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Consultation outcome

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

Updated 28 December 2020

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## Executive summary

The aim of this policy is to restrict the promotion of foods high in fat, sugar and salt in favour of healthier options to help improve people's diets and reduce children's sugar intakes.

Obesity is one of the biggest health problems this country faces. Two-thirds of adults are above a healthy weight, and over a fifth of children in England are overweight or living with obesity by the time they start primary school aged 5, and this rises to one third by the time they leave aged 11.

Regular overconsumption of food and drink high in calories, sugar and fat can lead to weight gain and, over time, obesity, which in turn has a significant impact on health and wellbeing and increases the risk of obesity related diseases.

The COVID-19 pandemic has highlighted the impact that obesity can have on people's health and health outcomes. Evidence suggests people living with obesity who contract COVID-19 are more likely to be admitted to hospital and have an increased risk of dying from COVID-19 compared to non-obese patients. Tackling obesity is therefore an immediate priority to support individuals and the NHS.

There has been growing concern about the impact of promotional offers ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/470175/Annexe\\_4\\_Analysis\\_of\\_price\\_promotions.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/470175/Annexe_4_Analysis_of_price_promotions.pdf)) on influencing and shaping food preferences toward less healthy products<sup>[footnote 1]</sup>. Evidence shows promotions are effective at influencing purchases and tend to be heavily skewed towards less healthy options. Volume price promotions lead us to buy almost 20% more than we otherwise would, and location promotions often lead to 'pester power' from children.

Some supermarkets have made voluntary commitments in this space, for example pledges to no longer sell confectionery at checkouts and stopping volume promotions and we welcome this action from forward thinking retailers. However, these commitments are not implemented consistently or at scale and therefore do not support a level playing field for business nor for the consumer.

In 'Childhood Obesity: a plan for action, chapter 2' (<https://www.gov.uk/government/publications/childhood-obesity-a-plan-for-action-chapter-2>), published in June 2018, the government announced its intention to ban promotions of products high in fat, sugar and salt (HFSS) by location and price through legislation and consult on how this policy should be implemented. The consultation ran from 12 January to 6 April 2019 and received 807 responses from individuals, businesses, and organisations. Around 60% of respondents were in favour of the government's proposal to restrict HFSS promotions.

Following consultation, the government announced in Tackling obesity: empowering adults and children to live healthier lives (<https://www.gov.uk/government/publications/tackling-obesity-government-strategy/tackling-obesity-empowering-adults-and-children-to-live-healthier-lives>), published in July 2020, that it has decided to introduce legislation to restrict promotions of HFSS products by location and price in retailers that sell food and drink in-store and online in England. The government intends to lay legislation by mid-2021. We will shortly be consulting further with Local authorities and business representatives on how the policy should be enforced.

This policy will significantly improve our food environment and therefore plays a key role in achieving the government's ambition to halve childhood obesity by 2030.

## Summary of policy

Promotion of HFSS products will be restricted by location and volume price as follows:

Locations restrictions will apply to store entrances, aisle ends and checkouts and their online equivalents (that is, entry pages, landing pages for other food categories, and shopping basket or payment pages).

Volume price restrictions will prohibit retailers from offering promotions such as "buy-one-get-one-free" or "3 for 2" offers on **H.F.S.S.** products.

## Products in scope of the restrictions

The 2004/2005 Nutrient Profiling Model (<https://www.gov.uk/government/publications/the-nutrient-profiling-model>)<sup>[footnote 2]</sup> will be used to define whether a product is **H.F.S.S.**

Prepacked food and drink in the following categories will be in scope of the restrictions: soft drinks, cakes, chocolate confectionery, sugar confectionery, ice cream, morning goods (for example pastries), puddings, sweet biscuits, breakfast cereals, yoghurts, milk-based drinks with added sugar, juice based drinks with added sugar, pizza, ready meals, meal centres, including breaded and battered products, crisps and savoury snacks, chips and similar potato products.

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

## Businesses in scope of the restrictions

The restrictions will apply to medium and large retailers (with 50 or more employees), including symbol group stores. The following businesses will be exempt from the restrictions:

### Exemptions for volume price restrictions:

- micro and small businesses (fewer than 50 employees)

### Exemptions for location restrictions:

- micro and small businesses (fewer than 50 employees)
- stores that are smaller than 185.8 square metres (2,000 square feet) (even if they are part of a medium or large business with 50+ employees)
- specialist retailers that sell one type of food product category, for example chocolatiers or sweet shops

## Introduction

### The impact of obesity

Obesity is one of the biggest health problems this country faces. Over a fifth of children in England are obese or overweight (<https://digital.nhs.uk/data-and-information/publications/statistical/national-child-measurement-programme>) by the time they start primary school aged 5, and this rises to more than one third by the time they leave aged 11<sup>[footnote 3]</sup>. The proportion of children who are overweight or obese in the UK overall is among the highest in Western Europe<sup>[footnote 4]</sup>. Children are becoming obese at earlier ages and staying obese for longer (<https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001828#abstract0>)<sup>[footnote 5]</sup>. Among adults, around two-thirds are above a

healthy weight, and of these, half are living with obesity. (<https://digital.nhs.uk/data-and-information/publications/statistical/statistics-on-obesity-physical-activity-and-diet/england-2020/part-3-adult-obesity-copy>)<sup>[footnote 6]</sup>

Obesity can have serious consequences for our health. The number of children admitted to hospital for obesity (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3680468/>) and related conditions has quadrupled in the last decade<sup>[footnote 7]</sup>. Individuals who are obese in their early years are more likely to become obese adults, putting them at a higher risk of ill-health (<https://bmcpublichealth.biomedcentral.com/articles/10.1186/1471-2458-9-88>), such as heart disease, type 2 diabetes, several types of cancer and fatty liver disease, and premature death<sup>[footnote 8]</sup>,<sup>[footnote 9]</sup>.

Evidence also shows that people living with obesity are significantly more likely to become seriously ill and be admitted to intensive care with COVID-19 (<https://www.medrxiv.org/content/10.1101/2020.04.23.20076042v1.full.pdf>) compared to those with a healthy weight<sup>[footnote 10]</sup>.

Obesity also has huge costs to society. It has been estimated that the indirect cost to the UK economy from obesity related conditions (<https://www.gov.uk/government/publications/health-matters-obesity-and-the-food-environment/health-matters-obesity-and-the-food-environment--2>) is around £27 billion per year<sup>[footnote 11]</sup>, with some estimates placing this figure much higher. It is estimated that in England, obesity-related conditions are currently costing the NHS £5.1 billion per year (<https://pubmed.ncbi.nlm.nih.gov/21562029/>)<sup>[footnote 12]</sup>. From 2018 to 2019, figures show that nearly 900,000 admissions to hospital were related to obesity (<https://digital.nhs.uk/data-and-information/publications/statistical/statistics-on-obesity-physical-activity-and-diet/england-2020/part-1-obesity-related-hospital-admissions-copy>)<sup>[footnote 13]</sup>.

## The role of diet and calorie overconsumption

Data shows that children and adults in the UK are not eating balanced diets. We consume too much sugar, saturated fat and salt and too many calories, but not enough fibre, fruit and vegetables.

Data specifically shows that children between 11 to 18 years old consume up to three times the recommended maximum amount of sugar (<https://www.gov.uk/government/statistics/ndns-results-from-years-7-and-8-combined>)<sup>[footnote 14]</sup>. On average, compared with those with ideal body weights, children who are overweight or living with obesity consume between 146 and 505 kcals more than they need per day for boys, and between 157 and 291 kcals per day for girls (<https://www.gov.uk/government/publications/calorie-reduction-the-scope-and-ambition-for-action>)<sup>[footnote 15]</sup>. There is a clear link between high sugar intake and excess calorie consumption (<https://www.gov.uk/government/publications/sacn-carbohydrates-and-health-report>), which increases the risk of weight gain and obesity<sup>[footnote 16]</sup>. In addition to weight gain and related ill health, consuming too much sugar and too many foods and drinks high in sugar can lead to tooth decay, which is currently the most common reason for child hospital admissions (<https://bda.org/news-centre/blog/childrens-oral-health-the-cost-of-complacency>)<sup>[footnote 17]</sup>.

Obesity is caused by consistently consuming more calories than we expend. Taking action to help reduce this excess calorie consumption will decrease obesity prevalence and obesity related ill health over time.

## Price and location promotions: evidence summary

It is clear from the academic evidence that promotions in stores are extensive, deep and effective at influencing food preferences and purchases

([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/470179/Sugar\\_education\\_The\\_evidence\\_for\\_action.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/470179/Sugar_education_The_evidence_for_action.pdf))<sup>[footnote 18]</sup>. Public Health England (PHE) has recommended that reducing and rebalancing promotions towards healthier food and drink is essential to help reduce population sugar and calorie intakes and help tackle obesity. Healthier options include products that are lower in calories, saturated fat, salt or sugar or higher in fruit, vegetables or fibre.

Although promotions appear to be mechanisms to help consumers save money, data shows (<https://www.gov.uk/government/publications/sugar-reduction-from-evidence-into-action>) that they increase consumer spending by encouraging people to buy more than they intended to buy in the first place. Price promotions appeal to people from all demographic groups and increase the amount of food and drink people buy. Promotions on food and drink in the UK reached record levels in 2015 and were the highest in Europe, with 40% of the food and drink people purchased being on promotion<sup>[footnote 19]</sup>. The latest data (<https://www.gov.uk/government/publications/sugar-reduction-from-evidence-into-action>) shows that we buy almost 20% more as a direct result of promotions<sup>[footnote 20]</sup>. Consumers typically do not stockpile these extra purchases to take advantage of the lower price, instead they increase their consumption (<https://www.gov.uk/government/publications/sugar-reduction-from-evidence-into-action>)<sup>[footnote 21]</sup>. Evidence also shows that volume promotions (multi-buys) cause a greater sales uplift compared to other types of price promotions such as simple price reductions. According to the latest data from PHE (<https://www.gov.uk/government/publications/sugar-reduction-progress-between-2015-and-2018>), promotions of chocolate remain high, with around half of chocolate purchased being on promotion<sup>[footnote 22]</sup>.

Evidence from Cancer Research UK ([https://www.cancerresearchuk.org/sites/default/files/paying\\_the\\_price\\_-\\_full\\_report.pdf](https://www.cancerresearchuk.org/sites/default/files/paying_the_price_-_full_report.pdf)) shows that shoppers who buy more of their food and drink on promotion tend to purchase more H.F.S.S products, in greater volume, and are more likely to be overweight or living with obesity<sup>[footnote 23]</sup>.

The shopping environment plays an important part in the way products are marketed to us, with simple factors such as the location of products within stores significantly affecting what we buy. For example, end of aisle displays can increase sales of soft drinks by over 50% (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4008933/>)<sup>[footnote 24]</sup>. Children are uniquely vulnerable to the techniques used to promote sales<sup>[footnote 25]</sup>. These effects can then be transmitted into the purchasing behaviours of parents through 'pester power'<sup>[footnote 26]</sup>, with evidence (<https://academic.oup.com/heapro/article/29/2/267/2805693>) showing 70% of parents purchased at least one food item requested during a shopping trip<sup>[footnote 27]</sup>.

The retail promotional environment does not align with healthy eating guidelines and makes it harder for families to make healthier choices when shopping. A recent survey from the Obesity Health Alliance (<http://obesityhealthalliance.org.uk/wp-content/uploads/2018/11/Out-of-Place-Obesity-Health-Alliance-2.pdf>) showed that 43% of all food and drink products located in prominent areas, such as store entrances, checkouts, and aisle ends were for sugary foods and drinks. 70% of these products were for food and drinks that contribute significantly to children's sugar and calorie intakes and less than 1% of food and drink products promoted in high profile locations were fruit or vegetables<sup>[footnote 28]</sup>.

## Rationale for intervention

It is clear that promotional offers can influence and shape food purchases, and they often determine the choices in our shopping baskets and eating habits. Currently, these offers tend to be widespread for less healthy, processed, and 'treat' type products, to the expense of healthier choices such as minimally

processed and nutritious food. Food categories in scope of this policy are set out in appendix 2.

Voluntary commitments to restrict promotions of **H.F.S.S.** food and drink have been limited or unsuccessful in the past. The Public Health Responsibility Deal (<https://www.gov.uk/government/news/public-health-responsibility-deal>) (**RD**)<sup>[footnote 29]</sup>, a partnership between government and industry, was unsuccessful in encouraging retailers to reach a common voluntary agreement on promotions. The evaluation of the **RD** (<https://www.sciencedirect.com/science/article/abs/pii/S0306919215000391>) clearly showed the programme failed to encourage concerted action from businesses to establish healthier shopping environments and therefore did not have the anticipated impact on helping people make healthier choices<sup>[footnote 30]</sup>.

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

Government is committed to making the healthier choice the easy choice for families. This policy can significantly improve our food environment by ensuring healthier food is more widely available, more easily accessible and more visible in shops, and ultimately support people to lead healthier lives.

In addition, there is public support for action on food and drink promotions. Polling has shown:

- just over half of people polled said that supermarkets should offer more healthy food in promotions (<https://press.which.co.uk/whichpressreleases/more-supermarket-promotions-on-less-healthy-food/>), and this was named as the top action shoppers wanted from retailers<sup>[footnote 31]</sup>
- 66% of people support reducing price promotions of unhealthy food (<https://www.cancerresearchuk.org/about-us/cancer-news/press-release/2016-02-08-public-back-ban-on-childrens-junk-food-advertising>)<sup>[footnote 32]</sup>
- more than 90% of respondents to a nationwide survey believe that **H.F.S.S.** foods at checkouts contribute to obesity (<https://www.foodingredientsfirst.com/news/bda-calls-for-uk-government-action-to-chuck-junk-food-off-the-checkout.html>)<sup>[footnote 33]</sup>
- 78% of shoppers said they found 'junk food' at checkouts 'annoying'; and 83% of them had been pestered by children to buy food at checkouts (<https://www.foodingredientsfirst.com/news/bda-calls-for-uk-government-action-to-chuck-junk-food-off-the-checkout.html>) with 75% giving in and buying something through 'pester power'<sup>[footnote 34]</sup>
- 72% of people support restricting promotion of unhealthy food in prominent places (<http://obesityhealthalliance.org.uk/2020/06/03/74-of-the-public-support-government-action-on-obesity-in-the-wake-of-emerging-links-with-covid-19/>) like checkouts<sup>[footnote 35]</sup>

## Consultation

In chapter 2 of the Childhood Obesity Plan (<https://www.gov.uk/government/publications/childhood-obesity-a-plan-for-action-chapter-2>), published June 2018, the government set out its intention to ban promotions of **H.F.S.S.** products by location and by price and committed to consult on how this should be implemented<sup>[footnote 36]</sup>. The consultation was launched on 12 January 2019, closed on 6 April 2019 and received 807 responses.

The aim of this policy is to reduce overconsumption of **H.F.S.S.** products that can contribute to children being overweight or living with obesity through:

- restricting volume price promotions of **H.F.S.S.** food and drink products that specifically encourage overconsumption, such as multi-buy offers (for example buy one get one free) and free refills of sugary soft drinks
- restricting the placement of **H.F.S.S.** food and drink products at key selling locations such as store entrances, checkouts and aisle ends which can lead to peer power and impulse purchases of **H.F.S.S.** products
- shifting the balance of promotions towards healthier options such as minimally processed and nutritious food and maximising the availability of healthier products that are offered on promotion, to make it easier for parents to make healthier choices when shopping for their families by encouraging retailers to use promotions for healthier foods

The consultation specifically sought views on:

- which businesses, products and types of price and location promotions should be in scope of the restrictions
- how **H.F.S.S.** products should be defined
- how the proposal should be implemented

## **Consultation summary**

The consultation received significant interest with 807 responses from individuals, businesses and organisations.



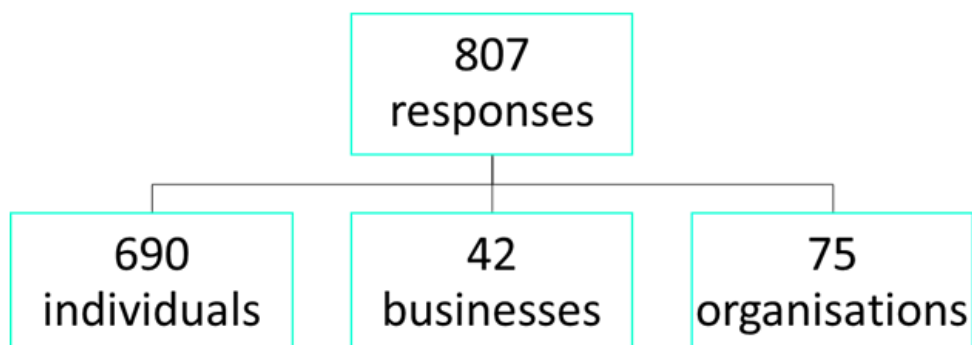


Figure 1: responses by individuals, businesses and organisations

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

Overall, there was support for introducing restrictions for promotions of HFSS products, with around 60% of respondents agreeing that the restrictions should apply to all retail businesses that sell food and drink products in England. There were noticeable differences between views from individuals, business and organisations. 57% of individuals agreed with introducing restrictions and organisations were overwhelmingly supportive with 95% in agreement. Businesses were less supportive of the proposal with only 26% saying that the restrictions should be introduced.

Within the business responses, retailers tended to be more supportive of the price restrictions but strongly against the location restrictions, and manufacturers tended to disagree with both the price and location restrictions. The overarching themes from businesses' responses included the need for a level playing field across the food industry and the need to ensure that the policy is proportionate and will have an impact on childhood obesity.

## Breakdown of consultation responses and analysis

807 responses were submitted in total, with 750 submitted via the online survey and 57 via email.

Responses were analysed by Department of Health and Social Care (DHSC) policy and analyst officials. The majority of questions provided the opportunity for respondents to give a justification for their answer or provide additional information in a free text box. All free text responses were read by DHSC officials and grouped into discrete themes to give an indication of respondents' views on the questions.

The analysis presents data by respondent type (individual/business/organisation) and outlines the % of yes/no responses (to note that the % do not necessarily add up to 100 because not all questions were answered by all respondents). The data also indicates the most common views expressed in the free text sections.

The consultation outcomes are grouped and presented in the themes below:

- Which businesses should be in scope of the restrictions?
- Which food and drink products should be in scope of the restrictions?
- How should HFSS products be defined?
- Which types of price promotions should be in scope?
- Which types of location promotion should be in scope?
- Policy options presented in the consultation
- How long should the policy be implemented?
- How should the policy be enforced?

## **Which businesses should be in scope of the restrictions? Consultation questions: 1 to 4, 6 to 7, 28 to 32**

### **Consultation feedback**

The consultation asked for views on government's proposal that the restrictions should apply to all businesses that sell food and drink in England, including franchises, online retailers and retailers that do not primarily sell food and drink, such as clothes shops and newsagents.

59% of respondents agreed that the restrictions should apply to all retailers that sell food and drink including franchises and the most common reasons provided was that it would increase the impact of the policy and promote a level playing field for industry. Around 39% said that restrictions should not be introduced; the most common reason given by individuals was that they felt the proposal interferes with consumers' free choice and that government should not be introducing regulations in this space.

50% of respondents agreed that the restrictions should also apply to online shopping, the most common reasons provided was to reflect the increasing trend of people shopping online and to ensure a level playing field with retailers that only operate online; 39% said the restrictions should not apply to online shopping, the most common reasons provided was that respondents disagreed with the proposal being introduced in the first place.

53% agreed that the restrictions should also apply to retailers who do not primarily sell food or drink, the most common reasons provided was because this would help reduce the pester power that parents face due to the prominent display of HFSS products even when they are not purchasing food and drink; 37% disagreed with this proposal.

Government also sought views on a list of specific exemptions including for microbusinesses (businesses with fewer than 10 employees), specialist retailers who sell one type of product, for example chocolatiers or sweet shops and very small stores in terms of size, which may not have distinct areas

such as checkout or store entrance.

Regarding whether price restrictions should apply to micro businesses, 44% of responses stated micro businesses should be included and 38% that they should be excluded. The common reasons were that the restrictions should apply to all businesses to ensure consistency and a level playing field. Not all businesses provided a response to this question, for those that did the majority supported the policy applying to all businesses. An industry association representing small and micro businesses felt the restrictions should not apply to small or micro businesses. They argued that smaller shops should be exempt from the location restrictions for practical reasons and that volume promotions are an important tool for independent retailers to respond to competition.

Regarding specialist retailers, 49% of respondents said that the price restrictions should not apply to them, the most common reasons provided was because this would cause significant implementation challenges for those businesses. Some individual respondents also argued that there should be no restrictions and that government should not intervene. However, 34% said that specialist retailers should be included to ensure a level playing field. The same question was asked with respect to the location promotions and 54% of respondents said it should not apply to specialist retailers, the most common reasons provided was because it would not be practically possible to implement and that people go into these shops with the intention of purchasing H.F.S.S. products. Again, some argued that there should be no restrictions and the government should not intervene. However, 26% of respondents said specialist retailers should be included, the most common reason provided was to ensure a level playing field.

Regarding the small stores' exemption, the majority of respondents said that this was a sensible exemption to ensure the restrictions are proportionate and realistic. The consultation specifically asked for views on an appropriate store size cut off. One industry association suggested a threshold of 3,000 square feet should be used to exclude smaller stores where they argue it would not be practical to apply the restrictions due to limited space.

## Discussion

Following careful consideration of the feedback received, government has decided that the restrictions will apply to medium and large businesses (which we are defining as 50 or more employees, see section 172 of the Taxation (International and other provisions) Act 2010

(<https://www.legislation.gov.uk/ukpga/2010/8/section/172>)<sup>[footnote 37]</sup>) that sell food or drink in England. This includes franchises with multiple businesses operating under the same name (where the total number of employees operating under that business name is 50 or more). The restrictions will also apply to retailers who do not primarily sell food or drink (that is, DIY stores, clothes shops) to ensure that shopping environments do not incentivise excess purchases of H.F.S.S. products, but instead support people to make healthier choices wherever they shop.

Further data analysis and stakeholder engagement was conducted and, as a result, the government decided to exempt micro businesses (fewer than 10 employees) and small businesses (10 to 50 employees) from both the price and location restrictions. We recognise that smaller businesses may find implementing the restrictions challenging and burdensome due to the time, resource and expertise needed. In contrast, medium and large businesses (more than 50 employees) have a greater turnover and more staff, and typically have greater expertise and knowledge within the business to adapt to new legislative requirements. Furthermore, according to our analysis, micro and small businesses represent a small proportion (less than 20% in terms of turnover) of the food and drink retail market and therefore their inclusion was not deemed proportionate or necessary to achieve the initial policy aims. We will produce detailed guidance to support businesses to prepare for and implement the restrictions prior to laying the regulations.

The restrictions will however apply to symbol groups or arrangements where multiple businesses operate under the same name, where the total number of employees operating under that business name is 50 or more for example franchises. The symbol group is considered a large business which has small and micro independent and multiple retailers trading under the group name. Businesses that are part of a symbol group will benefit from support which can help mitigate the impacts that other smaller businesses face. Government decided that the price restrictions will also apply to online shopping due to the significant increase in online shopping and to promote a level playing field with retailers that mainly or only operate online. We also intend to mirror the location restrictions for online equivalents (for example the pop-up page prompting shoppers to purchase H.F.S.S products before the online checkout stage).

Consideration of these restrictions will form part of the monitoring and evaluation of this policy and its impact on the food environment.

With regard to specialist retailers who only sell a specific type of H.F.S.S products (for example chocolate or sweets), we recognise that the location restrictions would be impractical for them to implement and would likely lead to significant disruption to their business. This, however, is not the case for price restrictions if they sell products that are included in the categories in scope of the restrictions. Therefore, specialist retailers are exempt from location restrictions but not from price restrictions.

Having considered industry feedback and conducting further stakeholder engagement with regard to exemptions based on the size of a store, the government has decided that stores 185.8 square metres (2,000 square feet) or greater will be in scope of the location restrictions because they are expected to have distinct checkout and front of store areas and typically have multiple aisles and aisle ends. We will be ensuring that the definitions in the regulations are fit for purpose through our enforcement consultation discussed under how the policy should be enforced.

Using the 185.8 sq m (2,000 sq ft) size threshold also means that retailers that operate on Sundays that are just under 3,000 square ft (as required in the Sunday Trading Act) will be in scope of the location restrictions. However, small and micro businesses with stores over 185.8 sq m (2,000 sq ft) are excluded from the policy.

## **Which food and drink products should be in scope of the restrictions?**

### **Consultation questions: 5, 15 to 17, 24 to 26, 32**

#### **Consultation feedback**

The consultation proposed that the restrictions should apply to H.F.S.S products which fall in the categories included in P.H.E's sugar and calorie reduction programmes and in the Soft Drinks Industry Levy (SDIL) (table 1).

Overall, for volume and location promotions, 47% and 48% of respondents, respectively, agreed that the restrictions should apply to these categories, due to the negative health effects associated with these products, specifically for children. However, 39% and 38% of respondents for price and location promotions respectively, disagreed with restrictions being applied to these categories. Around 67% of organisations were heavily in favour of this proposal, the most common reasons provided were that these product categories are heavily promoted and linked to childhood obesity.

Looking specifically at industry responses, 57% and 50% of businesses, for volume and location promotions respectively, disagreed with the proposed product categories. Arguments included that government should not intervene and restrict promotions or that the scope was too broad, not all of

these products are linked to childhood obesity and this proposal would lead to a disproportionate burden for industry. For location and volume promotions, 18% and 34% of businesses respectively said the restrictions should only apply to a specified list of 'discretionary' product categories in alignment with Scotland's proposal on promotion restrictions that was consulted on in 2019. These categories are defined as products that are not essential to the diet and do not provide useful nutrients, and include the following: chocolate and sweet confectionery, sweet biscuits, cakes, puddings and dairy desserts, morning goods (for example pastries), ice cream, soft drinks with added sugar, crisps and savoury snacks. Annex 1 provides further information on exemptions requested for specific product categories.

Government also asked for views on whether non-prepacked products, for example, food sold loose such as croissants, or food served in out-of-home businesses like restaurants and cafes, should be exempt from the price and location restrictions due to the practical difficulties that may arise from the lack of nutritional information being available on pack. Overall, between 42% and 43% of responses were in favour of including non-prepacked products in both the restrictions, the most common reasons provided were for consistency and to ensure a level playing field and because non-prepacked products may be equally **H.F.S.S.** as prepacked products. Between 39% and 40% of respondents said non-prepacked products should not be in scope, the most common reasons provided were that there should be no restrictions, the government should not intervene and the likely implementation challenges in determining whether products are **H.F.S.S.**

## Discussion

We recognise the concerns raised about the wide scope of the consultation proposal and we appreciate the challenges that this may present for businesses. Having conducted further analysis and extensive stakeholder engagement, government decided that the restrictions should apply to product categories that are the biggest contributors to children's sugar and calorie intakes and are heavily promoted, and therefore are the categories of most concern for childhood obesity. A revised list of included products is shown in table 1. This is largely aligned with the categories that are included in **P.H.E.**'s sugar and calorie reduction programmes and drinks subject to the SDIL. Government decided that non-prepacked products should be out of scope because businesses may not be able to determine whether these products can or cannot be promoted due to the lack of nutritional information on pack.

The restrictions will therefore apply only to **H.F.S.S.** prepacked products in the following categories: soft drinks, cakes, chocolate confectionery, sugar confectionery, ice cream, morning goods (for example pastries), puddings, sweet biscuits, breakfast cereals, yoghurts, milk-based drinks with added sugar, juice based drinks with added sugar, pizza, ready meals, meal centres, including breaded and battered products (for example curries, chicken nuggets, breaded chicken/fish), crisps and savoury snacks, chips and similar potato products.

Many businesses felt that only discretionary products should be in scope of the restrictions. However, this would not capture all products of most concern. We believe that the proposed shorter list of categories strikes the best balance between delivering a policy that will deliver significant health benefits, while taking into account feedback from industry on feasibility, implementation and the likely cost resulting from the policy. We will keep the products that are in scope of the restrictions under continual review to monitor impact and mitigate for any unintended consequences in future.

### **Table 1: comparison of product categories in scope for the consultation stage proposal and the revised proposal following consultation and feedback from stakeholders**

<b>Products in scope of the restrictions in the consultation</b>	<b>Products in scope of the restrictions post consultation</b>
Soft drinks	Soft drinks
Chocolate confectionery	Chocolate confectionery
Sugar confectionery	Sugar confectionery
Cakes	Cakes
Ice cream	Ice cream
Morning goods	Morning goods
Puddings and dairy desserts	Puddings and dairy desserts
Sweet biscuits	Sweet biscuits
Breakfast cereals	Breakfast cereals
Yoghurts	Yoghurts
Milk based drinks with added sugar	Milk based drinks with added sugar
Juice based drinks with added sugar	Juice based drinks with added sugar
Pizza	Pizza
Crisps and savoury snacks	Crisps and savoury snacks
Ready meals and meal centres	Ready meals and meal centres including breaded and battered products
Chips and potato products	Chips and potato products
Garlic bread	
Pies and quiches	
Bread with additions	
Savoury biscuits crackers and crispbreads	
Cooking sauces and pastes	

Products in scope of the restrictions in the consultation	Products in scope of the restrictions post consultation
Table sauces and dressings	
Processed meat products	
Pasta /rice/ noodles with added ingredients and flavours	
Prepared dips and composite salads as meal accompaniments	
Egg products /dishes	
Sweet spreads	

## How should H.F.S.S products be defined? Consultation question: 27

### Consultation feedback

The consultation proposed that the 2004/05 Nutrient Profiling Model (<https://www.gov.uk/government/publications/the-nutrient-profiling-model>) (N.P.M)<sup>[footnote 38]</sup> is used to define H.F.S.S products.

Overall, most respondents were in favour of using the N.P.M, with 40% of respondents saying it is an appropriate method to define H.F.S.S, 39% saying it is not, and 21% not providing a response. Generally, individuals said that although they were unfamiliar with the details of the N.P.M, it sounded like a good method to use. Organisations were strongly in favour, with 64% agreeing with the use of the 2004/05 N.P.M and many respondents asking that government commits to review this policy in future with a view to using the revised N.P.M when it becomes available. Businesses were not in support, with 14% in favour of the N.P.M and 48% disagreeing with the use of the model, the most common reasons provided were that it is a very strict model which demonises products and that it could disincentivise voluntary reformulation as it would require unrealistic reductions in the sugar, fat or salt in their products. Some businesses suggested the 'traffic light' system should be used, and some retailers said that the healthiest products within a category should be allowed to be promoted.

Some soft drinks businesses and the sector trade body requested that the SDIL threshold of 5g sugar per 100ml be used to determine whether soft drinks can be promoted, to allow those drinks that have been reformulated or launched to be under the SDIL thresholds to be promoted.

### Discussion

Having carefully considered the consultation feedback and likely implications, government decided that the 2004/05 Nutrient Profiling Model (N.P.M) is the most appropriate method to define H.F.S.S products for the purposes of this policy. Having multiple methods of defining H.F.S.S would likely cause confusion for businesses and consumers and the overall approach would lack clarity.

The **NPM** is based on scientific evidence and it is already used by industry to determine which products can or cannot be advertised to children on TV during children's viewing times. The **NPM** provides an overall assessment of the nutritional content of products as it accounts for nutrients of concern (fat, sugar, salt and calories), as well as beneficial nutrients (fibre, fruit and vegetable content).

The government does not propose to use the revised **NPM** as it has not yet been published. We will keep the promotions policy under review to monitor and evaluate impact but any proposal to use the revised **NPM** would require further consultation.

We recognise that for some products which are inherently **HFS**, reformulation to achieve the **NPM** threshold will be more challenging. However, there are other incentives, such as consumer demand for healthier products, the possibility of making nutrition claims, and **PHE's** reformulation programme, which can encourage manufacturers to reduce the salt, fat and sugar levels in their products.

The option to use the front-of-pack nutrition labelling scheme to define products in scope was also considered but this approach was not considered appropriate as it does not consider the overall nutritional content of the product in the same way as the **NPM**. Therefore, it would not give products a representative and appropriate scoring for the purposes of this policy.

Regarding the suggestion made by soft drinks businesses; after careful consideration the government decided that the SDIL threshold is not an appropriate model to define **HFS** drinks because it only takes into account added sugar and therefore does not present a complete assessment of the nutritional quality of a product. Drinks that are below the SDIL threshold are not necessarily healthy. Using multiple ways to define **HFS** products for different product categories would also risk confusion for businesses and lead to inconsistencies and implementation challenges. A consistent approach is more likely to render the policy effective and easier to implement.

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

### **Consultation feedback**

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

There was overall support for the restrictions to apply to volume promotions, with 58% agreeing with the proposal and 38% disagreeing. The most popular comments respondents gave were that these offers are mainly used to promote **HFS** products and are linked to overconsumption and obesity, and that the policy would help people make healthier choices.

Organisations were overwhelmingly in support, with around 90% agreeing with the proposal, and 57% of individuals also agreed. 38% of businesses were against restricting volume promotions and 19% were in favour. Although overall businesses were not supportive of the restrictions, there was some understanding, particularly among large retailers and some trade bodies, that these volume price promotions can and do encourage overconsumption and therefore, if government takes action, restricting volume promotions is an appropriate way forward.

The consultation also proposed that free refills of sugary soft drinks are in scope of the restrictions because they may encourage overconsumption of soft drinks, which are the biggest source of sugar in children's diets. Consultation responses were largely supportive of this measure due to the well-known



link between sugary soft drinks and negative health outcomes. Retailers and manufacturers were also in favour, as it would contribute to levelling the playing field with the out-of-home sector.

The consultation asked for views on whether there are other types of promotion that should be restricted for food and drink consumed outside the home, for example '3 courses for £X', 'kids eat free', and meal deals. Overall, 56% of respondents said no and 21% said yes. However, 45% of respondents said that meal deals (for example sandwich, snack and drink) should be in scope of the restrictions and 38% said they should not be in scope.

## Discussion

Evidence shows that volume price promotions encourage over-purchasing of H.F.S.S. products and result in a greater sales uplift compared to other types of promotion such as simple price reductions and can lead to overconsumption, as people do not typically tend to stockpile these additional purchases. The latest data shows that these promotions are heavily skewed towards H.F.S.S. products and remain prevalent in the majority of retailers.

Evidence submitted from Cancer Research UK

([https://www.cancerresearchuk.org/sites/default/files/paying\\_the\\_price\\_-\\_full\\_report.pdf](https://www.cancerresearchuk.org/sites/default/files/paying_the_price_-_full_report.pdf)) showed that shoppers who buy more of their food and drink on price promotion tend to purchase more H.F.S.S. products in greater volume and are more likely to be overweight or living with obesity<sup>[footnote 39]</sup>.

Having considered the consultation feedback and the available evidence, government decided that the price restrictions will apply to 'volume promotions' of prepacked H.F.S.S. products within the product categories in scope.

This restriction does not prohibit manufacturers from labelling their products with volume promotions. However, such products could not be offered for sale by a medium or large retailer.

With regard to free refills of sugary drinks, data shows that children consume up to 3 times more sugar than the daily recommended level and there is strong evidence showing that this overconsumption contributes to weight gain and, over time, obesity. In addition, we know that eating outside the home contributes around a quarter of children's daily calories, therefore it can play a significant role in excess calorie intake. Therefore, government decided that the restrictions will also apply to free refills of sugar-sweetened beverages (that are in scope of the SDIL but defined as H.F.S.S. using the N.P.M) in the out-of-home sector and that free refills will be available only for low/no sugar soft drinks.

In line with our initial proposal, government decided that promotions in the out-of-home sector and meal deals will not be in scope of the restrictions. Offers in the out of home sector are generally targeted to multiple individuals eating out together as a group and it is not the aim of this policy to make it more expensive for families eating out. In addition, there are practical problems with calculating the N.P.M on unpackaged foods due to the lack of nutrition information on pack. Meal deals are generally targeted as lunch options for adults to consume on the go that day rather than being stockpiled at home; and they aim to reduce the cost of a single meal. Therefore, it was decided that both these types of price promotion will not be in scope of the restrictions.

## Which location promotions should be in scope of the restrictions? Consultation questions: 21 to 23

### Consultation feedback

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

Overall, there was support for the restrictions to apply to these in store locations with 59% of respondents agreeing and 37% disagreeing. The most frequent justifications respondents gave for their answers were that these locations are the most visible in stores, they attract shoppers, and they lead to unwanted impulse purchases of HFSS and peer power for parents. Looking at responses from individuals (59% in support) and organisations (93% in support) there were strong views that HFSS products should be placed in their dedicated aisle in stores to reduce unnecessary temptation for consumers.

However, businesses were heavily against location restrictions, saying they would cause significant operational challenges particularly for small size outlets, and the associated costs would not be proportionate.

## Discussion

Evidence from the Obesity Health Alliance (<http://obesityhealthalliance.org.uk/wp-content/uploads/2018/11/Out-of-Place-Obesity-Health-Alliance-2.pdf>) that was submitted in the consultation showed 43% of all food and drink products located in prominent areas, such as store entrances, checkout areas and aisle ends were for sugary foods and drinks and less than 1% of food and drink products promoted in high profile locations were fruit or vegetables<sup>[footnote 40]</sup>.

Additional evidence submitted in the consultation shows that restricting the placement of HFSS foods at checkouts could have a significant impact on the amount purchased. A 2018 study found 7% fewer small packages of sugary confectionery, chocolate, and crisps were bought from supermarkets after they announced a 'healthier checkout food' policy restricting the availability of those products. One year after, the difference was around 16% fewer. Furthermore, in retailers who introduced healthier checkouts (<https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002712#sec015>), people bought 76% fewer small packages of sugary confectionery, chocolate, and crisps over 2 years<sup>[footnote 41]</sup>.

Many major retailers have already committed to 'healthier checkouts', for example Aldi and Lidl were the first retailers to lead the way and only operate healthier checkouts in all their stores in 2015; Tesco has also committed to having healthier checkouts in all their stores, which suggests that checkout restrictions, up to an extent, may be feasible for businesses regardless of store size.

On the other hand, businesses argued that the evidence and rationale of the policy was not strong enough to justify taking action, and the associated costs would be disproportionate to the estimated health benefits resulting from this policy. Looking solely at business responses, there was stronger disagreement with this element of the proposal compared to restrictions on volume price promotions.

When approached by DHSC officials some businesses and trade bodies were willing to provide evidence and further details in support of their position. This information was then used to revise upwards the estimated costs associated with the policy to reflect industry's feedback. The revised figures can be found in the final impact assessments (<https://www.gov.uk/government/consultations/restricting-promotions-of-food-and-drink-that-is-high-in-fat-sugar-and-salt>) published alongside this document. However, the majority of industry respondents did not provide any further evidence or data in support of their criticism for location restrictions or to counter the evidence which was presented in the consultation.

Having carefully considered the consultation feedback, government decided that the location restrictions will apply to checkout areas, ends of aisles and store entrances, in line with our initial proposal.

To ensure a level playing field and to reflect the increasing trend of people shopping online, the government has also decided that the location restrictions should be reflected in online locations. For some of the locations there is a clear online equivalent, for example a store entrance would equate to the entry page of the website or groceries page; a checkout would be when the customer views their basket or proceeds to make a payment. End of aisle displays would include promoting H.F.S.S products when a customer is browsing other food categories. We will consider any practical challenges for enforcement purposes of these proposed definitions through the enforcement consultation.

## **Policy options presented in the consultation - which options for restricting price and location promotions will best deliver the aims of the policy? Consultation questions: 10 to 11, 20**

### **Consultation feedback**

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

- option 1: require retailers to ensure that all their volume price promotions on food and drink are on healthier products
- option 2: alternative suggestions, for example, requiring retailers to ensure that at least 80% of their sales from volume price promotions on all food and drink per year are on healthier products

Feedback from the consultation showed overall option 1 was the preferred option, with 51% of respondents saying that it will have a bigger impact, it will provide a clear message for consumers and a clear framework for businesses to operate in. 6% reported option 2 was more appropriate. Looking specifically at businesses, the most common answer was that 'neither' option was appropriate, which reflects their overall disagreement with this policy. Nearly 10% of businesses were in support of option 1 and another 10% in support of option 2.

A similar question was asked for location promotions and the consultation feedback was similar to the figures presented above.

### **Discussion**

Following consultation feedback, government decided that option 1 is the most appropriate option to implement the restrictions because it is in line with and better supports the aim of the policy to reduce overconsumption of H.F.S.S products and maximise the availability of healthier products offered on promotion. Furthermore, our analysis shows that the estimated health benefits are significantly higher compared to alternative options. Option 1 is also easier to implement, monitor and enforce and it provides a clear message to consumers and a clear framework for businesses.

We therefore decided that the policy will require retailers to ensure that all their volume price promotions and location promotions (at checkouts, aisle ends and store entrances) on food and drink are on healthier products as defined by the NPM (set out in annex 5).

## **How should the restrictions be implemented? Consultation questions: 8 to 9, 33 to 35**

### **Consultation feedback**

In the consultation we asked for views on the length of the implementation period. Looking solely at businesses, including major retailers and trade bodies, the most common response was that 18 months will be an appropriate implementation period. Of other lengths suggested, 2 years was the second most frequent suggestion.

We also asked for views on who should be responsible to implement the restrictions. Although many responses, particularly from industry, recognised agreeing promotional strategies is a joint process between retailer and manufacturer, respondents overwhelmingly said that the retailer selling the product should be responsible to implement the restrictions as they have control of what promotions are available and how offers are displayed in their stores.

We also asked what support businesses will need to implement the restrictions and the most common response from businesses was that government should provide clear and detailed guidance on the scope of the restrictions, support businesses on implementation and clarity on the enforcement regime.

## Discussion

Conversations with stakeholders suggested that the time to assess food and drink products by calculating the **NPM** score, and the time to re-organise stores would require a significant amount of time, planning and resource. Furthermore, businesses said that the general period of uncertainty in the sector is an additional burden on their time and costs. We recognise that these restrictions will be a novel requirement for businesses, however, we do not want to delay this policy which can have a significant impact on the health of the population. We are intending for this policy to come into force in April 2022. This includes a minimum of 6-months implementation period, to allow businesses time to prepare and make the necessary arrangements before the restrictions come into force. It is also our intention to develop guidance on complying with the regulations in advance of laying the regulations to help businesses to plan ahead. For on pack promotions we are planning to include a transition period within the regulations to permit existing stock that features wording such as 'x% extra' to be sold by relevant businesses until April 2023.

This restriction does not prohibit manufacturers from labelling their products with volume promotions. However, such products could not be offered for sale by a medium or large retailer.

We will conduct a post implementation review of the promotion restrictions 5 years after they come into force to assess the impact on businesses and consumers and monitor their effectiveness in reducing **H.F.S.S.** overconsumption.

## How should the restrictions be enforced? Consultation question: 36

### Consultation feedback

The consultation asked for views on the enforcement of the proposed restrictions but did not make specific proposals about how the policy should be enforced. Looking specifically at feedback from businesses, the most common responses were that:

- it would be appropriate for Local authorities and Trading Standards to be responsible for enforcement, but there will be a need for additional funding for this new requirement
- the primary authority principle should be used to allow for existing arrangements between businesses and local authorities to be used for this new requirement

- there should be an appropriate and proportionate enforcement regime that allows for warnings and fines, not leading straight to prosecution, and any fixed penalties should be appropriate for the type of business (for example, taking into account turnover and size of business)
- the enforcement regime should promote a level playing field; and clear guidance will be needed

## Discussion

Having considered the above feedback and further industry engagement, government are proposing the below high-level principles for the enforcement of this policy:

- local authorities will be responsible to enforce the policy
- an enforcement process that focusses on supporting compliance rather than penalising non-compliance is best suited
- giving a range of enforcement options to Local authorities, for example, the option of civil penalties as an alternative to criminal penalties

The government is committed to ensuring enforcement of regulatory policies is proportionate and fair and avoids unnecessary criminal offences, by making greater use of civil sanctions, especially for minor breaches. We will therefore consult shortly on our proposed enforcement approach. If you wish to be involved in this consultation, please see the consultation document on the GOV.UK webpage by 22 February 2021. We will use this opportunity to test our proposal with local authorities, businesses, trade associations and other stakeholders who will be affected by the restrictions to ensure an appropriate enforcement regime is in place.

## Outcome and next steps

Government has carefully considered all of the consultation responses and engaged further with industry and health organisations to inform its thinking and next steps on this proposal. Government decided to legislate to restrict promotions of HFSS products by price (volume promotions) and location (checkouts, end of aisles and store entrances) in medium and large retailers that sell food and drink in England.

Government intends to use powers in the Food Safety Act (FSA) 1990 to lay secondary legislation before Parliament by mid-2021. Subject to being passed by Parliament, we will then allow at least a 6-month implementation period before the restrictions come into force. We will work with trade associations and local authorities to ensure businesses are supported in implementing the new requirement ahead of it coming into force.

A summary of the decisions is presented below:

- micro and small businesses (below 50 employees) will not be in scope of the price and location restrictions due to the likely disproportionate burden on them resulting from this policy
- stores that are below 185.8 sq m (2,000 sq ft) and all specialist retailers (for example sweet shops) will not be in scope of the location restrictions due to the likely practical implementation challenges resulting from this policy
- the price and location restrictions will only apply to a specified list of product categories that are significant contributors to children's sugar and calorie intakes and are heavily promoted. The list includes: soft drinks, cakes, chocolate confectionery, sugar confectionery, ice cream, morning

goods (for example pastries), puddings, sweet biscuits, breakfast cereals, yoghurts, sweetened milk-based drinks, sweetened juices, pizza, ready meals and meal centres, including breaded and battered products (for example curries, chicken nuggets, breaded chicken/fish), crisps and savoury snacks, chips and similar potato products

- the 2004/05 Nutrient Profiling Model (NPM) will be used to define HFS products within the specified list of product categories in scope, to determine whether they can or cannot be promoted
- the price restrictions will only apply to volume promotions ('multibuys' and 'extra free').
- the location restrictions will apply to checkouts, ends of aisles and store entrances
- there will be at least a 6-month implementation period for businesses to prepare and plan for the new requirements
- enforcement powers will be given to Local authorities who will be responsible for enforcing the policy. We will consult on how the restrictions should be enforced in due course
- we will review and evaluate the policy within 5 years post implementation

## Annex 1: additional consultation feedback

### Exemptions requested for specific product categories or types of businesses

A number of exemptions were requested by individual businesses and/or trade bodies. These were carefully considered, and the outcome is presented below.

- dairy products (for example yoghurts): an exemption was requested by dairy products manufacturers and sector trade bodies due to the nutritional content of these products, specifically the health benefits of consuming calcium rich products for children's development. We recognise the importance of consuming dairy products; they are included in the Eatwell Guide and form part of a healthy, balanced diet. Unsweetened dairy products (dairy products without added sugar) typically pass the 2004/05 NPM set out in annex 5, so they will be allowed to be promoted by price and location. Therefore, we decided that an exemption for unsweetened dairy products is not required. Sweetened dairy products such as yoghurts with added sugar and flavoured milk drinks are among the top sugar contributors to children's diets and are heavily promoted. Their high sugar content outweighs the benefits of calcium content, which is reflected in Government dietary advice to consume unsweetened dairy products, particularly for children. Therefore, we decided that an exemption for sweetened dairy products is not appropriate. However, businesses will be able to promote them if they pass the NPM
- crisps and savoury snacks: an exemption was requested by crisps and savoury snacks sector representative bodies based on the argument that these products do not contribute to children's calorie intakes and therefore to obesity in childhood. Data shows that these products are significant contributors to calorie and salt in children's and adults' diets and are heavily promoted. Furthermore, these products should be consumed in moderation and should not be part of children's daily diets. We therefore decided that an exemption for crisps and savoury snacks is not justified or appropriate, and they are in scope of the promotion restrictions. However, businesses will be able to promote crisps and savoury snacks if they pass the NPM

- fruit juices/smoothies: an exemption was requested by one manufacturer due to the high fibre and vitamin content of these products, the likely health benefits, and the fact that they may count towards 1 of your recommended 5 portions of fruit and vegetables a day. Pure unsweetened fruit juices/ smoothies are not in scope of the restrictions, so they can be promoted by price and location. However, fruit juices/smoothies with added sugar, which are also in scope of the SDIL (as defined in annex 3), are among the top contributors to children's sugar intakes. Therefore, we decided that an exemption for these products is not appropriate, and they are in scope of the promotion restrictions. However, businesses will be able to promote them if they pass the NPM
- morning goods (as defined in annex 3): an exemption was requested by the sector representative body based on the argument that these products do not contribute to children's calorie intakes and therefore to obesity in childhood. Data shows that morning goods are significant contributors to sugar and calories and are heavily promoted. Again, these products should be consumed in moderation and should not be part of children's daily diets. Therefore, we decided that an exemption for the morning goods category is not justified or appropriate, and they are in scope of the promotion restrictions. However, businesses will be able to promote morning goods if they pass the NPM
- cooking sauces: an exemption was requested by a cooking sauces manufacturer and the sector representative body based on the argument that these products do not significantly contribute to children's calorie intakes and therefore to obesity in childhood. We recognise that although sauces are regularly consumed by families and children, this product category is not among the highest calorie contributors to diets. Therefore, we decided that cooking sauces are not in scope of the promotion restrictions
- seasonal products and seasonal promotions: an exemption was requested by retailers, manufacturers and industry representative bodies based on the argument that promotions are vital for sales of seasonal products. While we understand the importance of promotions to maximise sales, there are multiple seasonal promotion points running through the year including, but not limited to: Christmas, Diwali, Valentine's Day, Easter, Mother's Day, Father's Day and Halloween. This means that seasonal promotions can occur for the majority of the year. Seasonal products (for example Christmas chocolate, Easter eggs) can be found on the shelves and in key prominent locations in stores, such as end of aisle, checkouts and store entrances, up to three months before Christmas or Easter for example, and we also know that consumers typically buy these products as soon as they are available in shops and offered on promotion. A 2019 survey from the Royal Society for Public Health (<https://www.rsph.org.uk/about-us/news/retailers-urged-to-crack-down-on-early-easter-egg-sales-to-tackle-obesity.html>) (RSPH)<sup>[footnote 42]</sup> found that 50% of the UK public bought and consumed at least one Easter-related chocolate, treat or cake three weeks before Easter. The polling also showed that 77% of people think supermarkets start selling Easter related treats too early and 38% said that the heavy promotion of seasonal products makes their diets less healthy. This is felt particularly among parents, with 57% saying promotional Easter egg displays, given prime locations near the checkouts, led to pester power from their children. In addition, chocolate and sweet confectionery are among the top sources of sugar in children's diets and this includes

those products that are branded 'seasonal' but tend to be offered throughout the year. Therefore, we decided that an exemption for seasonal products is not justified or appropriate, and they are in scope of the promotion restrictions. However, businesses will be able to promote seasonal products if they pass the NPM

- retailers in travel hubs: An exemption was requested by the relevant trade body based on the argument that these outlets are not linked to obesity in childhood because children are unlikely to frequent airports regularly. We understand this point; however, we also recognise that travel hubs such as train stations can often be part of families' daily commutes, and promotional offers of HFSS products whether by price or location may lead to impulse purchases. HFSS promotions specifically for chocolate and sweets tend to be widespread in travel hub retailers. In addition, having exemptions for different businesses would cause implementation challenges and confusion for businesses and consumers, and would most likely create overly complicated enforcement requirements for local authorities. Furthermore, retailers in travel hubs are unlikely to be above the 185.8 sq m (2,000 sq ft) threshold and therefore are unlikely to be in scope of the location restrictions. Therefore, we decided that a specific exemption for retailers in travel hubs is not justified. Those retailers that are medium or large businesses (based on the number of employees), for example those that are part of a chain, are in scope of the price restrictions, and those that are above the 185.8 sq m (2,000 sq ft) threshold are in scope of the location restrictions as well

## Equality Act, consultation questions: 52 to 55

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

## Socio-economic background, consultation question: 56

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

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

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

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

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

## Further evidence

The consultation asked respondents if there is any further evidence or data they wish to submit for consideration in the final impact assessment (<https://www.gov.uk/government/consultations/restricting-promotions-of-food-and-drink-that-is-high-in-fat-sugar-and-salt>). The majority of respondents either reiterated points they made elsewhere in the consultation or made points that were common in the responses of others. Some businesses and organisations included additional information in response to this question, for example evidence or research, which was carefully considered and used in the development of the final impact assessments for this policy.

## Impact assessment questions, consultation questions: 37 to 51

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

## Annex 2: policy detail

### Businesses in scope

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

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

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

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

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

Exemptions for price restrictions:

- micro and small businesses (<50 employees)

Exemptions for location restrictions:

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

### Products in scope

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

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

Prepacked is defined as in article 2(2)(e) of the retained Food Information to Consumers Regulation (EU) No. 1169/2011 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011R1169-20180101>) as amended by The Food (Amendment) (EU Exit) Regulations 2019

(<https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legislation.gov.uk%2Fuksi%2F2019%2F529%2Fmade&data=04%7C01%7CTom.Stafford%40defra.gov.uk%7Cdad521fcc5314aae48ba08d896e246c4%7C770a245002274c6290c74e38537f1102%7C1%7C0%7C637425245881684644%7CUnknown%7CTWFpbGZsb3d8eyJWljoic4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6I1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=GCx1aINWgcJDv6DNqVstTTOphR1kRdmPZPJ5wfe1oaQ%3D&reserved=0>) and The Food (Amendment) (EU Exit) Regulations 2020

(<https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legislation.gov.uk%2Fukdsi%2F2020%2F9780348213065%2Fmemorandum%2Fcontents&data=04%7C01%7CTom.Stafford%40defra.gov.uk%7Cdad521fcc5314aae48ba08d896e246c4%7C770a245002274c6290c74e38537f1102%7C1%7C0%7C637425245881684644%7CUnknown%7CTWFpbGZsb3d8eyJWljoic4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6I1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=b8KooRe8S4daMlxFcUdI9BR%2Bz4ilhY7IBVHE4CSB7yg%3D&reserved=0>)<sup>[footnote 43]</sup>: "prepacked food means any single item for presentation as such to the final consumer and to mass caterers, consisting of a food and the packaging into which it was put before being offered for sale, whether such packaging encloses the food completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging; 'prepacked food' does not cover foods packed on the sales premises at the consumer's request or prepacked for direct sale".

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

The restrictions will not apply to:

The restrictions will not apply to:

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

### **Annex 3: descriptions of product categories in scope**

Product category descriptions as defined by Public Health England

#### **Breakfast cereals**

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

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

#### **Yoghurts**

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

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

#### **Biscuits**

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

Excludes savoury biscuits and crispbreads.

#### **Cakes**

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

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

### **Morning goods**

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

Excludes plain bread and rolls.

### **Puddings**

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

### **Ice cream**

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

### **Chocolate confectionery**

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

### **Sweet confectionery**

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

### **Sweetened milk-based drinks**

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

### **Sweetened fruit-based drinks**

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

### **Pizza**

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

### **Crisps and savoury snacks**

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

### **Chips and potato products**

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

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

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

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

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

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

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

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

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

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

- it has had sugar added during production, or anything (other than fruit juice, vegetable juice and milk) that contains sugar, such as honey
- it contains at least 5 grams (g) of sugar per 100 millilitres (ml) in its ready to drink or diluted form

- it is either ready to drink, or to be drunk it must be diluted with water, mixed with crushed ice or processed to make crushed ice, mixed with carbon dioxide, or a combination of these
- it is bottled, canned or otherwise packaged so it's ready to drink or be diluted
- it has a content of 1.2% alcohol by volume (ABV) or less

A list of what is classed as sugar for the purposes of the levy can be found in the guidance published by HM Revenue & Customs (<https://www.gov.uk/guidance/check-if-your-drink-is-liable-for-the-soft-drinks-industry-levy>)<sup>[footnote 44]</sup>.

The levy does not apply to drinks that are:

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

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

## **Annex 4: definitions of price and location promotions**

The price promotion (<https://www.businesscompanion.info/en/quick-guides/pricing-and-payment/providing-price-information#Promotions>) restrictions will only apply to the volume price promotions outlined below<sup>[footnote 45]</sup>.

- multibuy promotion – a promotion that requires the shopper to buy one or more items to benefit from a discounted price compared to the price when bought separately. For example, 'buy one get one free', '3 for 2'; as well as types that state a fixed price or saving, for example '3 for £10' or 'buy 6 and save 25%')
- extra free promotion – a promotion that occurs when an enlarged pack size is created by the manufacturer and where the pack label states that a proportion of the product is free. For example, an extra-large packet stating "50% extra free". This does not prevent a manufacturer from labelling products with volume promotions but restricts medium and large retailers from offering these for sale
- free refills of sugar sweetened drinks – a promotion that occurs when a drink, for example soft drink, tea or coffee is allowed to be filled again, free of charge, after being consumed

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



- checkout area (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6314468/>): the till point or a self-checkout area and the surrounding floor space area (any area within 2 metres)<sup>[footnote 46]</sup>, as well as the queueing areas leading to the till point or self-checkout (<https://www.england.nhs.uk/wp-content/uploads/2018/05/staff-health-wellbeing-cquin-2017-19-implementation-support.pdf>) including food stands with glass cabinets and/or fridge/freezers<sup>[footnote 47]</sup>.
- end-of-aisle display: the point of purchase advertising of products placed at the ends (front and/or back) of shelf rows in stores, or on separate units adjacent to the ends of shelf rows, for example island bin displays.
- store entrance display: the display of products on units/shelves placed at/in the vicinity of the store entrance(s), lobby or foyer area including either:

i.) displays within a distance inside the store that is less than or equal to 5 per cent of the square meterage of the store premises up to a maximum of 225 square metres (for example equal to 9.3 square metres (100 square feet) for a store that is 185.8 sq m (2,000 sq ft).

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

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

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

- the entry page of the website or grocery page
- where the customer views their basket or proceeds to make a payment
- ~~H.F.S.S~~ products appearing when customers are browsing other product categories; products highlighted on pages related to other product categories

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

The 2004/5 Nutrient profiling model (<https://www.gov.uk/government/publications/the-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<sup>[footnote 48]</sup>. Ofcom uses the outputs from the model to regulate the television advertising of foods to children.

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

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

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

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

## Calculations

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

### Calculating 'A' points

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

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

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

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

### Calculating 'C' points

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

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

Points	Fruit, Vegetable and Nuts (%)	NSP Fibre (grams) (a)	or AOAC Fibre (grams) (a)	Protein (grams) (b)
0	≤40	≤0.7	≤0.9	≤1.6
1	>40	>0.7	>0.9	>1.6
2	>60	>1.4	>1.9	>3.2
3	-	>2.1	>2.8	>4.8
4	-	>2.8	>3.7	>6.4
5	>80	>3.5	>4.7	>8.0

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

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

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

### Combining points into an overall score

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

Less than 11 'A' points

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

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

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

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

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

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

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

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

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