and dairy desserts⁶ 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 sugar⁷ 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.

² "foods" is the collective term used in this paper for food and drink.

³ 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

⁴ 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.

⁵ Savoury snacks include, among other things corn snacks, wheat snacks, prawn crackers, poppadums.

⁶ Dairy desserts include, among other things, yogurts, custards and rice puddings.

⁷ Targeting discretionary food and drink will target free sugars as almost all the sugars in them will be free.

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.⁸
- 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.

⁸ This would include anywhere any space sold to a manufacturer or distributor for the promotion or marketing of a targeted food.

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. Views are sought on whether, and if so to what extent, restrictions should be applied online.

Exemptions

16. Views are sought 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.

Enforcement and Implementation

17. We are considering giving local authorities the role of enforcing the proposed policy.

18. We do not anticipate a need for a new register.

19. We are considering giving Ministers powers to issue guidance to local authorities.

20. We are considering a guide to industry to support effective implementation.

Legislative Framework

21. In giving consideration to legislation needed to implement the policy, we aim to ensure that there is sufficient flexibility to future-proof the policy.

Monitoring and Evaluation

22. The implementation and impact of the policy would be monitored and evaluated.

2. INTRODUCTION

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.

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

“Of all the things our society could do to reduce the burden of obesity and other diet-related chronic diseases, interventions at the point of purchase holds an enormous potential. The point of purchase is when people make their decisions about what and how much to buy and to consume, for themselves as well as for their families. The point of purchase is the setting where people are challenged to either follow through on their long-term goals to stay healthy or are tempted to buy and consume foods that will increase the risk of weight gain, hypertension, diabetes, and cancer”.

Cohen D and Lesser L. Obesity prevention at the point of purchase. Obesity Reviews 2016. 17:389–396.⁹

1. Too many of us in Scotland have a poor diet and an unhealthy weight, which can have a negative impact on our health and wellbeing. This is in part because we generally consume too many calories and too much fat, sugar and salt.¹⁰

2. In *A Healthier Future: Scotland's Diet and Healthy Weight Delivery Plan*¹¹ (“the delivery plan”) we have outlined the Scottish Government's actions to improve the nation's diet-related health outcomes. These actions will help us to achieve our vision - to create a Scotland where everyone eats well, and we all have a healthy weight – and meet our ambitions to halve childhood obesity levels by 2030, and to significantly reduce diet-related health inequalities.

Promotion and marketing of foods high in fat, sugar or salt

3. The marketing of HFSS foods is recognised as playing a significant role in the dietary choices of Scotland's young people.¹² Given this, the delivery plan outlines a series of actions to reduce consumption of HFSS foods, including by restricting HFSS broadcast and non-broadcast advertising to children.

4. UK consumer expenditure on price promotions is the highest in Europe¹³ and data show that price promotion of food and drink in Scotland is skewed towards less

⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5406228/>

¹⁰ Further information on this is set out in **Annex C**.

¹¹ <https://www.gov.scot/Publications/2018/07/8833>

¹² Institute for Social Marketing: University of Stirling & the Open University Stirling (2015), *The Impact of Food and Drink Marketing on Scotland's Children and Young People*. (Commissioned by Scottish Government) <https://www.stir.ac.uk/media/stirling/services/faculties/sport-and-health-sciences/documents/Impact-of-Food-and-Drink-on-Scotlands-Young---Sept-15.pdf>

¹³ Public Health England (2016) *Sugar Reduction: The evidence for action. Annexe 4: An analysis of the role of price promotions on the household purchases of food and drinks high in sugar* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/470175/Annexe_4_Analysis_of_price_promotions.pdf

healthy categories.¹⁴ Given the prominence of discretionary foods, the lack of need to consume them for a healthy diet and their negative impact on diet, weight and health, we are considering restricting the in-store¹⁵ promotion and marketing of this specific subset of HFSS foods.

5. This consultation seeks detailed views on a key element of the delivery plan: whether to restrict the promotion and marketing of discretionary foods where they are sold to the public to reduce the volume and frequency of their purchase (and associated health harm of their consumption).

6. Changing the environment in which people buy and eat food is likely to be more effective than measures to influence individual behaviour change because it applies across the whole population.¹⁶ Also, measures aimed at encouraging individual behaviour change may disadvantage those who find it difficult to access health promotion advice and preventive services. As this policy seeks to change the overall food environment, it is more likely to be effective in addressing health inequalities, as it does not rely on individual behaviour change.¹⁷

7. We recognise that some progress has already been made through voluntary action, such as some removal of confectionery from some checkouts.¹⁸ However, to deliver the scale and pace of change needed, and maintain a level competitive playing field, we consider mandatory measures may be required.¹⁹

Wider context

8. Evidence suggests that, overall, the food and drink provided out of home is skewed towards less healthy options.²⁰ Food Standard Scotland (FSS) will be consulting shortly on additional measures to improve healthier choices in the Out of Home (OoH) sector. The in-store promotion and marketing of discretionary foods in OoH settings is contained in this consultation.

¹⁴ 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

¹⁵ We use the term “in-store” as shorthand for within, or in relation to, premises where targeted foods are sold to the public. This may include online sales (see paragraphs 3-5 of section 6).

¹⁶ NHS Health Scotland (2017) *Rapid evidence review - restriction of price promotions* <http://www.healthscotland.scot/media/1611/rapid-evidence-review-restriction-of-price-promotions.pdf>

¹⁷ Macintyre, S. (2007), *Inequalities in health in Scotland: what are they and what can we do about them*. Other. MRC Social and Public Health Sciences Unit <http://eprints.gla.ac.uk/81903/>

¹⁸ Ejlerskov et al. *The nature of UK supermarkets' policies on checkout food and associations with healthfulness and type of food displayed: cross-sectional study*, International Journal of Behavioral Nutrition and Physical Activity (2018) at <https://ijbnpa.biomedcentral.com/articles/10.1186/s12966-018-0684-2>

¹⁹ In its response to the earlier consultation paper, the Scottish Retail Consortium advised: “any measures brought forward must be on a mandatory basis, and it’s positive to see the Scottish Government have accepted that argument..... any restrictions introduced should apply on a level playing field. The retail sector or bigger players should not be disproportionately impacted by any restrictions. If restrictions were to apply in one setting but not another, customers purchasing behaviour will not be changed.”

²⁰ Food Standards Scotland (2017). *Diet and Nutrition Board Paper. Proposals for setting the direction for the Scottish Diet: One year on:* <http://www.foodstandards.gov.scot/publications-and-research/fss-board-meeting-8-march-2016>

9. We are continuing to work towards our vision of Scotland as a Good Food Nation. In line with Programme for Government 2018-19²¹, we published a Good Food Nation Programme of Measures²² in September. We will also be consulting in the autumn, including on what legislative measures might be required to underpin the work already being done.
10. The UK Government will be consulting on its plans to restrict promotions of unhealthy food and drink in England.²³
11. Measures to restrict in-store promotion and marketing of discretionary foods would complement measures at a UK-level to encourage reformulation to reduce the calorie and sugar content of HFSS foods, including by reducing portion sizes.
12. Alcoholic drinks are also discretionary and are high in calories.²⁴ However, as there is already a comprehensive regulatory system for the sale of alcohol within licensed premises, alcoholic drinks are not included in this consultation.

This consultation paper

13. We are consulting in more detail to inform Scottish Government policy, to inform impact assessments and in consideration of legislation. This will help us assess whether the proposed measures are proportionate and would deliver beneficial outcomes. It may also support the Scottish Government to consider the role the UK Government might play in realising our policy aspirations, given, among other things, the UK Government's own consultation on similar proposals for England.
14. Information on the Scottish Government consultation process and how to respond to this consultation is set out in **Annex A**.
15. This consultation builds on a previous consultation²⁵, an analysis of which is at **Annex B**.
16. Further information on the policy rationale for the plans in this paper is set out in **Annex C**.
17. Key publications are at **Annex D**.
18. A glossary is at **Annex E**.

²¹ Scottish Government (2018), *Delivering for Today, Investing for Tomorrow - The Government's Programme for Scotland 2018-19*, <https://www.gov.scot/Publications/2018/09/6276>

²² Scottish Government (2018), *Good Food Nation Programme of Measures*, <https://www.gov.scot/Publications/2018/09/5895>

²³ UK Government (2018), *Childhood obesity: a plan for action, chapter 2*, <https://www.gov.uk/government/publications/childhood-obesity-a-plan-for-action-chapter-2>

²⁴ 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

²⁵ The Scottish Government (2017), *A Healthier Future: Action and Ambitions on Diet, Activity and Healthy Weight Consultation Document*, <https://www.gov.scot/Resource/0052/00526543.pdf>

Question 1

To what degree do you agree or disagree that mandatory measures should be introduced to restrict the promotion and marketing of foods high in fat, sugar or salt to reduce health harms associated with their excessive consumption?

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree

Please explain your answer.

3. FOODS THAT WOULD BE SUBJECT TO RESTRICTIONS

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 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.

We are considering targeting discretionary foods categories. These are:

- confectionery
- sweet biscuits
- crisps
- savoury snacks
- cakes
- pastries
- puddings
- soft drinks with added sugar.

Views are sought on whether we should treat ice-cream and dairy desserts as a category of discretionary foods. If the category were considered discretionary, we would include it in the above list of targeted categories.

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

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

1. As a nation, we consume too much food and drink that has little to no nutritional value, but which contribute calories or salt to our diet. Discretionary foods have a significant negative impact on our diet. On average, they account for about 380 calories per person, per day.²⁶ That is the equivalent of one extra, wholly unnecessary, main meal every day.

2. FSS has advised that a key step to improving diet in Scotland would be to reduce consumption of discretionary foods by around half.²⁷ This would equate to a reduction of 190 kcals per person, per day.

²⁶ Food Standards Scotland (2018), *Estimation of food and nutrient intakes in Scotland from secondary analysis of the Living Costs and Food Survey. Data from 2013-2015*, <https://www.foodstandards.gov.scot/publications-and-research/publications/latest-estimation-of-food-and-nutrient-intakes>

²⁷ 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

3. We know people want to cut down on the types of foods we plan to target. A 2015 survey²⁸ found more than half of the people surveyed would prefer to eat fewer snack foods. And for 31% of those surveyed, reducing their consumption of foods covered by this policy was the main change they wanted to make to have a healthier diet.²⁹

Ice-cream and dairy desserts

4. The ice-cream and dairy desserts category may also be considered as discretionary. The category accounts for around 2.1% of total fat, 3.6% of saturated fat, 3% of total sugar and 0.3% of sodium³⁰ of retail purchase.³¹

5. The 'ice-cream and dairy desserts' category will include a greater proportion of non-discretionary foods than the other discretionary food categories, as some will contribute positively to the diet because they contain beneficial nutrients such as calcium. While it may be possible to define this category to exclude non-discretionary foods, this may be onerous for businesses to implement. This could undermine the overall effectiveness of the policy.

Our approach to non-discretionary foods which are high in fat, sugar or salt

6. In line with FSS advice³² that reducing discretionary foods would be a key step towards improving diet in Scotland, we are considering at this time prioritising targeting discretionary foods rather than HFSS foods more generally. Taking a wider approach would mean targeting meat products, potato and dairy products, many of which contribute beneficial nutrients such as protein, iron and calcium.

7. Also, non-discretionary HFSS foods tend to be consumed as part of meals rather than as snacks. As such, it would make our messaging more complex. Given discretionary foods are not necessary for good health, our messaging would be clear: these are foods that should be eaten less often and in smaller amounts.

8. Given their nature, discretionary food categories would have far fewer exclusions than other HFSS food categories, as other categories would include more individual foods that do contribute beneficial nutrients.

²⁸ Food Standards Scotland (2015), *Attitudes to diet and health in Scotland*, http://www.foodstandards.gov.scot/downloads/Attitudes_to_Diet_and_Health_in_Scotland_2015_Report.pdf

²⁹ 19%: fewer sweets, chocolates and cakes; 8%: 'things like crisps and savoury snacks'; 4%: less sugary drinks.

³⁰ See table 2 in **Annex C**.

³¹ In relation to this data, retail means all food and drink purchased for use *within* the home, i.e. all grocery shopping. This definition excludes take-away (including home delivered take-away food) and any foods that were purchased for immediate consumption outside the home such as a sandwich purchased.

³² Food Standards Scotland (2018), *Briefing paper on Discretionary Foods*, <https://www.foodstandards.gov.scot/publications-and-research/publications/briefing-on-discretionary-foods>

Defining the categories

9. We are considering defining by category the foods that are subject to the restrictions. This would require clear definitions for each category descriptor. We would seek expert, technical advice on defining the full category definitions and any exclusions of particular foods/products from those definitions. This would take into account that nutrition information may only be available for pre-packaged foods. This would also take account of evidence on the frequency of consumption and the contribution discretionary foods make to population-level calorie and nutrient intakes.

10. Any exceptions would be a matter for clear category descriptors. For example, for the purposes of this policy 'confectionery' would not include sugar-free sweets, as they are not high in fat, sugar or salt.

11. We would consult again on the technical, expert advice we receive before we implement our policy.

Question 2

Should this policy only target discretionary foods? [confectionery, sweet biscuits, crisps, savoury snacks, cakes, pastries, puddings and soft drinks with added sugar]

Yes

No – there are additional categories that should also be targeted, please specify

No – fewer categories should be targeted, please specify what should not be targeted

No – no foods should be targeted

Other – please specify _____

Don't know

Please explain your answer.

Question 3

Should this policy treat ice-cream and dairy desserts as discretionary foods?

Yes

No

Don't know

Please explain your answer.

Question 4

Please comment on our approach to defining categories and exclusions of particular foods/products from those definitions (paragraphs 9-11)?

4. PRICE PROMOTIONS THAT WOULD BE SUBJECT TO RESTRICTIONS

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

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

We are not considering restricting:

- temporary price reductions
- multi-packs.

1. Evidence strongly suggests that price promotions drive increased sales. There is absolute growth in the product category.³³ It does not simply result in people buying one brand over another nor are these sales offset by reduced purchasing of other foods³⁴ or in less frequent future purchasing.³⁵

2. By far the most used form of price promotion is temporary price reductions. Between 2010 and 2016 calories purchased through retail temporary price reductions **increased** from 21% to 26%.

In the same period, multi-buys fell:

- (a) Y for £X: from 3% to 2.3%
- (b) X for Y: from 0.4% to 0.05%.

Other forms of price promotion remained constant at 0.2%.³⁶

3. In 2016, over half of all crisps, savoury snacks and sugar containing soft drinks were purchased on retail price promotion in Scotland. Well over 40% of confectionery, puddings, desserts and over one third of cakes and pastries were purchased on retail price promotion.^{37 38}

³³ That is incremental to expected category purchasing levels, i.e. net growth in the purchase volumes of the parent category.

³⁴ Public Health England (2016), *Sugar Reduction: The evidence for action. Annexe 4: An analysis of the role of price promotions on the household purchases of food and drinks high in sugar*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/470175/Annexe_4_Analysis_of_price_promotions.pdf

³⁵ NHS Health Scotland (2017), *Rapid evidence review - restriction of price promotions*, <http://www.healthscotland.scot/publications/rapid-evidence-review-restriction-of-price-promotions>

³⁶ Calculated from published data: [Monitoring retail purchase and price promotions in Scotland \(2010-2016\)](#), [Food Standards Scotland \(2018\)](#)

³⁷ Food Standards Scotland (2018), *Monitoring retail purchase and price promotions in Scotland (2010-2016)*, <http://www.foodstandards.gov.scot/publications-and-research/monitoring-retail-purchase-and-price-promotions-in-scotland-2010-2016>

³⁸ 40% of ice-cream and 41% of edible ices and dairy desserts were purchased on retail price promotion.

Temporary price reductions

4. In the previous consultation paper, we said we were minded to restrict price promotions, which could include, among other things “temporary price reductions”. Having reflected on the responses received, we have decided not to consider restricting price reductions.

5. As we set out in paragraphs 6 to 8 of section 5, we will instead consider restricting the promotion of value. This would include restricting the promotion of any price reductions. The benefits of this approach are:

- it avoids having to define “temporary”. While not necessarily insurmountable, it is problematic. If for example, we defined “temporary” as four weeks, it may encourage promotions that last four weeks and a day.
- restricting price reductions could lead to more promotions along the lines of x% extra free in order to deliver the same value proposition. A 20% reduction in price is the value equivalent of 25% extra free. A shift towards more x% extra free promotions is likely to lead to worse health outcomes through greater consumption.
- it would restrict among other things, promotion of extra free and price reductions, whether temporary or permanent. Restricting temporary price reductions would not capture promotion of permanent price reductions or products that were simply discounted.

Multi-buys

6. “Multi-buys” are (a) two or more separate products sold together to obtain a discount or (b) one or more products given free as a result of a purchase. We are considering a policy that would cover Y for £X (e.g. 3 for £2); X for Y, (e.g. buy one get one free and 3 for 2 offers) and meal deals (which are essentially a form of Y for £X). In other words, we are considering restricting promotions that involve the purchase of more than one product to receive an overall discounted price or the purchase of one product but receiving more than one product. It would mean, for example, that a targeted food could not be part of a meal deal. If one or more were a targeted food, the products could not be sold at less than the sum of their individual prices.

7. Despite being less prevalent at this time, multi-buys are particularly effective at driving sales, over many other forms of price promotion. Given they involve the purchase of increased volumes, they can encourage increased consumption.³⁹ When comparing multi-buy promotions and temporary price reductions, representing a like-for-like discount, multi-buy promotions generate the greatest sales increase.

³⁹ Chandon P and Wansink B. *When are stockpiled products consumed faster? A convenience-salience framework of post-purchase consumption incidence and quantity*. Journal of Marketing Research 2002. 39(3):321–335.
<http://journals.ama.org/doi/abs/10.1509/jmkr.39.3.321.19111?code=amma-site>

One study conducted for Public Health England (PHE)⁴⁰ observed that the expansion in sales from multi-buy type promotions⁴¹ ranged from 29% of sales (from a 5–15% discount) to 35% of sales (for 45–50% discount). This is in comparison to 20% (from a 5–15% discount) and 25% (for 45–50% discount) for temporary price reduction.

8. In addition to increasing sales, multi-buy promotions may normalise purchasing in larger quantities. This can lead to sustained increases in purchase and availability in the household of HFSS foods that have low perishability. Purchasing of these products can become habitual as a result, triggered by environmental cues.⁴²

Multi-packs

9. “Multi-packs” are two or more items in a pack sold as a single item. We are not considering restricting multi-packs. This is because restrictions on multi-packs are dependent on the same items also being on sale at the outlet, so that it is possible to judge whether a multi-pack of, for example six items, is sold more cheaply than six times the cost of the individual item. Given this, restrictions on multi-packs could lead to:

- individual items no longer being sold
- increases in the size of items in a multi-pack (so they then differ from the size of products on sale individually).

10. While it would be possible to devise rules to deal with situations where the size of multi-pack items differ from the size of individual items on sale at the outlet, the rules would inevitably be complex and may be onerous on industry to implement.

11. That said, we are conscious that an unintended consequence of restricting multi-buys is that it may lead to more multi-packs or super-sized products. Despite the complexities involved, restricting multi-packs may be necessary if this were to occur. The retail purchase of multi-packs would therefore be closely tracked.

Sale of unlimited amounts for a fixed charge

12. The higher the price of an unlimited offer (such as unlimited soft drinks), the higher the consumption as people consume more to obtain their ‘money’s worth’.⁴³ It is therefore a form of promotion that can especially encourage overconsumption.

⁴⁰ Public Health England (2016), *Sugar Reduction: The evidence for action. Annexe 4: An analysis of the role of price promotions on the household purchases of food and drinks high in sugar*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/470175/Annexe_4_Analysis_of_price_promotions.pdf

⁴¹ Defined in the study as “a promotion requiring the purchase of more than one pack, e.g. “2 for £2” or “Buy One Get One Free)”

⁴² NHS Health Scotland (2017), *Rapid evidence review - restriction of price promotions*, <http://www.healthscotland.scot/publications/rapid-evidence-review-restriction-of-price-promotions>

⁴³ Just DR, Wansink B. *The flat-rate pricing paradox: conflicting effects of “all-you-can-eat” buffet pricing*. Rev Econ Stat. 2011;93:193–200.

13. To be clear: the proposed restrictions would not apply to main meals, as main meals would not be subject to the restrictions. They would mean that foods that are subject to the restrictions, such as cakes, could not form part of an unlimited deal.

Question 5

In relation to the foods being targeted, should this policy seek to

Yes No Don't Know

Restrict multi-buys

Restrict sales of unlimited amounts for a fixed charge

Not restrict temporary price reductions

Not restrict multi-packs?

Other – please specify _____

Please explain your answers.

5. OTHER FORMS OF PROMOTION AND MARKETING THAT WOULD BE SUBJECT TO RESTRICTIONS

In relation to the foods subject to restrictions, we are considering restricting other forms of promotion or marketing in places 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.⁴⁴
- promotion of value (see paragraphs 6-8).
- 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.

We are considering prohibiting:

- outlets from being able to sell or lease display spaces for foods subject to the restrictions⁴⁵
- manufacturers and distributors from providing promotional or marketing material and from making arrangements for the display of foods subject to the restrictions.

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.

⁴⁴ This would include anywhere any space sold to a manufacturer or distributor for the promotion or marketing of a targeted food.

⁴⁵ Retailers often sell aisle ends and shelf space in advantageous positions to their suppliers. Leigh Sparks and Steve Burt, University of Stirling (2017), *Identifying and Understanding the Factors that can Transform the Retail Environment to Enable Healthier Purchasing by Consumers*, prepared for Food Standards Scotland. Leigh Sparks and Steve Burt, University of Stirling, http://www.foodstandards.gov.scot/downloads/FSS- Final_Report_June_1st_2017.pdf

1. Promotion and marketing at the point of sale drives sales of discretionary foods that for our good health we should eat less often and in smaller amounts. We are therefore considering restricting in-store triggers that encourage people to purchase them.
2. To reduce associated public health harm, we are considering these foods would not be promoted or marketed where they are sold to the public.

Other forms of promotion and marketing

3. It is not only changes to price that change behaviour.⁴⁶ Non-price promotions can also increase purchases. Because of this, retailers often sell aisle ends and shelf space in advantageous positions to their suppliers.⁴⁷ An observational study in England which controlled for price evidenced that end of aisle displays can significantly increase purchases of carbonated soft drinks.⁴⁸ There is also evidence that price promotions supported by feature and display promotions have a larger effect on increased category consumption than price promotions alone.⁴⁹
4. Consumers can also be incentivised to varying degrees by rewards.⁵⁰ Some purchase rewards that involve forming a collection are known to increase frequency of purchase. Competition entries can similarly increase the frequency of purchase.⁵¹
5. A key message from previous consultation responses is that there is a risk that restricting only price promotions may lead to more non-price promotions.

Promotion of value

6. In considering restricting in-store promotion and marketing of targeted foods we are considering restricting promoting the value of the products (i.e. no extra prominence would be given on the basis of price, size or volume, including price

⁴⁶ Glanz K, Bader M and Iyer S. Retail grocery store marketing strategies and obesity: An integrative review. *American Journal of Preventative Medicine* 2012. 42(5):503–512.

[https://www.ajpmonline.org/article/S0749-3797\(12\)00058-X/fulltext](https://www.ajpmonline.org/article/S0749-3797(12)00058-X/fulltext)

⁴⁷ Leigh Sparks and Steve Burt, University of Stirling (2017), *Identifying and Understanding the Factors that can Transform the Retail Environment to Enable Healthier Purchasing by Consumers*, prepared for Food Standards Scotland. Leigh Sparks and Steve Burt, University of Stirling, <http://www.foodstandards.gov.scot/downloads/FSS- Final Report June 1st 2017.pdf>

⁴⁸ Nakamura, Pechey, Suhrcke et al. *Sales impact of displaying alcoholic and non-alcoholic beverages in end of aisle locations, an observational study*. *Social Science and Medicine* 2014. 108:68–73.

⁴⁹ van Heerde HJ, Leeflang PSH, Wittink DR. *Decomposing the sales promotion bump with store data*. *Market Sci.* 2004; 23:317–334. <https://pubsonline.informs.org/doi/abs/10.1287/mksc.1040.0061>

⁵⁰ Leigh Sparks and Steve Burt, University of Stirling (2017), *Identifying and Understanding the Factors that can Transform the Retail Environment to Enable Healthier Purchasing by Consumers*, prepared for Food Standards Scotland. Leigh Sparks and Steve Burt, University of Stirling, <http://www.foodstandards.gov.scot/downloads/FSS- Final Report June 1st 2017.pdf>

⁵¹ Written evidence was submitted to the House of Commons Health and Social Care Committee paper Childhood Obesity: Time for action from Living Loud (Dan Parker) which stated 'The government should also restrict the use of collector mechanics and competitions on HFSS products, as these are designed to increase the frequency of purchase, leading to increased frequency of consumption.

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/health-and-social-care-committee/childhood-obesity/written/81227.pdf>

reductions or size increases). Evidence suggests that promotions offering greatest value generate the greatest increase in sales.⁵²

7. These restrictions would apply to, for example, packaging, labelling, shelf-edge displays and signage:

Price, size or volume (e.g. £1, 8 items, 100g)	<p>No display of price, size or volume of a product beyond what is required to comply with consumer protection price indicator regulations and any other legal requirements.</p> <p>No labelling/signage etc. of:</p> <ul style="list-style-type: none"> • above average size (compared to other labels etc. in the place where the food is displayed) • a different colour to distinguish these products from others.⁵³
Price reductions (e.g. 10p off, 10% off)	<p>No reference to reduction in price.</p> <p>No reference price (i.e. no mention of a previous price or comparator price)</p>
Size or volume increases (e.g. 10% extra free, 2 extra items in pack, was 8 items now 10)	No reference to increase in size or volume (or to previous size or volume)
General	No reference to “special price” “special offer”, “bargain”, “price reduced”, “size increased”, “value” or anything else that suggests a deal or value.

8. This would not affect the normal display of a product’s price, size or volume on packaging, labelling, shelf-edge displays or signage.

9. Health and nutrition claims about foods are already regulated.

Not restricted

10. In considering taking a comprehensive approach to restricting in-store promotion and marketing, it is important too to be clear about what would not be covered. In our view, at this juncture, some of the measures below would not be proportionate and could lead to excessive disruption in the normal operations of an outlet in displaying and selling foods to consumers.

⁵² NHS Health Scotland (2017), *Rapid evidence review - restriction of price promotions*, <http://www.healthscotland.scot/publications/rapid-evidence-review-restriction-of-price-promotions>

⁵³ Some stores use coloured labels to draw attention to promoted items.

<p>Packaging (except in relation to promotion of value)</p>	<p>This would enable manufacturers to continue to highlight new products and changes in nutritional content (e.g. reduced sugar).</p> <p>As outlined in the delivery plan, the Scottish Government urges the UK Government to pursue measures to restrict the use of licensed characters, brand equity characters and celebrities to promote HFSS foods to children.</p> <p>Any measures should be considered across UK/GB to reduce any adverse impact on packing and distribution costs.</p>
<p>Position on shelf or number of products on display. [Restrictions to selling/leasing of shelf place <u>would</u> apply].</p>	<p>Significantly intrusive and difficult to implement given wide range of outlets covered by restrictions.</p> <p>Evidence that products near to top shelves at eye level have increased sales. However banning HFSS products from the top shelves may mean positioning them lower at children's eye level which would be an undesirable outcome.</p> <p>Restrictions would not be particularly relevant where whole of aisle may have targeted foods (so not relevant whether top/middle/bottom shelf).</p>
<p>Number of aisles or location of aisles for foods within outlet (except positioning restrictions)</p>	<p>This would be difficult to implement given the different sizes of outlets. We consider the proportionate approach is to restrict known locations that encourage sales.</p>
<p>Size/volume of foods</p>	<p>This is being addressed by PHE sugar and calorie reductions programmes, which involve reformulation and/or smaller portion sizes to meet reduction targets.</p> <p>As outlined in the delivery plan, the Scottish Government urges the UK Government to take appropriate action if it becomes clear that industry will not meet the PHE reformulation targets set for both sugar and calorie reduction.</p>

Price-marked packs

11. We are considering applying the requirements outlined in paragraphs 6 to 8 (promotion of value) to packaging, so any price on a product's packaging would have to meet them.

12. Price-marked packs can give consumers assurance that a price has not been inflated, including in convenience settings. There is also evidence from the food industry that current price marked packs can also be a promotional tool.^{54,55,56,57,58,59,60} It is for this reason the Healthcare Retail Standard⁶¹ only allows price panels that are less than 25% of the front of a pack.

13. However, it is less clear whether this would continue to be a promotional tool if price-marked packs met the 'promotion of value' restrictions under this policy. We are therefore minded at this time not to treat price-marked packs as intrinsically promotional. In other words, we are considering allowing them, subject to the possible requirements outlined in paragraphs 6 to 8 (promotion of value).

Question 6

Please comment on the approach we are proposing to take to restricting forms of promotion and marketing outlined in section 5.

⁵⁴ Scottish Grocer and Convenience Retailer *Value where it counts* Posted on May 2015
<https://www.scottishgrocer.co.uk/2015/05/value-where-it-counts/>

⁵⁵ <https://www.krig.com/Conversation/ConversationDetails.aspx?id=589973>

⁵⁶ Scottish Grocer and Convenience Retailer *Marked for sales* - Posted on May 2018
<https://www.scottishgrocer.co.uk/2018/05/marked-for-sales/>

⁵⁷ Scottish Grocer and Convenience Retailer *Making a mark on the shelf* - Posted on May 2018
<https://www.scottishgrocer.co.uk/2018/05/making-a-mark-on-the-shelf/>

⁵⁸ Scottish Grocer and Convenience Retailer *Showing bottle*
- Posted on February 2018 <https://www.scottishgrocer.co.uk/2018/02/showing-bottle/>

⁵⁹ Scottish Grocer and Convenience Retailer *True value can shine through* - Posted on September 2017 <https://www.scottishgrocer.co.uk/2017/09/true-value-can-shine-through/>

⁶⁰ Scottish Local Retailer *The Price is Right* - <https://www.slrmag.co.uk/price-marked-packs/> published 13 October 2017

⁶¹ <https://www.scottishshop.org.uk/healthy-living/healthcare-retail-standard-guide>

6. PLACES THAT WOULD BE SUBJECT TO RESTRICTIONS

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 OoH outlets and wholesale outlets where there are also sales made to the public.

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.

Views are sought on whether, and if so to what extent, restrictions should be applied online.

Outlets to which the policy would apply

1. Applying the restrictions to any place where foods are sold to the public (in the course of business) would level the playing field. It would treat everyone fairly and mitigate competitive disadvantage. It would stop one outlet increasing its promotional activity to capture promotional sales lost by another, which would undermine the expected health benefits of the policy.

2. This would include:

- **Retail:** Most calories (and nutrients) are from purchases from **retail** stores. An increasing feature of the retail landscape has been the shift toward everyday low prices caused, in part, by the growth of supermarket discounters. Examples include supermarkets, convenience stores, discounters and bargain stores and confectionary shops.
- **Out of Home:** The rise in 'eat out' (or 'eat in' at home) has also reduced food spend in traditional retail outlets.⁶² FSS has advised us (based on data from PHE⁶³) that as much as 25% of total calories are from the OoH sector, so that sector makes a significant contribution. Examples include, takeaways and home delivery services, restaurants, cafes/bistros, sandwich shops and workplace canteens.

⁶² Leigh Sparks and Steve Burt, University of Stirling (2017), *Identifying and Understanding the Factors that can Transform the Retail Environment to Enable Healthier Purchasing by Consumers*, prepared for Food Standards Scotland. Leigh Sparks and Steve Burt, University of Stirling, http://www.foodstandards.gov.scot/downloads/FSS- Final_Report_June_1st_2017.pdf

⁶³ Public Health England (2018), *Calorie reduction: The scope and ambition for action*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685359/Calorie_reduction_The_scope_and_ambition_for_action.pdf

- **Other outlets where HFSS foods are sold.** Examples include charity shops, clothes shops, tourist shops and pharmacies.

Question 7

Should the restrictions apply to any place where targeted foods are sold to the public, except where they are not sold in the course of business (e.g. charity bake sales)?

Yes

No

Don't know

Please explain your answer.

Online

3. Over the past twenty years the internet has altered the shopping landscape, with many food purchases made online. These sales are growing.⁶⁴

4. To ensure all businesses are treated equally and minimise any shifts of promotional activity if measures apply in some settings but not others, we will explore the potential for extending proposed measures to the online space.

5. We recognise that not all the proposed restrictions in this consultation have like-for-like online equivalents. Some are only relevant to a physical environment (e.g. end-of-aisle displays). However, there may be scope to mirror some of them online. There are precedents for online restrictions. For example, the ban on alcohol multi-buy sales in Scotland applies to all products, including those purchased online and despatched from premises within Scotland.

Question 8

Please comment on whether, and if so to what extent, restrictions should be applied online.

Please explain your answer.

⁶⁴ Leigh Sparks and Steve Burt, University of Stirling (2017), *Identifying and Understanding the Factors that can Transform the Retail Environment to Enable Healthier Purchasing by Consumers*, prepared for Food Standards Scotland. Leigh Sparks and Steve Burt, University of Stirling, http://www.foodstandards.gov.scot/downloads/FSS- Final_Report_June_1st_2017.pdf

7. EXEMPTIONS

Views are sought 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.

1. In considering whether there should be any exemptions, we will be guided by the following key principles:

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

Positioning restrictions

2. The restrictions we are considering would apply to many different outlets of various sizes and layouts, selling a wide range of products. While this would not have a material bearing on many of the proposed restrictions, it could affect the ability of some from complying with some placement restrictions (at checkouts, end-of-aisle etc.). In certain cases, the display of foods in particular locations may simply reflect the realities of the physical size or layout of the premises or the limited product range (for example, sweets being sold in a confectionary store).

3. The restrictions may also need to take into account 'grab and go' areas of some stores (areas in larger stores that allow consumers to get in and out of the store quickly, e.g. 'meal deal' areas). This could mean that the 'grab and go' area itself was considered a small retail environment and relevant placement restrictions considered accordingly.

Question 9

Should restrictions to displaying targeted foods at end of aisle, checkouts etc., not apply where there is no reasonable alternative to displaying them elsewhere?

Yes

No

Don't know

Please explain your answer.

Expiry

4. We are not considering restricting price reductions, an example of which is the practice of discounting food close to expiry. Some responses to our previous consultation highlighted this practice helps reduce food waste.

5. To support this practice to continue, we could consider exempting food marked as discounted because it is close to expiry from (a) placement and (b) promotion of value restrictions, which are outlined in section 5.

Question 10

Should food marked as discounted because it is close to expiry be exempt from

Yes No Don't Know

Positioning restrictions (end of aisle, checkouts etc.)

'Promotion of value' restrictions?

Please explain your answer.

Other exemptions

Question 11

Please list any other exemptions we should consider.

Please explain your answer.

8. ENFORCEMENT AND IMPLEMENTATION

We are considering giving local authorities the role of enforcing the proposed policy.

We do not anticipate a need for a new register.

We are considering giving Ministers powers to issue guidance to local authorities.

We are considering a guide to industry to support effective implementation.

Enforcement and implementation

1. Those selling, manufacturing or distributing discretionary foods in Scotland are required under EU Food Hygiene Legislation to register as a “food business” which is generally enforced by local authorities. Local authorities are also responsible for related matters, including enforcing trading standards and environmental health legislation. We want to minimise demands on (a) existing enforcing authorities and (b) those subject to the restrictions. We therefore consider local authorities would be best placed to enforce the policy outlined in this consultation paper. Given food businesses must already register with their local authority, we do not anticipate a need for a new register for this policy.

2. Local authorities would have relevant powers to them, including in relation to powers of entry and powers to obtain information. Similar to food safety legislation, we are considering local authorities would also have powers to issue (a) compliance notices and (b) fixed penalty notices.⁶⁵ Relevant offences would be created.

3. We plan to work closely with the Convention of Scottish Local Authorities, FSS and others to assess resource implications.

Guidance

4. We recognise the importance of clarity in ensuring the effective implementation of this policy. To support this, we plan to work with local authorities and industry in developing Ministerial guidance to local authorities on matters for which they should have regard when discharging their functions. This could include, for example, guidance on placement restrictions (e.g. at checkouts, end-of-aisle etc.).

Support to industry for implementation

5. We are considering the publication of a guide to industry, co-designed by industry representative bodies, to support effective implementation.

⁶⁵ Provisions for compliance notices and fixed penalty notices are contained in the Food (Scotland) Act 2015. They have yet to be brought into use.

Question 12

Please comment on our proposals for enforcement and implementation outlined in section 8.

9. LEGISLATIVE FRAMEWORK

In giving consideration to legislation needed to implement the policy we aim to ensure that there is sufficient flexibility to future-proof the policy.

1. Ensuring that legislation needed to implement the policy is sufficiently flexible would enable changes to be made in the light of experience as well as to take into account changes to the underlying evidence base or promotional/marketing practices.
2. While it will be necessary to keep the position under review as the policy develops we envisage that, whatever the overall legislative framework, Ministers would, following consultation, make provision in secondary legislation for the foods to be targeted and types of promotion and marketing that would fall within and outwith the scope of the restrictions and any exemptions.
3. We consider that it would be necessary to have the flexibility to define targeted HFSS foods in various ways and to take different approaches to the retail and OoH sectors, where that is appropriate. We consider it prudent to ensure there is flexibility for policy developing over time.

Question 13

Please comment on the proposed flexible approach outlined in section 9.

10. MONITORING AND EVALUATION

The implementation and impact of the policy would be monitored and evaluated.

1. This policy has not been introduced in any country to date. The independent monitoring and evaluation of it would therefore be particularly important to ensure that lessons are learned, and experience of implementation can shape future developments. It would be important to learn whether there are any unintended consequences and whether the policy is achieving positive outcomes.

2. We are considering this would include monitoring:

- compliance with the policy
- change in the purchase and consumption of food and drink in the population, including both products subject to the restrictions and HFSS products not subject to the restrictions
- the use of other marketing and promotional activity of foods not targeted by the policy
- the impact on Scottish businesses.

11. IMPACT ASSESSMENTS

This consultation will help inform, among other things, the development of a Business and Regulatory Impact Assessment and a Health Inequalities Impact Assessment (which includes within it an Equality Impact Assessment).

Business and Regulatory Impact Assessment

1. The mandatory nature of the measures we are considering means there would be a consistent approach across both retail and Out of Home sectors, which should mitigate competitive disadvantage.
2. We are seeking to reduce the purchase and thereby consumption of targeted foods. The greater the success of the policy, the greater the likelihood of an impact across the food sector, including on manufacturers where targeted foods constitute a significant proportion of their turnover.

Question 14

If you sell, distribute or manufacture discretionary foods, please comment on how the restrictions in this consultation paper would impact you.

Please explain your answer.

Question 15

What support do sellers, distributors and manufacturers need to implement the restrictions effectively?

Please explain your answer.

Health Inequalities Impact Assessment

Question 16

How would the proposed restrictions impact on the people of Scotland with respect to age, disability, gender reassignment, pregnancy and maternity, ethnicity, religion or belief, sex, sexual orientation or socioeconomic disadvantage?

Please consider both potentially positive and negative impacts, supported by evidence, and, if applicable, advise on any mitigating actions we should take.

12. ANY OTHER COMMENTS

Question 17

Please outline any other comments you wish to make.

CONSULTATION PROCESS

Responding to this Consultation

1. We are inviting responses to this consultation by 9 January 2019.
2. Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at: <https://consult.gov.scot/health-and-social-care/reducing-health-harms-of-foods>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 9 January 2019.
3. If you are unable to respond using our consultation hub, please complete the Respondent Information Form, and return it, together with your response, to:

Restricting Promotions Consultation
Creating Health Team
3E
St Andrew's House
Regents Road
Edinburgh EH1 3DG.

Handling your response

4. If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.
5. All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.
6. If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.
7. To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

Next steps in the process

8. Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

9. Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

10. If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at DietPolicy@gov.scot.

Scottish Government consultation process

11. Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

12. You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

13. Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented.

14. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

OUTCOMES OF PREVIOUS CONSULTATION

1. We published in October 2017 **A Healthier Future – Action and Ambitions on Diet, Activity and Healthy Weight: Consultation Document**⁶⁶. The consultation received 362 responses; 179 from individuals and 183 from organisations (public, private and Third sector). In addition, four organisations (the Scottish Youth Parliament, Young Scot, Food Standards Scotland and the Scottish Public Health Network) carried out separate engagement exercises⁶⁷. An independent analysis of the consultation responses⁶⁸ was published in April 2018.

2. In that consultation, we asked two questions on promotions on (1) types of price promotion and (2) defining the foods to be targeted.

3. Public health and third sector respondents generally (i) supported restricting price promotions, (ii) identified other types of promotion to restrict, and (iii) highlighted other mechanisms (both price and non-price related) to encourage healthier diets. Their main concern was the impact on people on low incomes. They suggested various ways to promote healthier food and drink and make them more affordable. In terms of the products to be targeted, respondents suggested using: (i) the nutrient profiling model (discussed in the consultation paper); (ii) the traffic light labelling system; and / or (iii) the Eatwell guide.

4. By contrast, private sector and business respondents generally (i) were opposed to price promotion restrictions, (ii) highlighted the important purposes of promotions, and (iii) raised concerns or identified negative consequences. These included: (i) a loss of business for supermarkets and small retailers, (ii) disadvantaging small food producers, (iii) placing a further burden on products or businesses already targeted for government intervention (e.g. through the Soft Drinks Industry Levy), (iv) increasing food waste, and (v) increasing prices and reducing consumer choice. They emphasised that, if promotional restrictions were introduced, there must be clear, specific and evidence-based definitions of targeted foods. This group also highlighted difficulties in using the nutrient profiling model.

5. This consultation has been informed by the responses to the previous consultation.

⁶⁶ The Scottish Government (2017), *A Healthier Future: Action and Ambitions on Diet, Activity and Healthy Weight Consultation Document*, <https://www.gov.scot/Resource/0052/00526543.pdf>

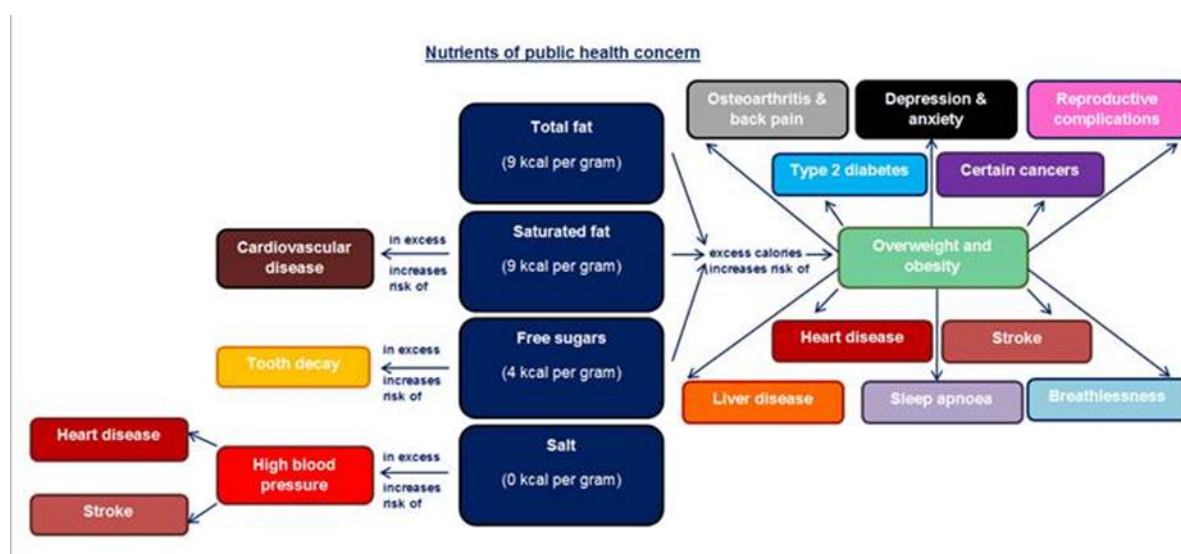
⁶⁷ Published individual responses and consultation event reports are at https://consult.gov.scot/health-and-social-care/a-healthier-future/consultation/published_select_respondent

⁶⁸ The Scottish Government (2018), *A Healthier Future – Action and ambitions on diet, activity and healthy weight: Analysis of consultation responses*, <http://www.gov.scot/Publications/2018/04/3768>

POLICY RATIONALE

1. The policy we are considering seeks to reduce Scotland-level consumption of calories, fat, saturated fat, free sugar and salt.

2. These nutrients are of public health concern because our consumption exceeds our requirement. Saturated fat, free sugars and salt can directly increase the risk of health harms such as cardiovascular disease, high blood pressure and tooth decay. Total fat, saturated fat and free sugars also contribute, indirectly through excess calories, to increasing the risk of gaining weight and therefore to increasing the risk of health harm as a result of overweight or obesity (see schematic below).⁶⁹



3. Excessive consumption of fat, saturated fat, free sugars⁷⁰ and salt is measured at a population level by the extent to which Scotland is meeting national Dietary Goals, last updated in March 2016.⁷¹ The Goals describe, in nutritional terms, the diet that will improve and support the health of the Scottish population. Scotland has consistently failed to meet these dietary goals since they were set in 1996.

⁶⁹ Food Standards Scotland (2018), *Briefing paper on Discretionary Foods*, <https://www.foodstandards.gov.scot/publications-and-research/publications/briefing-on-discretionary-foods>

⁷⁰ Free sugars include all sugars added to foods and those present in fruit juice and honey.

⁷¹ The Scottish Government (2016), Revised Dietary Goals for Scotland, <http://www.gov.scot/Topics/Health/Healthy-Living/Food-Health/DietaryGoalsScot>

Table 1: Scottish Dietary Goals

	Current Intake	Goal
Total Fat	38.9% of food energy (2015)	<35% of food energy
Saturated Fat	15.1% of food energy (2015)	<11% of food energy
Free Sugars*	14.4% of food energy (2015)	<5% of food energy
Salt	7.8g (2014)	6g

Source: Food Standards Scotland (2018), *The Scottish Diet - It needs to change 2018 update*, <https://www.foodstandards.gov.scot/publications-and-research/publications/the-scottish-diet-it-needs-to-change-2018-update>

Contribution of discretionary food categories to purchases

4. Discretionary foods make up a significant proportion of total retail purchases.

Table 2: % contribution of discretionary categories, ice-cream, edible ices and dairy desserts to retail purchase of calories, total fats, saturated fats and total sugars in 2016

% contribution in 2016 to purchase of:					
Category	Calories	Total fat	Saturated fat	Total sugar	Sodium
Cakes and pastries	4.1	3.9	4.0	5.4	2.2
Biscuits	6.6	6.9	8.7	7.0	3.4
Confectionery	5.3	5.4	8.0	11.8	0.9
Crisps and savoury snacks	3.7	5.3	1.6	0.5	3.4
Regular soft drinks	1.6	0.0	0.0	6.8	0.3
Puddings and desserts	1.3	1.3	2.0	2.3	0.5
Ice cream	1.0	1.2	2.1	1.9	0.2
Edible ices and frozen dairy desserts	0.6	0.9	1.5	1.1	0.1
TOTAL	24.2	24.9	27.9	36.8	11.0

Source: Food Standards Scotland (2018), *Monitoring retail purchase and price promotions in Scotland (2010-2016)*, <http://www.foodstandards.gov.scot/publications-and-research/monitoring-retail-purchase-and-price-promotions-in-scotland-2010-2016>

5. The top five foods and drinks consumed out of home (% of total visits) include regular cola (3rd, 10.1%) and cakes, biscuits and pastries (5th, 9.4%).⁷²

Reducing health harm

6. Reductions in the purchase of discretionary foods, translated into reduced consumption of calories, fat, saturated fats, free sugar and salt, would see a shift towards our dietary goals and a positive impact on public health.

7. The potential impact of a range of reductions in the purchase of discretionary foods (up to 50% as advised as a key step by FSS) is shown in the table below.⁷³

⁷² 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

The reduction in % food energy from total fats, saturated fats and free sugars was based on a simple calculation using the most recent three years of published data based on the total average energy intake.

Table 3: Impact of reducing intakes of discretionary foods by 5%, 10%, 25% and 50% on progress towards the Scottish dietary goals for fat, saturated fat, free sugars and fibre

	Scottish Dietary Goal	2013-2015 Intake	5% reduction	10% reduction	25% reduction	50% reduction
Fat	≤35% food energy	39.3%	39.0	38.7	37.8	36.1
Saturated fat	≤11% of food energy	15.3%	15.2	15.1	14.7	14.0
Free sugars	≤5% of total energy	14.3%	14.0	13.7	12.7	11.0
Dietary Fibre	18g/day ⁷⁴	12.0g	11.9	11.9	11.7	11.4

Impact on families with lower incomes

8. Some respondents to the consultation paper were concerned about the plans adversely affecting families with lower incomes.

9. However:

- as outlined in this paper, we are not targeting main meals. The restrictions would only apply to discretionary foods that do not form part of a healthy diet and can contribute to increased risk of health harm.
- promotions do not necessarily represent good value. They can encourage us to buy things we don't always need or to overlook cheaper, healthier alternatives.
- people on low incomes spend a lower proportion of their food and drink budget on promotion, compared to those in the highest income groups (33% vs 39%).⁷⁵ This is perhaps because they are not always best value.

10. We will explore this further as part of the Health Inequalities Impact Assessment.

⁷³ The values assume that discretionary foods are **not replaced** with other types of foods which in the case of fruits and vegetables which would help to rebalance the diet by adding essential nutrient such as vitamins and minerals and fibre.

⁷⁴ This is the dietary reference value of 18g/day of non-starch polysaccharides, defined by the Englyst method, prior to the revised Scientific Advisory Committee on Nutrition recommendation in 2015 and the revised Scottish Dietary Goals, which equates to about 23-24 g/day of dietary fibre if analysed using these Association of Official Analytical Chemists (AOAC) methods. The new recommendation is for 30g/day using the AOAC method. Based on FSS published data.

⁷⁵ Food Standards Scotland (2018), *Monitoring retail purchase and price promotions in Scotland (2010-2016)*, http://www.foodstandards.gov.scot/downloads/Monitoring_retail_purchase_and_price_promotions.pdf

KEY PUBLICATIONS

October 2018

[Briefing paper on Discretionary Foods, Food Standards Scotland](#)

[Methodologies for identifying foods high in fat, sugar and salt for limiting marketing and promotions, NHS Health Scotland](#)

Impact of in-premise marketing on consumer purchasing and consumption, NHS Health Scotland⁷⁶

February 2018

[The Scottish Diet - It needs to change 2018 update, Food Standards Scotland](#)

[Monitoring retail purchase and price promotions in Scotland \(2010 - 2016\), Food Standards Scotland](#)

January 2018

[Marketing strategies used within premises by out of home businesses, Food Standards Scotland](#)

December 2017

[Public attitudes to reducing levels of overweight and obesity in Scotland, NHS Health Scotland](#)

October 2017

[Rapid evidence review: The impact of promotions on high fat, sugar and salt \(HFSS\) food and drink on consumer purchasing and consumption behaviour and the effectiveness of retail environment interventions, NHS Health Scotland](#)

June 2017

[Identifying and Understanding the Factors that can Transform the Retail Environment to Enable Healthier Purchasing by Consumers, University of Stirling, Report Prepared for Food Standards Scotland](#)

October 2016

[An assessment of the out of home food and drink landscape in Scotland \(2015\), Food Standards Scotland](#)

October 2015

[Sugar Reduction: The evidence for action, Public Health England](#)

⁷⁶ The paper, which will be published shortly, will be available at <http://www.healthscotland.scot/health-topics/diet-and-obesity/obesity>

GLOSSARY

Body Mass Index (BMI)	BMI is calculated as weight in kg divided by the square of height in metres.
Category-based approach	The identification of specific categories of foods for the purposes of the policy.
Delivery plan	A Healthier Future: Scotland's Diet & Healthy Weight Delivery Plan , published in July 2018, sets out how the Scottish Government will improve our nation's health by improving our diet and weight. http://www.gov.scot/Publications/2018/07/8833
Discretionary foods	In its report, The Scottish Diet - It needs to change 2018 update , FSS describe discretionary foods and drinks as high in calories, low in nutritional value and not necessary for our health. They tend to be heavily promoted and represent an unhealthy proportion of our overall diet. In the report FSS include: confectionery, cakes, biscuits, pastries, savoury snacks and sugary drinks. They are a subset of HFSS foods. http://www.foodstandards.gov.scot/downloads/Situation_report_-_the_Scottish_diet_-_it_needs_to_change_-_2018_update_FINAL.pdf In this consultation paper, discretionary foods are: confectionery, sweet biscuits, crisps, savoury snacks, cakes, pastries, puddings and soft drinks with added sugar. We are consulting on whether we should also consider ice-cream and dairy desserts as discretionary foods.
FSS	Food Standards Scotland
Food Environment	The food environment comprises the foods available to people in their surroundings – and includes the nutritional quality, safety, price, convenience, labelling and marketing of these foods. This includes supermarkets, convenience stores, cafés, restaurants, takeaways, work and school canteens, and all other venues where people procure and eat food. <small>Source: FAO (2016) Influencing Food Environments for Healthy Diets. Food and Agriculture Organization of the United Nations, Rome.</small>
Foods	A collective term used in this paper for food and drink.
Health Inequalities	The unfair and avoidable differences in people's health across social groups and between different population groups.
HFSS	Foods which are high in fat, sugar or salt.
In-store	In this paper the term "in-store" is used as shorthand for within, or in relation to, premises where targeted foods are sold to the public. This may include online sales.

Multi-buys	In this paper “multi-buys” are (a) two or more separate products sold together to obtain a discount or (b) one or more products given free as a result of a purchase.												
Multi-packs	“Multi-packs” are two or more items in a pack sold as a single item.												
Non-discretionary HFSS foods	Non-discretionary HFSS foods tend to be consumed as part of a meal (such as some meat, potato or dairy products) or as meal ingredients (such as cooking oil or table sugar), rather than as snacks. They can have positive nutritional attributes and therefore are less optional in the diet than discretionary foods.												
Non-price promotion	Marketing or promotion that is not a price promotion. It includes among other things, placement promotions.												
Nutrient profiling	Nutrient profiling uses a scoring system which balances the contribution made by beneficial nutrients that are particularly important in diets with components in the food that people should eat less of. The overall score indicates whether that food (or drink) can be considered healthy or not.												
Out of Home (OoH)	The Out of Home sector encompasses all the food and drink we eat outside the home, as well as from takeaways. This includes cafes, all types of restaurants, pubs/bars, vending machines, workplace canteens, leisure and entertainment, food on the go providers such as supermarkets and convenience stores and foods purchased when commuting or travelling.												
Overweight and obese	<p>Adults (aged 16 and over) can be classified into the following BMI groups:</p> <table border="1"> <thead> <tr> <th>BMI (kg/m²)</th><th>Description</th></tr> </thead> <tbody> <tr> <td>Less than 18.5</td><td>Underweight</td></tr> <tr> <td>18.5 to less than 25</td><td>Normal</td></tr> <tr> <td>25 to less than 30</td><td>Overweight</td></tr> <tr> <td>30 to less than 40</td><td>Obese</td></tr> <tr> <td>40 and above</td><td>Morbidly obese</td></tr> </tbody> </table> <p>Although the BMI calculation method is the same, there are no fixed BMI cut-off points defining overweight and obesity in children. Instead, overweight and obesity are defined using several other methods including age and sex specific BMI cut-off points or BMI percentiles cut-offs based on reference populations. Children can be classified into the following groups:</p>	BMI (kg/m²)	Description	Less than 18.5	Underweight	18.5 to less than 25	Normal	25 to less than 30	Overweight	30 to less than 40	Obese	40 and above	Morbidly obese
BMI (kg/m²)	Description												
Less than 18.5	Underweight												
18.5 to less than 25	Normal												
25 to less than 30	Overweight												
30 to less than 40	Obese												
40 and above	Morbidly obese												

	Percentile cut-off Description	Percentile cut-off Description
	At or below 2 nd percentile	At risk of underweight
	Above 2nd percentile and below 85 th percentile	Healthy weight
	At or above 85 th percentile and below 95 th percentile	At risk of overweight
	At or above 95 th percentile	At risk of obesity
PHE	Public Health England	
Positioning promotions	The display of products in locations that are more visible to customers, such as end-of-aisles and checkouts.	
Positioning restrictions	Restrictions to positioning promotions.	
Price-marked packs	Packs which have price displayed as part of a product's packaging.	
Price promotion	Where the price of a product (or combination of products) is used to promote its sales.	
Promotion and marketing	Action taken to increase the visibility and attractiveness of a product to induce sales.	
Public health	Public health focuses on the health of populations as a whole rather than on individuals. It deals with the behavioural, social and environmental factors that influence the health of populations.	
Promotion of value	A promotion that aims to highlight a product's value (its price, size or volume). This includes price reductions and size/volume increases.	
Retail (take home food and drink purchase)	<p>All food and drink purchased for use <i>within</i> the home, i.e. all grocery shopping. This definition excludes take-away (including home delivered take-away food) and any foods that were purchased for immediate consumption outside the home such as a sandwich purchased.</p> <p>This definition is relevant to data in this paper concerning retail purchases reported in Food Standards Scotland (2018), <i>Monitoring retail purchase and price promotions in Scotland (2010-2016)</i>, http://www.foodstandards.gov.scot/publications-and-research/monitoring-retail-purchase-and-price-promotions-in-scotland-2010-2016</p>	
Scottish Dietary Goals	The Goals describe, in nutritional terms, the diet that will improve and support the health of the Scottish population. They are set at the Scottish population level. They indicate the direction of travel, and assist policy development to reduce the burden of obesity and diet-related disease in Scotland. They will continue to underpin diet and health policy in Scotland and will be used for scientific monitoring purposes.	
Targeted foods	Foods that would subject to the proposed restrictions. We are consulting on targeting discretionary foods.	

Temporary price reduction	Where a product is temporarily reduced in price before returning to its previous price.
Type 2 diabetes	<p>Type 2 diabetes occurs when the body doesn't produce enough insulin to function properly, or the body's cells don't react to insulin. This means glucose stays in the blood and isn't used as fuel for energy. Type 2 diabetes is often associated with obesity and tends to be diagnosed in older people. It's far more common than type 1 diabetes.</p> <p>Source: NHS Inform https://www.nhsinform.scot/illnesses-and-conditions/diabetes/type-2-diabetes</p>
Wholesale	Sales that are not direct to the public.

REDUCING HEALTH HARMS OF FOODS

HIGH IN FAT, SUGAR OR SALT

CONSULTATION PAPER

RESPONDENT INFORMATION FORM

This form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

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- ☐ Individual
☐ Organisation

Full name of individual or organisation

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☐ Manufacturer
☐ Retailer
☐ Out of home provider (e.g. restaurant, fast food outlet, coffee shop)
☐ Public sector
☐ Third Sector

Other (please specify)

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- ☐ Publish response only (without name)
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If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

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- ☐ No



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