



Scottish Wholesale Association Response to the Consultation Reducing Health Harms of Food High in Fat Sugar and Salt

This submission is made by the Scottish Wholesale Association.

The Scottish Wholesale Association is the official trade association for Scotland's food, drink and allied trades wholesaling businesses. The wholesale market in Scotland is worth £2.9bn (FWD Whole Society Market Report 2018) meaning our sector represents a significant part of the Scottish food and drink industry.

SWA welcome the opportunity to contribute to the proposals set out in the Scottish Government consultation Reducing Health Harms of Food High in Fat Sugar or Salt. SWA appreciate the efforts of officials within the Scottish Government who have met with us to discuss the proposals and taken part in depot site visits to gain an understanding of the wholesale sector.

SWA strongly disagree with the Scottish Government's proposed mandatory approach and are deeply concerned at the negative impact these proposals would have on the wholesale sector and the 4962 independent convenience retail stores (ACS Scottish Local Market Report 2018), that our members supply.

We are pleased with and agree that the proposals set out within this consultation would NOT apply to wholesale outlets, where sales are only to trade. While the vast majority of Scottish wholesalers, sell only to trade customers and will not be directly impacted by these proposals, they will however be significantly indirectly affected by the reduced sales of discretionary foods by their customers.

However, one of our wholesale members could potentially be directly affected as while they sell predominantly to trade customers, they also sell to qualifying individual club members. Such members only become so after following a strict qualifying application process and payment of an annual membership fee. The SWA would argue that as the particular wholesaler only sells in large bulk packs, not single impulse retail packs, they are inadvertently being penalised for their market differentiating business model. And as such we would perceive this as being anti-competitive should any restrictions be imposed upon them, as a result of this consultation, which was different from other wholesale members.

Wholesalers are not a homogeneous group. Our members include single-depot, family-owned businesses as well as national wholesale companies and buying groups. As well as providing cash and carry services, many wholesalers also provide foodservice deliveries to public and private sector customers including schools, restaurants and the hospitality sector. Members provide on sales services to licensed premises and some manufacture and supply their own brand products.

Within our membership we have specialist wholesale businesses which will be more exposed to the potential negative impacts of these proposals as well as those that will not. The majority of members supply all the products covered by the Scottish Government's proposals.

Approximately 60% of our members sales are through the supplying of food and drink to Scotland's 4,962 independent convenience stores. This is often through the symbol group approach, with our



members providing not just the food and drink but store branding, design, layout assistance, marketing as well as legal advice. Many Scottish Wholesale Association members also own retail interests, particularly local convenience stores.

Wholesalers are also a key provider to retailers in business advice and guidance, as well as supporting them with promotional leaflets, point of sale and other materials to assist with the marketing of their business. This support is essential to enable these local businesses promote and highlight their services, products and offerings within their local community. Enabling them to compete more fairly with larger multi-site supermarkets and discounters.

SWA also represent supplier members who include some of the UKs largest FMCG food manufacturers.

Our wholesale and supplier members have already been proactive in tackling the UK's obesity and overweight problems by increasing their healthier ranges, reformulating own label drinks to low or no sugar variants and actively supporting the UK Government's Department of Health's Change4Life initiative.

It's essential that the Scottish Government doesn't penalise such activities and positively differentiates in favour of healthier and re-formulated options. It's essential that the Scottish Government acts to incentivise reformulation.

To date the Scottish Government have supported manufacturers to re-formulate products and have supported retailers via the HLF. We would urge the Scottish Government to work in partnership with SWA to investigate incentives for Scotland's wholesalers to stock healthier products rather than seeking to restrict commercial freedom and sector innovation.

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 disagree

Please explain your answer.

SWA understand that the Scottish Government wish to discourage overconsumption and impulse buying and while we share the Government's wish to reduce the public health harms associated with the excessive consumption of foods high in fat, sugar and salt we believe the current proposals to legislate are ill considered, lacking in definition and not evidence based.



We appreciate that the Scottish Government intend to engage nutritionists, to work out which categories will be included and to consult further on these issues. We look forward to seeing greater definition of what HFSS foods would actually be targeted. Wholesalers have told us it's currently impossible to accurately assess the impact of these proposals on their businesses without greater clarity of definition.

The 2004/5 Nutrient profiling model (NPM) was developed by the Food Standards Agency (FSA) to provide Ofcom, the broadcast regulator, with a tool to differentiate foods on the basis of their nutritional composition. Ofcom uses the outputs from the model to regulate the television advertising of foods to children. It scores foods based on their nutritional content. The nutrients considered are split into two categories – A and C. The score for 'C' nutrients is subtracted from the score for 'A' nutrients to give the final score. A higher score indicates a less healthy food.

We note that this approach is favoured by the current Department of Health & Social Care Consultation on Restricting promotions of products high in fat, sugar and salt by location and by price. (Annex 4 <https://www.gov.uk/government/consultations/restricting-promotions-of-food-and-drink-that-is-high-in-fat-sugar-and-salt>)

We don't believe the consultation document provides any evidence that restricting in store promotions of "discretionary foods" will reduce obesity rates. SWA note that the Scottish Government accept that they are taking a unique approach which hasn't been applied elsewhere. However, we believe that Quebec has banned the marketing of certain foods to children since 1980. When these restrictions were put in place Quebec children were as likely to be obese as children elsewhere in Canada. Forty years later Quebec's childhood obesity problem surpasses the rest of Canada with 23.2 % of children aged 2-11 years being termed obese or overweight compared to 18.7% in the rest of the country. (Statistics Canada, Canadian Community Health Survey <https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=1310079701>)

SWA are extremely concerned at the approach set out in the consultation which will risk progress already made on re-formulation and support for retailers via the Healthy Living Fund. To date the Scottish Government have supported manufacturers to re-formulate products and have supported retailers via the HLF. We would urge the Scottish Government to work in partnership with SWA to investigate incentives for Scotland's wholesalers to stock healthier products rather than seeking to restrict commercial freedom and sector innovation.

The Scottish Wholesale Association are members of Scotland Food and Drink and are committed to the Ambition 2030 growth strategy of doubling Scotland's food business to £30bn by 2030. These are difficult times for the food and drink sector. The UK Government's projections, estimate the cost of No Deal Brexit to the sector to be at least £2billion in lost sales annually as well as dealing with logistical problems resulting from transport delays and labour shortages.

SWA urge the Scottish Government to support the Scottish food and drink sector, including wholesalers, at this challenging time by withdrawing these proposals which will impact on consumer choice and commercial freedom.

The Scottish Wholesale Association would prefer to see progress based on collaborative working with the food and drink industry building on work already undertaken by SWA supplier and



wholesale members and other partners within the food supply chain. Our members have informed us that they have already increased their ranges of healthier products and the marketing of those products. Food Service members supplying ready meals have also reduced portion size. Supplier members are successfully engaged in ongoing programmes of portion control and reformulation, sometimes with financial support from the Scottish Government.

SWA are deeply concerned that the Scottish Government appears to be diminishing the importance of consideration of product reformulation as part of the solution. This is one of the most effective ways to improve the nation's health and most, if not all, food and drink manufacturers have already started investing £millions in reformulation. Down-playing the re-formulation approach would be damaging to our economy and would send out the wrong message to our manufacturing sector.

The proposals are likely to have unintended consequences as the approach will not encourage producers of HFSS foods to engage in re-formulation and harm reduction. If companies will be penalised by restrictions on sales, promotions and marketing whether they attempt to produce healthier options or not there is little incentive for them to do so. Reduced sales may lead to downward pressure on manufacturer's development budgets as well as ultimately leading to higher prices for consumers and a reduction in consumer choice.

This approach runs counter to the Scottish Government's wider support for the food and drink sector which contributes so much to the Scottish economy. These restrictions would have a disproportionate impact on small to medium sized Scottish businesses which are a) more likely to trade in Scotland possibly to the exclusion of other markets b) in competition with well known, established brands which may be better able to maintain market share in the face of in store restrictions on marketing and promotion and c) likely to bring new products to market which require and benefit from local promotion.

Many of our members are competing and operating in a UK wide marketplace. SWA would prefer to see these issues dealt with on a cross border basis.

We believe that the approach being taken by the UK Government which intends to restrict HFSS products which are included in Public Health England's reformulation categories and which will use the 2004/05 nutrient profiling model to define what constitutes a HFSS food and drink product may provide less unintended consequences while adding greater clarity. We appreciate that the Scottish Government intends to undertake further work on this matter and to consult further. We agree with the proposal that there should be an expert technical group set up to define the categories and exclusions.

We would prefer these measures to be considered as part of a UK wide agenda which would take consideration of the results of the UK Government's recently launched consultation as well as this consultation. DHSC state that their dual aims are to reduce overconsumption of HFSS products, particularly by children, but also to encourage businesses to promote healthier products and to further incentivise re-formulation.

The DHSC consultation in England is examining options to ensure all volume based price promotions are on healthier products and to restrict locations promotions by restricting placements of HFSS products at checkouts, end of aisle and front of store. They are also proposing to end free refills of



sugary soft drinks in out of home environments. However they state they are “ open to alternative suggestions on ways to reduce overconsumption of HFSS products and encourage businesses to promote healthier products and to further incentivise reformulation e.g Retailers ensuring at least 80% of their sales on volume based price promotions per annum are on healthier products.” They also say they are open to alternative suggestions which achieve their dual aims.

Given that both UK and Scottish Governments are keen to reduce HFSS product consumption and intending to take action in the coming two years we would urge the Scottish Government to work closely with their Westminster counterparts and other devolved administrations. Implementing changes on a Scotland only basis will lead to a potential 2 tier market within each of the defined categories and will result in significant additional implementation and management costs for food manufacturers, retailers and wholesalers which supply to both Scottish and wider UK markets. This would include additional packaging, administrative, warehousing and distribution logistical costs.

Question 2

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

NO

Please explain your answer.

No foods should be targeted in this fashion. While there is general evidence of the health impacts of HFSS foods there is no evidence within the consultation document which justifies the particular promotion and marketing restrictions being advocated.

We believe the Scottish Government are proposing a blanket approach to HFSS discretionary foods because it's assumed this would be simple for consumers and businesses to understand in comparison to targeting food with a defined level of salt or sugar.

The sweeping generalisation of defining products high in fat, sugar and salt by a market/industry “category definition” gives no clarity to what is defined as such a product. Therefore the whole consultation process is flawed if consultees are unclear about the products they are being consulted on. The sweeping generalisation of defining products high in fat, sugar and salt as “...products of no nutritional benefit” is not fact. This is especially true where the Scottish Government cannot define what they themselves class as being “healthy” or “of nutritional benefit”.

As mentioned previously, we appreciate that the Scottish Government intend to engage nutritionists, to work out which categories will be included and to consult further on these issues. If the Scottish Government wishes to restrict the marketing and promotion of HFSS products we look forward to seeing greater definition of which HFSS foods would actually be targeted. Wholesalers have told us it's currently impossible to accurately assess the impact of these proposals on their businesses without greater clarity of definition.



We note that the categories include those covered by the Soft Drinks Industry Levy and Public Health England's Sugar Reduction Programme and Calorie Reduction Programme. Both Programmes challenge manufacturers to revise and reformulate their products.

The 2004/5 Nutrient profiling model (NPM) was developed by the Food Standards Agency (FSA) to provide Ofcom, the broadcast regulator, with a tool to differentiate foods on the basis of their nutritional composition. Ofcom uses the outputs from the model to regulate the television advertising of foods to children. It scores foods based on their nutritional content. The nutrients considered are split into two categories – A and C. The score for 'C' nutrients is subtracted from the score for 'A' nutrients to give the final score. A higher score indicates a less healthy food.

This approach is favoured by the current Department of Health & Social Care Consultation on Restricting promotions of products high in fat, sugar and salt by location and by price. (Annex 4 <https://www.gov.uk/government/consultations/restricting-promotions-of-food-and-drink-that-is-high-in-fat-sugar-and-salt>)

If the Scottish Government is determined to take these proposals forward we would suggest they collaborate on their approach with the UK Government as the vast majority of foods marketed and sold in Scotland are produced and sold throughout the rest of the UK.

However, SWA maintain our more general concern that the proposed approach would be a restriction on adults right to choose which food products they wish to purchase and the consultation fails to demonstrate a causal link between the selected products and promotions with obesity. SWA note that the Scottish Government suggest they are tackling over consumption and impulse buying but some targeted promotions such as a lunchtime meal deal represents neither.

Question 3

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

No

Please explain your answer.

The Scottish Government has stated it doesn't intend to focus on foods consumed as part of a meal. UK sales figures show that dairy desserts and ice cream tend to be consumed as part of a meal rather than as a snack.

Question 4

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

The stated approach might appear to be easier for the consumer to understand as it relies on broad categories of "discretionary foods" such as confectionery. There are complications in this approach



with products being caught by this definition which might have positive nutritional components e.g a granola bar which is high in fibre or a protein bar which is targeted at athletes. Therefore we believe these definitions are not adequately explained and are set too wide.

Wholesalers have told us it's impossible to accurately assess the impact of these proposals on their businesses without greater definition. While it might be less accessible to the general public, using the 2004/05 Nutrient profiling model used to define HFSS food and drink products by OFCOM to restrict advertising products to children might represent a more understandable approach for the food and drink sector and might allow for incentives to be made for re-formulation and other innovation.

SWA appreciate that the Scottish Government intend to engage nutritionists, to work out which categories will be included and to consult further on these issues. If the Scottish Government wishes to restrict the marketing and promotion of HFSS products we look forward to seeing greater definition of which HFSS foods would actually be targeted prior to further consultation.

Question 5

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

Restrict multi-buys **No**

Restrict sales of unlimited amounts for a fixed charge **No**

Not restrict temporary price reductions **Yes**

Not restrict multi-packs? **Yes**

Please explain your answers

Implementing all, or even some, of the proposed marketing, promotion and advertising restrictions will result in healthier re-formulated products facing the same restrictions as an "HFSS unhealthy" product. SWA would question how consumers are expected to purchase products which will be less harmful to them if manufacturers and the retail/foodservice sector are unable to promote or highlight them?

The wholesale and retail food market is substantially price point driven. Volume sales are driven by price and the rise of the discount supermarkets means other retailers, including independent convenience stores, in communities across Scotland must compete on price. Introducing these proposed restrictions would lead to store closures and would impact significantly on wholesalers. SWA has supplier and wholesale members whose entire product range will be affected by these disproportionate proposals putting jobs and future investment at risk.

SWA have sought information on turnover impacts from members. Food Standards Scotland suggest Scots should reduce our intake of discretionary foods by at least half. The Scottish Government must



acknowledge that falling sales in high margin areas such as confectionery will inevitably impact on retail and wholesale business survival & viability and may well lead to rising food prices overall.

As with any market restrictions, most recently the tobacco display ban and the sugar levy, where one element of a member's business is affected by a downturn in either sales or margin, then it will look at raising prices and pushing sales in other elements to compensate. This will result in consumers having to pay more, not just for their HFSS products but potentially within other areas of their food shopping.

The cumulative effect, of recent changes and restrictions, within the food and drink industry are causing SWA members concern as well as additional costs and administrative burdens. Many of these have been instigated by the Scottish Government including the revaluation of Business Rates, introduction of Minimum Unit Pricing, the proposed Deposit Return Scheme, proposed restrictions in the Out of Home Sector and the upcoming Good Food Nation legislation.

The UK Government has introduced the Soft Drinks Industry Levy as well as the Apprenticeship Levy and a series of ongoing changes in terms of the sale and tracking of Tobacco. These changes are set against a particularly difficult economic period for our members and their customers which is quite likely to be exacerbated by the UK's Withdrawal from the EU. Meanwhile the wholesale market is in a state of some flux as supermarket chains become wholesalers and retail customers are dealing with the impact of the discount supermarkets and wider difficulties and closures on high streets across the country.

Multibuys – This sales strategy represents a small part of a Wholesaler's direct sales model but represents a significant proportion of their retail customers promotional and marketing strategy. This would therefore impact on the income of both retailers and wholesalers.

While supermarkets (Multiples) can afford the store space to stock heavily discounted multi packs, often only manufactured for supermarkets and discounters, small independent convenience stores rely on stocking single units which they may sell and promote via multibuys. Restricting multibuys and not multipacks may have a greater impact on convenience stores. We would suggest the Scottish Government undertakes greater research into this issue.

Restrict sales of unlimited amounts for a fixed charge - This form of volume promotion would have less impact on wholesalers than many of the other proposals.

However, foodservice customer such as restaurants and pubs may offer free soft drink refills to nominated drivers to support their drink driving schemes. This is a valuable incentive in a very important area of public health/safety.

Temporary price reductions - SWA agree that there should be no restriction on temporary price reductions. Retailers must be able to advertise those reductions to customers. Being unable to do so will again prevent retailers highlighting value and the promotion of alternatives, such as healthy products.

Multipacks - We also agree that there should be no restrictions on the selling of multi-packs. Multi packs represent a value for money option for many Scots families. Multi packs of soft drinks will



already be affected by the introduction of a Scottish Deposit Return Scheme. Once again we remain concerned that while the Scottish Government are not banning the sale of multipacks they are intending to ban the promotion of any consumer savings which result from multipacks.

Question 6

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

SWA have serious concerns about the impact the Scottish Government's proposed restrictions on promotion and marketing would have.

Wholesalers receive revenue from a range of sources - sales to trade customers; advertising revenue from listings in product promotional leaflets made available in store; sale of key display space to manufacturers. The Government's proposed restrictions on promotion and marketing will affect wholesalers through a diminution in sales and potential loss of income from sales of location space, particularly where a wholesaler also sells to the public as well as to trade.

It's also likely that they will lead to a market place which is dominated by large well-known brands to the detriment of ongoing and evolving consumer choice and the promotion of small local Scottish producers. The prohibition of free samples will also affect the small local food producers' ability to attract customers from the established market leaders. These proposals will stifle product innovation, including the re-formulation of healthier options, as well as restricting customer choice.

Price, place and promotion are the key ways of selling and highlighting product to the consumer, especially new product and those within niche markets/categories. If, through restrictions on the basics of promotion and marketing, products cannot be highlighted to consumers then manufacturers will be reluctant to invest in new product development (NPD), reformulation or creating solutions to attain the objectives of this consultation.

This will potentially create a perverse level playing field where some healthier versions of these discretionary foods will face the same onerous restrictions as more unhealthy options. Therefore, how are consumers expected to purchase such healthier products if manufacturers and retailers are unable to promote or highlight them?

This will result in consumers having to pay more, not just for their discretionary products but potentially within all other areas of their food and household shopping. This consultation should also be examined alongside the likely implications of Brexit on household food costs and the continuing difficulties affecting the retail sector.

Product placement - Product placement is significant in:

- 1) Creating brand awareness
- 2) Creating product differentiation, such as its' health benefits.



3) Brand switching

4) Helping increase purchase and sales of that particular product.

5) Being the only place feasible for certain products to site (ie seasonal lines which would not fit within a categories normal display space. For example Easter Eggs, Xmas selection boxes, chocolate gift boxes). Or in a small store where the physical size of the store determines the layout and where there may be no reasonable alternative of displaying food elsewhere.

Taking these points, we would highlight that product placement is not about increasing consumption, nor does it mean increased category sales.

Seasonal product sales represent major footfall attractors at particular times of the year. During the celebrated seasons of Christmas, Easter, Valentine's, Mothers Day and Father's Day most wholesalers and their retail customers only have the option of displaying those products on rack-ends (gondola ends), floor displays or front of checkouts. With these often being the only areas large enough to accommodate, what is generally considered, a bulky product when compared to a chocolate bar that would sit within the main confectionery shelving. One wholesaler member directly affected by these proposals has pointed out that for health & safety reasons it's important that such high volume turnover items are easily accessible for easy and safe re-stocking

Consideration must be given as to where these are positioned within retail outlets and exclusions given on such products display. Otherwise any restriction could destroy these key selling times for the whole supply chain from manufacturer, supplier, wholesaler through to final reseller.

In some wholesalers and retailers, specific space including rack-ends or bulk floor displays may be rented/leased by suppliers and manufacturers. This represents an additional revenue stream for the wholesaler/retailer, while allowing suppliers to promote new products in visible locations. Including healthier or re-formulated products. Restricting display opportunities would again impact on highlighting healthier products while also preventing much needed additional revenue to support our wholesaler's margins.

Promotions - The SWA are concerned that restrictions on in-store promotions would have a disproportionate impact on small to medium sized Scottish food and drink businesses which are:

- a) More likely to trade in Scotland possibly to the exclusion of other markets
- b) In competition with well known, established supermarkets or chains which may be better able to maintain market share in the face of in store restrictions on marketing and promotion.
- c) Likely to bring new products to market which require and benefit from local promotion.

Promotions are the very foundation of every business, not just in food and drink. It has the similar effects to those mentioned under Product Placement above. Our fear is that the restriction on some, or all of the activities below, will have numerous consequences including unintended consequences.



Shelf-edge displays and signage – these are important indicators for customers to find products, highlight promotional value as well as to gain information on that product. This may include country of origin, health benefits, nutritional content and complimentary products. Promotional shelf tickets are particularly useful for consumers who are seeking to identify the best value option. Restricting the use of these signposts is likely to add time to the average shopper’s visit to the supermarket or convenience store.

Larger signage, including posters, are often used to disrupt footfall and encourage custom. Especially so within areas of high competition and passing trade and where businesses use signage as a tool to highlight their offers and to grow their business.

Promotion of value - The wholesale and retail food market is substantially price point driven. Volume sales are driven by price and the rise of the discounters have meant other retailers, including independent convenience stores, have been led into competing on price.

Introducing these proposed restrictions would only exacerbate the problems seen on our communities’ high streets and lead to more than just the 80+ independent convenience store closures within the past year (ACS Scottish Local Market Report 2018 v. 2017) as well as also significantly impacting on wholesalers’ sales.

The SWA has supplier and wholesale members whose entire product range will be affected by these disproportionate proposals putting jobs and future investment at risk. One wholesaler which would be affected by the restrictions stated that 30% of their discretionary food would be sold on promotion. One wholesale respondent told us that “Some independent retailers only exist because we promote sales”.

SWA strongly oppose restrictions on promotion of value such as banning the display of price, size or volume of a product on packaging, labelling or signage. Restricting price reductions or size increases or anything denoting value on packaging would represent a major attack on commercial freedom. This would also add costs to the production of packaging and the logistics of delivering differently packaged products in different parts of the UK if different restrictions were in place. It might also drive some manufacturers out of the Scottish market restricting consumer choice.

We note and welcome that the Scottish Government are minded not to include restrictions on price marked packs per se, unless they include any promotion of value.

Free samples – A number of wholesalers have expressed concern at this proposal with one stating “Try before you buy is massive for us. Food manufacturers use it as part of promotions to push new and local products.”

Only by sampling can consumers “taste the difference” and this is often the main marketing tool used by local Scottish businesses. This is especially pertinent where the product may be more



expensive than its nearest competitors and where unless consumers can taste it they are unlikely to buy.

Consumer leaflets - Restricting advertising to consumers through leaflets within retail outlets, online advertising, point of sale tickets/posters and product siting within store will all reduce retailer's footfall and income. This will, by extension, affect wholesalers' sales, revenue and business viability.

We note that the Scottish Government are NOT considering prohibiting wholesalers themselves from providing promotional or marketing material and from making arrangements for the display of foods subject to the restrictions, within the wholesaler's own depots.

Of the 4,962 convenience stores within Scotland (ACS Scottish Local Market Report 2018), 76% are independent and ALL serviced via an SWA wholesaler member or symbol group. Consumer leaflets are critical in helping those retailers promote and highlight their business within their local community and to drive footfall to their stores. It is the wholesalers who produce and fund, most often at no cost to the retailer, this marketing support package including leaflets, point of sale and on-line advertising support to their retail customer base.

This support comes from wholesalers negotiating with their suppliers for assistance with promotional activity through paid advertising. Approximately 50% of this funding comes from HFSS categories/manufacturers. Any reduction in HFSS sales may jeopardise this huge support mechanism for independent Scottish food and drink retailers which will risk the viability of small community convenience stores.

In store advertising - Our members generate revenue income from their manufacturers and suppliers through selling advertising space within their cash and carry depots, trade magazines, promotional leaflets and space within some company owned retail stores.

The benefit is twofold, the advertiser gets their products in front of the trade customer within the magazine or at key display locations within the depot while the wholesaler receives revenue which not only covers the costs but the surplus is reinvested into the business. This may include lowering prices, supplementing margin from lower margin categories, investing in their customer's business and helping them implement Government policy.

As per above, any reduction in HFSS sales may jeopardise this sort of support for our wholesalers and their retailers.

This is also true of many of our members who produce and fund, most often at no cost to the retailer, a marketing package including leaflets, point of sale and on-line advertising support to their retail customer base. Such a marketing package is again funded through the wholesaler selling advertising/promotional space to the manufacturer or supplier, in guarantee of getting their product in front of the consumer.

Restricting advertising to consumers through leaflets within retail outlets, online advertising, point of sale tickets/posters and product siting within store will all reduce retailer income and, as a result, that wholesaler's revenue stream. These are the only mechanisms that many of the 4,962



convenience stores, within Scotland, can use to promote their offering to their local community and customer base.

Upselling - Some SWA members have identified this as a particular concern. There are also clear practical difficulties involved in implementing such a policy. How does the Scottish Government intend to monitor and enforce a restriction on upselling? How might a retailer or wholesaler go about promoting a slightly healthier option to the product selected by the customer for example if that product is more expensive? What will the penalty be for a store employee who tries to sell someone an additional cake at a bakery counter?

Restrictions on branded chillers and floor display units - Many small retailers cannot afford expensive equipment like branded chillers which are provided for free by manufacturers. It is highly unusual in the current market to find a retailer that does not have branded equipment or chillers. This equipment is also used for other non-HFSS products (e.g. milk or ice cubes), without which the retailer may lack the appropriate storage.

Equipment may be branded by manufacturers of HFSS products e.g. Coca Cola, but those manufacturers also supply products which are non-discretionary foods or healthier alternatives, e.g. Coke zero or Diet variants.

Other – One wholesaler, who will be directly affected, has asked if charity promotions will be affected. For example, where by a non-trade customer purchasing a particular product will result in a charity payment being made by the wholesaler.

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)?

The SWA understand the attraction to the Government of treating all food and drinks premises the same. All wholesalers should be exempt, however greater understanding of the Scottish retail marketplace is required to identify a classification to whom the restrictions would not apply.

For example, it would be unfair to impose display restrictions on a small convenience store, or kiosk, where given the physical size of the store they cannot display food products anywhere else but at the checkout or front of store. The converse of this is that a large specialist Chocolate Shop or traditional Sweet Shop could be allowed to continue displaying and promoting wherever they want. Yet a larger convenience store, of the same size and selling fewer confectionery lines, will face the restrictions.

The vast majority of wholesalers supply on a Trade to Trade basis. The SWA have one wholesale member who operate as a membership wholesale club which trades with trade and also trades with defined qualifying individual members e.g NHS staff. Members must apply for membership and pay a fee to join. The vast majority of their business is “Trade to trade”. The company holds enough information to identify and isolate non-trade customers. They already do this with alcohol as a result of MUP. They would be most affected by restrictions on placements; value promotions; free



samples, leaflets and coupons. Options might include exempting this business model from these restrictions. Or they might have to restrict individual members from purchasing certain products which are under offer or may have to charge them a different price. This information would have to be displayed.

If they were covered by the proposals, they would have to make alterations to store layout and to in store advertising which would be disproportionate given the majority of their business is trade. We note that the consultation proposes that positioning restrictions (e.g. in relation to display at aisle ends) should be exempted where there is no reasonable alternative to displaying foods elsewhere. We believe there is a case for that in respect of this wholesaler.

We agree with the Scottish Government's proposal to not include wholesalers which sell to trade customers but would welcome an extension to cover all wholesalers for the sake of clarity.

Question 8

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

Please explain your answer.

SWA does not support these proposed restrictions either in store or online.

We raise a concern that online promotions could lead to a greater shift to online sales, leading to a reduction in high street sales and further retail closures. There may also be greater negative impacts on those socio-economic groups, such as older people or lower income households, who are more likely to shop in store than online.

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

For many small retailers the checkout is also their counter and it represents a significant percentage of the retail space. These display restrictions will hit small convenience stores and traditional CTN (Confectionery, tobacco and newsagents) particularly hard.

It would be unfair to impose display restrictions on a small convenience store, or kiosk, where given the physical size of the store they cannot display food products anywhere else but at the checkout or front of store.

For some businesses which sell nothing but affected products such display restrictions would threaten the viability of their entire business.



As explained in Question 7 above, SWA support the view that small convenience stores, kiosks and CTN stores should be exempt from the positioning restrictions as there are no reasonable alternatives where products might be displayed. This exemption should be based on size rather than being based on the number of employees.

If this exemption was not to be put in place, the placement restrictions placed on small independent retail spaces would be subjective and open to misinterpretation. The wide variety of shop shapes, sizes and layouts would make such interpretations challenging and, most probably, open to dispute and potential appeal.

Question 10

Should food marked as discounted because it is close to expiry be exempt from Positioning restrictions (end of aisle, checkouts etc.) 'Promotion of value' restrictions?

Yes

Please explain your answer.

SWA shares the Scottish Government's ambition to reduce food waste by 33% by 2025.

Question 11

Please list any other exemptions we should consider.

Please explain your answer.

SWA would prefer the Scottish Government to withdraw the proposals considered within this consultation and to work towards a unified UK wide approach which includes reformulation, education and partnership with manufacturers, suppliers, wholesalers and retailers to implement a collaborative solution.

Question 12

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

SWA fail to see how the proposed restrictions could be enforced in a clear, objective, consistent manner across the country particularly if small convenience stores and kiosks are not exempted. We also don't believe that restrictions on upselling could be enforced in any location.

Scotland's local authorities are struggling with the effects of long-term budget reductions. SWA feel it's unlikely they would welcome these further duties being given to Trading Standards Officers without the required degree of financial resources and training.



Due to the proposed range of this policy which affects the whole food and drink supply chain, the lead time would be substantial. Our manufacturer suppliers have packaging that is bought and paid for up to 3 years in advance and promotional and marketing plans between wholesalers and their suppliers are often negotiated at least 1 year in advance.

There would be a need for public education and communication, staff training, repackaging, rebranding and business remodelling. SWA would suggest a lead time of at least 2 years or more.

The Scottish Government worked constructively with SWA and other stakeholders to develop guidance for the implementation of Minimum Unit Pricing. SWA would welcome a similar, open approach from Government in respect of its' plans on Reducing Health Harms of HFSS Foods.

SWA are extremely concerned at the approach set out in the consultation which will risk progress already made on re-formulation and support for retailers via the Healthy Living Fund. To date the Scottish Government have supported manufacturers to re-formulate products and have supported retailers via the HLF.

We would urge the Scottish Government to work in partnership with SWA to investigate positive incentives for Scotland's wholesalers to stock healthier products rather than seeking to restrict commercial freedom and food sector innovation.

Question 13

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

SWA don't believe foods should be targeted in this fashion. While there is general evidence of the health impacts of HFSS foods there is no evidence within the consultation document which justifies the particular promotion and marketing restrictions being advocated.

We believe the Scottish Government are proposing a blanket approach to HFSS discretionary foods because it's assumed this would be simple for consumers and businesses to understand in comparison to targeting food with a defined level of salt or sugar.

We appreciate that the Scottish Government intend to engage nutritionists, to work out which categories will be included and to consult further on these issues. We look forward to seeing greater definition of what HFSS foods would actually be targeted prior to commenting on the proposed approach.

Many of our members are competing and operating in a UK wide marketplace. SWA would prefer to see these issues dealt with on a cross border basis. We can certainly see greater attraction in the approach being taken by the UK Government around nutrient profiling. We appreciate that the Scottish Government intends to undertake further work on this matter and to consult further. We agree with the proposal that there should be an expert technical group set up to define the categories and exclusions.

We would prefer these measures to be considered as part of a UK wide agenda which would also take consideration of the results of the UK Government's recently launched consultation. DHSC state



that their dual aims are to reduce overconsumption of HFSS products but also to encourage businesses to promote healthier products and to further incentivise re-formulation.

If the Scottish Government goes ahead with these proposals SWA would suggest a sunset clause be applied, similar to that applied in the MUP legislation. We would also suggest that the Scottish Government allows sufficient lead in time of at least two years following royal assent, to allow industry partners and local authorities to plan effectively for implementation.

SWA would require more specific definitions of what might be covered by legislation before we could make any further comment on the best legislative approach.

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.

SWA have set out elsewhere in this submission, and in our BRIA response, how these proposals would affect the wholesale distribution sector. We have done so to the best of our abilities however we look forward to seeing greater definition of which HFSS foods would actually be targeted. Wholesalers have told us it's currently impossible to accurately assess the impact of these proposals on their businesses without greater clarity of definition however given average discretionary food turnover we believe these proposals could take up to £305 million out of the Scottish wholesale sector.

If the Scottish Government is determined to take these proposals forward, we would suggest they collaborate on their approach with the UK Government as the vast majority of foods marketed and sold in Scotland are produced and sold throughout the rest of the UK. If different policies are adopted in Scotland versus the rest of the UK, Scottish wholesalers may have to hold dual stock i.e. Scottish packaging which wouldn't include price or value promotions. The SWA believe it makes sense for both the Scottish and UK Government to work together to agree on definitions and to find the most effective approach which does the least economic damage to the food and drink sector and the wholesale industry in particular.

If these restrictions were to be implemented it's likely that sales of discretionary foods would fall. If there is a drop in income and turnover as well as no possibility of retailers being able to advertise price reductions in retail stores it's likely that food prices may rise. The majority of our members will have to refocus their business model towards other departments and areas in order to compensate for the potential loss in sales and more importantly margin. This will lead to higher prices within the rest of the food chain to compensate.

The majority of our members who responded to our requests for information believe that these restrictions have the potential to result in a "phenomenal loss of jobs". The Scottish wholesale sector



directly employs over 6k people, with around 54k other jobs being supported on local high streets across Scotland (FWD Whole Society Report 2018, Scotland representing 10% of UK totals).

One wholesale member whose business comprises almost completely of selling HFSS products have told us these proposals would have a significant impact on their business and they will have to remodel their business to protect their employees' jobs or face potential closure if no feasible alternative model can be found.

Wholesalers who sell both to the trade and to qualifying individuals may be affected directly unless exceptions/exclusions are considered by the Scottish Government or a "dual" process can be found.

Question 15

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

Please explain your answer.

The Scottish Government worked constructively with SWA and other stakeholders to develop guidance for the implementation of Minimum Unit Pricing. SWA would welcome a similar, open approach from Government in respect of its' plans on Reducing Health Harms of HFSS Foods.

SWA appreciate the efforts of officials within the Scottish Government who have met with us to discuss the proposals and taken part in depot site visits to gain an understanding of the wholesale sector. As well as responding to this consultation we have also responded to the BRIA and look forward to continuing to work closely with the Scottish Government and its' proposed expert technical group, which will be set up to define the categories and exclusions. We also plan to respond to the DHSC consultation and urge the UK Government to work collaboratively with the Scottish Government on these issues.

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.

SWA believe that the proposals are likely to lead to a reduction in price promotions and an increase in food prices which represent negative implications for older consumers and for those coping with socioeconomic disadvantage and living on fixed incomes.

These are the clear regressive consequences of the Scottish Government's aims to reduce the affordability and attractiveness of certain products to reduce consumption and minimise impulse buys.



Question 17

Please outline any other comments you wish to make.

SWA would urge the Scottish Government to remove the proposals considered within this consultation and work towards a unified UK wide approach which includes reformulation, education and works closely with manufacturers, suppliers, wholesalers and retailers to implement a collaborative solution.

The cumulative effect, of recent changes and potential restrictions, within the food and drink industry are causing SWA members concern as well as additional costs and administrative burdens in some cases. These include the revaluation of Business Rates, introduction of Minimum Unit Pricing, the proposed Deposit Return Scheme, proposed restrictions in the Out of Home Sector and the upcoming Good Food Nation legislation as well as the UK Government's Soft Drinks Industry.

These changes are set against a particularly difficult economic period for our members and their customers which is being exacerbated by the UK's Withdrawal from the EU. Meanwhile wholesalers and their retail and foodservice customers are dealing with the impact of the discount supermarkets and wider difficulties and closures on high streets across the country. SWA trust the Scottish Government will bear these challenges in mind and work with industry to deliver a public health food policy which is collaborative, effective and proportionate.