Consultation Analysis

Restricting Promotions of Food and Drink High in Fat, Sugar or Salt

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Riaghaltas na h-Alba

Consultation Analysis —

Restricting Promotions of Food and Drink High in Fat, Sugar or Salt

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Executive Summary

Introduction

1. From 1st July to 23rd September 2022, the Scottish Government undertook a public consultation to invite views on its proposed approach for restricting promotions of food and drink that are high in fat, sugar or salt (HFSS), as a means of changing the food environment that encourages the public to purchase more than they need and to over-consume less healthy food.

2. The aim of the consultation was to gain some sense of the balance of opinion among respondents towards the proposals, whilst also presenting an understanding of the breadth and detail of arguments put forward both for and against them. Respondents to the consultation are a self-selecting group and therefore their views cannot be claimed to be representative of the wider population.

The respondents

3. The consultation received 110 responses. Of these 38 were from individuals (35%) and 72 were from organisations (65%). Organisation responses comprised of 41 (57%) from industry (industry representative bodies, manufacturers, retailers and out of home providers) and 31 (43%) from non-industry (public sector, third sector and 'other').

Overview of findings

4. Typically, different respondent types held distinct views for each of the proposals. Non-industry respondents were generally supportive of restrictions but less supportive of some exemptions. They generally favoured restrictions being comprehensive and avoiding the possibility of 'loopholes' that could undermine the overall effectiveness of the approach. Industry respondents were supportive of some aspects of the approach but typically to a lesser degree than non-industry respondents. Generally, where support existed among industry respondents it related either to preferring alignment with the UK Government regulations for restrictions in England or to attaining fairness across businesses. There were some aspects of the approach that industry respondents disagreed with, typically due to a view that there is insufficient evidence to justify them, or that they would create disadvantages for certain types of businesses (such as smaller companies) or that they would not align with the approach being adopted in England.

5. Among individual respondents there was some tendency towards agreement with the proposals, but also some divergence in views. Those that were supportive generally demonstrated a similar viewpoint to those expressed by non-industry respondents. Those that were against the proposals tended either to disagree with the need for restrictions at all (viewing it to be inappropriate for the Government to influence people's purchasing behaviour), or to hold concerns about how the restrictions on promotions may affect the public financially.

Headline findings for each question group

Foods that would be subject to restrictions (Questions 1-3)

6. While numbers were somewhat dispersed across the answer options, non-industry respondents tended to favour the inclusion of the full scope of products being considered – option 4 (i.e. discretionary foods, plus ice-cream and dairy desserts, plus all categories included in the UK-wide reformulation programmes) as a more comprehensive approach. Industry respondents tended to favour alignment with the categories subject to restrictions in England in order to minimise confusion, disruption and the cost burden of making changes – option 3 (i.e. discretionary foods, plus ice-cream and dairy desserts, plus additional categories that are of most concern to childhood obesity according to the UK-wide reformulation programmes). Some preferred that option due to a variety of concerns with option 4. Individuals did not show a clear preference. Regardless of respondent type, some exclusions (such as foods that have nutritional benefits despite having high levels of sugar) were proposed by respondents.

7. All three respondent types tended to support the use of nutrient profiling to define whether a product is HFSS and therefore within scope of the restrictions. This was viewed as an appropriate tool and one that provided consistency with England. Non-industry respondents were a bit more muted with some preferring the perceived simplicity of a whole category approach. Industry respondents specifically favoured the 2004/2005 nutrient profile model (NPM). They held concerns about the suitability of the updated draft (2018) model (still to be published), primarily that this would diverge from England, widen the range of products to be restricted and disincentive reformulation.

8. Views were mixed in respect of the proposal (if nutrient profiling were used) to only target pre-packed products and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge. Industry respondents tended to support the proposal primarily on the basis that they viewed this to be an appropriate approach and that it would align with England. Non-industry respondents tended to disagree primarily due to concerns that this would undermine the overall effectiveness of the legislation by introducing loopholes. Individuals were mixed between agreement (viewing the approach as sensible) and disagreement (sharing the concerns held by non-industry respondents).

Price promotions (Questions 4-8)

9. Non-industry and individual respondents tended to support the inclusion of ‘extra free’ and ‘meal deal’ offers in multi-buy restrictions on the basis that these offers result in unintended purchases and over-consumption. Industry respondents also showed a level of preference for including extra free although this tended to be due to the desire for alignment with England. Those that disagreed with the inclusion of extra free primarily suggested they do not drive over-consumption or that restricting them would undermine competition and hamper smaller businesses and new products. Overall industry respondents disagreed with the inclusion of meal deals, either because this would not align with restrictions in England, or the

view that meal deals are distinct from other multi-buy offers, and are cost effective, convenient and do not drive over-consumption.

10. Non-industry and individual respondents tended to support restricting unlimited refills for a fixed charge on targeted soft drinks with added sugar on the basis that these offers encourage over-consumption of unhealthy drinks. A large proportion of industry respondents did not have a specific view on this issue (some noted this type of promotion was not relevant to the type of business(es) they represented). However, there was a level of support among industry on the basis that this approach would align with regulations in England.

11. Non-industry and individual respondents suggested some other foods to be included in restrictions on unlimited amounts for a fixed charge (all targeted HFSS foods, ‘all you can eat’/buffet style options, ‘diet’ soft drinks, and ice-cream desserts). However, overall individuals’ views were split as to whether other foods should be included or not. Many industry respondents did not express a view on this issue (again as this type of promotion was often not relevant to the type of business(es) they represent).

12. Non-industry respondents tended to support restricting temporary price reductions (TPRs) primarily on the basis that they are used to promote unhealthy products or encourage unintended purchase. Industry respondents were opposed, primarily on the basis of insufficient evidence to justify their inclusion or a desire for alignment with regulation in England. Individuals were mixed between agreement (for the same reasons expressed by non-industry) and disagreement, primarily due to concern for the potential impact on low-income households.

13. Non-industry respondents offered some suggestions for additional forms of price promotion for inclusion in restrictions. Industry respondents tended to oppose including other price promotions either because this would not align with regulations for England or because they were against the introduction of any forms of price promotion. Individuals did not show a clear view. Suggestions for inclusion included loyalty schemes/pricing, multipacks, price marked packs, upselling, shelf-edge labels, money off vouchers, offering a discount on an HFSS product when another item is purchased, family sized items, reductions on fresh items (reaching the end of their shelf life), yellow label items, free or discounted side orders and discounts on larger portions in the out of home sector.

Location and other non-price promotions (Questions 9-13)

14. Non-industry respondents typically agreed with the location of HFSS products being restricted at all four in-store locations proposed (checkout areas, including self-service; end of aisle; front of store, including store entrances and covered outside areas connected to the main shopping area; island/bin displays). This was because they believed that these locations encourage customers to purchase HFSS goods that they did not intend to buy. Individuals also tended more towards agreement than disagreement. Responses from industry organisations were more mixed. There was some concern about a disproportionate impact of location restrictions on small stores (that have limited space/layout, that would

struggle to meet the costs of redesigning the store layout in order to comply and that may find complying would limit the products they can stock and/or services they can provide). However, there was general support that if restrictions are introduced these should align with restrictions in England. Consequently, industry respondents thought restrictions should not include ‘island/bin displays’. There were a number of other specific concerns expressed in respect of restricting island/bin displays, such as their specific use for meeting high demand for seasonal products and for displaying clearance products.

15. Non-industry respondents suggested some additional locations to include in restrictions (seasonal/promotional aisles, designated/extended queuing areas, branded chillers, the full extent of ‘non-price promotions’ described in the 2018 consultation on restrictions on promotion of HFSS products, HFSS items should only be displayed in their ‘normal’ area/aisle, temporary stands, HFSS products should not be displayed in the ‘eye line’ of children). Although not a specific ‘location’, restricting images of HFSS goods was also suggested. Industry respondents opposed the inclusion of additional locations, primarily because this would not align with regulations in England or because they do not support location (or any) restrictions. Individuals were split between disagreement and uncertainty but typically did not provide a comment to explain why.

16. Non-industry respondents supported the proposal to apply location restrictions online, in all five locations (home page, favourite products page, pop ups and similar pages not intentionally opened by the user, shopping basket, checkout page). This was on the basis that these encourage unintended purchases of HFSS items. Individuals shared a similar view but were more muted in respect of the shopping basket and were split in respect of favourites. This was due in part to concerns that restrictions may result in products not being displayed at all in those areas (even when purposely selected by the customer). There was a level of support for restricting the online locations among industry respondents on the basis that they supported alignment with restrictions in England. Where industry and individual respondents disagreed with the online locations this typically reflected general disagreement with the rationale for restricting the promotion of HFSS foods.

17. Non-industry respondents suggested some other online locations to include in restrictions. Industry respondents tended to disagree with including other online locations either because this would not align with restrictions in England or they did not support location (or any) restrictions. Individuals were mainly mixed between disagreement and uncertainty but did not typically explain their response. Suggestions for other online locations included apps/supermarket apps, social media, online adverts that pop up when using the internet, promotions via email, all pages that customers see on websites and loyalty card scheme apps.

18. Industry respondents tended to disagree with including any other types of promotion (in-store or online) not already covered by the proposals, on the basis that proposals are already comprehensive or that additional restrictions would not be consistent with the approach in England. A proportion of non-industry respondents suggested additional promotions to include. Individuals tended

towards uncertainty. Suggestions that had not already been made in response to previous questions included coupons, cinema advertising for snack outlets, vending machines and promotions that include a toy.

Places that would be subject to restrictions (Questions 14-16)

19. Non-industry respondents tended to support promotion restrictions applying to all four places explored in the consultation (retail, out of home, wholesale – where sales are also made to the public, other outlets) to ensure consistency across the locations where HFSS products are sold to the public so that the restrictions are effective. Individual respondents answered in a similar fashion although support for restrictions applying to ‘other outlets’ was more muted (but with no clear explanation why). Industry respondents tended to agree with restrictions applying to retail but were quite split in respect of the other three places; some believed all four should be included to ensure a level playing field across businesses, while others thought there should be alignment with England where the primary focus is on retail. There were also some specific concerns about the inclusion of the out of home sector that meant that overall there was a level of preference among industry not to include the out of home sector.

20. Having indicated that restrictions would not apply to other wholesale outlets (where sales are only to trade) nor to places where sales are not in the course of business (such as charitable food and bake sales) the consultation explored whether there are any other places/types of business which should and also which should not be within the scope of restrictions.

21. Non-industry respondents made suggestions for other places/types of business that restrictions should apply to. Industry respondents tended to disagree either because this would not align with restrictions in England or they did not support location (or any) restrictions. Individuals were evenly split between disagreement and uncertainty but typically did not provide a reason to explain their response. Suggestions for other places restrictions should apply included transport and transport hubs, education settings, places visited by children, entertainment venues, attractions and museums, delivery companies/takeaways, and ‘everywhere’.

22. Around half of each respondent type (industry, non-industry and individuals) did not express a view in respect of whether there are any other places/types of business that restrictions should not apply. Among those that did: non-industry and individual respondents tended not to indicate any other exclusions (preferring consistency across places that sell HFSS products); industry respondents were mixed. Some indicated there should be other exclusions (small businesses, places where other regulation already applies to food such as healthcare, out of home sector, ‘airside’ stores[1], economically vulnerable locations on the high street and workplace canteens). Others felt there should not be other exclusions in order to ensure a level playing field among businesses.

[1] Located in airports having gone through security checks.

Exemptions to restrictions (Questions 17-21)

23. All three respondent types (non-industry, individual and industry) tended to support the proposal to exempt specialist businesses that mainly sell one type of food product category (such as chocolatiers and sweet shops) from location restrictions. Primarily this was on the basis that it would not be practical for these businesses to avoid displaying HFSS goods in the locations proposed for restrictions, although industry respondents also noted that the exemption would align with restrictions in England.

24. Non-industry respondents tended to disagree with using ‘number of employees’ and/or ‘floor space’ as a basis for determining exemption (should exemptions from location restrictions be extended beyond specialist businesses). Their primary concern was that allowing further exemptions would reduce the overall impact of the restrictions. Individuals tended to be split between agreement (primarily due to opposing the restrictions) and disagreement (for the same reason as non-industry respondents). Industry respondents tended to support exemptions for businesses from location restrictions on the basis of number of employees and/or floor space due to a preference for alignment with England or a view that it would not be practical for smaller businesses to comply. Notably however, it was not always clear whether respondents had made the distinction between restrictions on ‘price promotion’ and restrictions on ‘location’ and that the exemption being explored in Scotland is only proposed to apply to location restrictions.

25. Specific responses and comments were relatively low for the question on the size of business that should be exempt from location restrictions if number of employees is used as the basis for exemption. Industry respondents indicated a preference for the exemption to be applied to businesses with fewer than 50 employees primarily because this would align with England. Non-industry respondents did not indicate a preference. Individual respondents mostly did not express a view, but those that did showed a very slight preference for exempting businesses with fewer than 10 employees (but with no clear view why). Some considerations were noted by respondents in respect of how the exemption should be calculated such as including staff based at each shop or on the shop floor but not the wider business.

26. Specific responses and comments were also relatively low for the question on the size of business that should be exempt from location restrictions if floor space is used as the basis for exemption. Industry respondents indicated a preference for the exemption to be applied to businesses of less than 186 square metres, again because this would align with England. Non-industry respondents did not indicate a preference. Individual respondents mostly did not express a view, but those that did showed a level of preference for exempting businesses less than 93 square metres. This was primarily on the basis that by only exempting the smallest businesses the restrictions could still have a large impact. Some considerations were noted by respondents in respect of how the exemption should be calculated such as only considering the floor space where food is displayed (and not areas where other services are provided or other types of products are sold).

27. Very few respondents thought there were any other types of exemptions (beyond those already explored) that should apply. Suggestions that were made included exempting the advertising of company names even where that company produces HFSS products, point-of-sale advertising online, and shops that are in a remote location.

Enforcement and implementation (Questions 22-25)

28. Individuals and non-industry respondents tended to support the proposal for local authorities (LAs) to enforce the policy. Industry respondents did so to a lesser extent. Those agreeing tended to acknowledge that LAs are well placed based on their existing knowledge and relationship with relevant businesses. Some industry respondents proposed the use of the 'Primary Authority' model[2]. However, a substantial proportion of industry and non-industry respondents did not indicate a preference. Disagreement, although low overall, tended to relate to a concern that LAs do not have sufficient capacity to undertake enforcement. A small number of industry respondents questioned whether LAs would be able to assess the accuracy of the NPM claims made by manufacturers.

29. There was a view across respondent types that to support enforcement LAs would need appropriate funding in order to: ensure sufficient staff are in place; provide training to staff on the requirements; put appropriate systems in place; and to create resources and clear guidance to assist LA staff, businesses and the public. Some industry and non-industry respondents noted the importance of ensuring a consistent approach to enforcement across LAs.

30. Industry respondents tended to favour 24 months as the lead-in time that would be appropriate to allow preparation for enforcement and implementation of the policy. This was on the basis that time would be needed to re-design store layout and train staff but also to allow time for businesses and LAs to recover from the impacts of the pandemic, and also give the public time to adapt to the cost of living crisis. Notably some industry respondents, that did not indicate a specific timeframe, suggested the time would depend on the final scope of the restrictions and/or the extent to which they align with England. Individuals were mainly split between 12 months and 24 months with no clear distinction as to why (although generally views overlapped with those expressed by industry respondents). Non-industry respondents were split across the options and a relatively high proportion did not express a view (some noted this issue was outside of their expertise).

31. In respect of whether any further considerations needed to be taken into account in relation to enforcement (such as resulting from the coronavirus pandemic, EU exit or rise in cost of living) a consistent theme among respondents was concern about the current cost of living pressures and how the restrictions may impact on the costs of shopping at a time when people were already struggling financially. A smaller number of respondents suggested that the restrictions may have a positive impact by reducing unintended purchases and therefore overall expenditure. Industry respondents held concerns about the challenges for

2 See https://www.gov.uk/guidance/local-regulation-primary-authority

businesses in adapting to the changes, having already gone through considerable disruption due to recent events and the introduction of other regulation. There was a view among industry respondents that a 'light touch' approach to enforcement would be appropriate to recognise these challenges. Respondents also highlighted that enforcement would pose challenges to LAs, which were thought to have limited resources and to already be carrying a number of burdens.

Legislative framework (Question 26)

32. Non-industry and individual respondents tended to support the proposed legislative framework – that Scottish Ministers should be able to make provision in secondary legislation, following consultation, to regulate in relation to specified less healthy food and drink to arrange for enforcement (including the setting of offences and the issuing of compliance notices and fixed penalty notices). Generally, they viewed this approach as appropriate to ensure restrictions are implemented effectively and that allowing flexibility would enable the approach to adapt to reflect changes to the food environment over time. Industry respondents were much more mixed but with a slight tendency towards disagreement. They were primarily concerned that the approach would mean changes could be made to the legislation without sufficient scrutiny, and there was also some objection to the use of fixed penalty notices. Undertaking further consultation before making changes to the legislation was generally favoured by respondents.

Impact assessments (Questions 27-30)

33. In respect to how the restrictions may impact specific communities or groups, there was a view that there may be positive impacts to health (by addressing one of the causes of over-consumption of HFSS products) and also financially (if people no longer purchase more than intended). However, there was also concern that there may be a negative impact on people living with socio-economic disadvantage who may experience reduced affordability of shopping. To a lesser extent it was noted there could be negative impacts (for health or financially) for a variety of groups such as those that have a specific reason or need to depend on certain HFSS foods (such as for specific health conditions or religious reasons).

34. Comments were also received in respect of potential unintended impacts on businesses. A few responses suggested restrictions could have positive impacts such as aiding smaller shops to compete with larger supermarkets, and that both manufacturers and retailers may make more money since customers will pay higher prices. However, a number of respondents held concerns that the restrictions would reduce income and increase costs to businesses, some of which suggested this may lead to business closures. There was also concern that the restrictions may impact most on small and independent businesses which are an important local service. Concerns were reiterated that diverging with restrictions in England would create a number of problems for businesses such as confusion and implementation errors, increased financial burden, and further complexity at a time where a number of challenges are already faced.

1. Introduction and background

1.1. The Scottish Government committed in Programme for Government 2022-23 to bring forward legislation to restrict 'unhealthier food and drink promotions'. The aim of the policy is to reduce the public health harms associated with the excess consumption of calories, fat, sugar and salt, including the risks of developing type 2 diabetes, various types of cancer and other conditions such as cardiovascular disease. To inform its approach, in July 2022, the Scottish Government consulted on plans to restrict promotions of foods that are high in fat, sugar or salt (HFSS) where these foods are sold to the public. The consultation paper set out the rationale for this approach and the specific aspects of the policy being considered. The consultation closed in September 2022 and its analysis is the subject of this report.

Policy context

1.2. The introduction of a policy restricting promotions of 'unhealthier food and drink' is a key part of creating a food environment that supports healthier choices. This is one element of a wide range of actions to improve diet and support the population to be a healthy weight, set out in the 2018 Diet and Healthy Weight Delivery Plan. The approach is based on concerns that:

- 2 out of 3 adults in Scotland are living with overweight or obesity with unequal distribution in the population – in 2019 70% of adults in the most deprived areas of Scotland were living with overweight or obesity compared to 60% of adults in the least deprived areas;[3]
- A higher prevalence of excess weight is also seen in some minority ethnic groups. Associated health risks occur at a lower level of excess weight in these groups;[4]
- There is a higher prevalence of children at risk of overweight or obesity in the most deprived areas (35%) compared to the least deprived areas (22%);[5]
- As a nation, dietary goals in Scotland have not been met since being set in 1996;[6]
- The Scottish diet remains too high in calories, fat, sugar and salt which can have serious consequences for health.[7]

The consultation

1.3. The consultation paper set out proposals for restricting promotions of HFSS foods as a means of changing the food environment that encourages the public to purchase more than they need and to over-consume less healthy food. This consultation follows two previous consultations undertaken by the Scottish Government, in 2017/18 and in 2018/19. The purpose of this (2022) consultation

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[3] Scottish Government (2020) *The Scottish Health Survey 2019 edition | volume 1 | main report*
[4] Scottish Government (2012) Scottish Health Survey – topic report: equality groups
[5] Scottish Government (2020) *The Scottish Health Survey 2019 | supplementary tables*
[6] Food Standards Scotland (2020) *Situation Report: Changes to shopping and eating behaviours in Scotland during the COVID-19 pandemic in 2020*
[7] Food Standards Scotland (2020) *Estimation of food and nutrient intakes from food purchase data in Scotland between 2001 and 2018 – full report*

was (i) to hear views on how best to restrict promotions of HFSS food and drink, having refined the proposals in respect of the findings of the previous consultations and other research, and (ii) to take into account recent changes such as the pandemic, EU exit and cost of living increases. The consultation opened on 1st July and closed on 23rd September 2022.

1.4. The consultation also took place in the context of a Welsh Government consultation on proposals to restrict promotions of HFSS foods taking place over a similar time period (from 9th June to 1st September 2022). Further, the UK Government has put in place regulations to restrict the promotion of targeted foods by location and volume price in England. Location restrictions came into force in England on 1st October 2022 (i.e. shortly after the Scottish Government consultation closed), with restrictions on volume price delayed 12 months, now due to come into force on 1st October 2023.

1.5. The 2022 Scottish Government consultation contained 31 questions – 24 were multiple choice (closed) and 7 were open questions. For all questions, space was provided for respondents to provide an explanation for their answer. The questions covered a number of themes:

- Foods that should be subject to restrictions (Questions 1, 2 and 3)
- Price promotions (Questions 4, 5, 6, 7 and 8)
- Location and other non-price promotions (Questions 9, 10, 11, 12 and 13)
- Places that would be subject to restrictions (Questions 14, 15 and 16)
- Exemptions to restrictions (Questions 17, 18, 19, 20 and 21)
- Enforcement and implementation (Questions 22, 23, 24 and 25)
- Legislative framework (Question 26)
- Impact Assessments (Questions 27, 28, 29 and 30)
- Any other comments (Question 31)

1.6. Annex 1 contains a full list of consultation questions.

Aims of this report

1.7. The overall aim of this report was to gain a sense of the balance of opinion among respondents towards the proposals, whilst also presenting an understanding of the breadth and detail of arguments put forward both for and against the proposals.

1.8. The structure of the report follows the structure of the consultation paper, considering the response to each question in turn. Section 2 provides an overview of the respondents to the consultation.[8] Sections 3-10 summarise the views submitted by respondents in answer to the consultation questions. Section 11 provides insights that do not relate to a specific question. Finally, Annexes 1-3 provide further detail on the consultation questions and the respondents.

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[8] Including individuals, organisations and organisation type.

Approaches to analysis

Quantitative analysis

1.9. Frequency analysis was undertaken for all multiple choice (closed) questions. The figures are included within the findings. Prior to the main analysis, responses were reviewed for blanks, duplicates, campaign responses[9], missing answers and any problems with responses such as misinterpretation of the questions. The purpose of this was to ensure the views of respondents were represented as accurately as possible. Where tick box answers were missing but the comment provided indicated a clear preference, a corresponding tick box answer was imputed and counted in the analysis. For a small number of responses the tick box answer conflicted clearly with the associated open text comment and the tick box answer was changed to match the open text comment.

1.10. The percentages presented in tables have been rounded to the nearest whole number. Consequently, due to rounding error the percentage totals do not always equal 100%.

Qualitative analysis

1.11. The responses given to the open questions and the comment sections of the closed questions were analysed to identify the main themes emerging, the range of views expressed for each question and how views varied by respondent type. In general the responses submitted by organisations were more detailed and lengthy than those submitted by individuals. While the views of respondents are discussed, the accuracy/evidence on which they are based has not been assessed (as this is beyond the scope of the analysis). At times responses were complex and it was not always clear which aspect of the proposals for a given question was being referred to. Additionally, as some questions are inter-related, at times the same point was covered across a number of questions. To facilitate the interpretation of the findings, efforts were made to minimise duplication by integrating duplicated views within the question that most closely relates to that issue.

Comment on the generalisability of the consultation findings

1.12. It should be noted that the purpose of consultation is to understand the range of views expressed and the reasons these views are held. However, caution is needed when interpreting the responses. The consultation was open to anyone wanting to express views on the topic, and individuals and organisations who have a keen interest in the topic and the capacity to respond were more likely to participate than those who do not. This self-selection means that the balance of views of participants cannot be generalised to the wider population; the findings are not intended as being representative of public opinion, rather to offer insights.

[9] 1) No blank responses and no duplicate responses were present. (2) There were no campaign responses. (3) There were low numbers where it was evident that respondents had ‘conferred’ and submitted similar response wording. These responses were kept on the basis that they were submitted to represent different organisations and it was deemed reasonable for different organisations with similar interests to submit consistent responses.

Interpretation of the findings

1.13. While efforts have been made to explain and summarise the questions posed within the consultation paper, it should be noted that the full rationale and evidence base for the proposals is not presented within this report. It is therefore advised that the full consultation paper is read in advance of this document to aid interpretation of the findings presented here. Efforts have also been made to provide context on where the proposals for Scotland are aligned or differ to the UK Government regulations for restrictions in England. It should be noted that these descriptions relate to the restrictions that were planned at the time the Scottish Government was conducting its own consultation (i.e. July to September 2022).

1.14. The overall number of responses to the consultation (110) is relatively low. While the insights remain very valuable and the percentages remain a useful tool in gaining a sense of where the balance of opinion lies, these should be considered alongside the actual number of responses holding that viewpoint (presented in the tables within this report).

2. About the respondents and responses

Number of responses received

2.1. The consultation received 110 responses, 72 from organisations (65%) and 38 from individuals (35%), all of which were included for analysis.

2.2. Respondents could submit an online response by completing the response form hosted on the Scottish Government's consultation hub, Citizen Space. In total 54 respondents used this facility to submit their response.

2.3. Respondents could also submit their responses directly to the Scottish Government's Diet and Healthy Weight Team by email. 56 respondents (52 organisations and 4 individuals) submitted their response by this route.

Organisation respondents

2.4. A list of the organisations that responded to the consultation is provided in Annex 2. For the purposes of the analysis, the organisations were grouped in to two categories – industry (n=41; 57%) and non-industry (n=31; 43%). The composition of these categories is shown in Table 2.1.

Table 2.1 Organisation types

	n	% of total
Industry Organisations (n=41, 57%)		
Industry representative body	16	22%
Manufacturer	12	17%
Retailer	8	11%
Out of Home provider[10]	5	7%
Non-industry Organisations (n=31, 43%)		
Public Sector	12	17%
Third Sector	10	14%
Other[11]	9	13%
Total	**72**	**101%**

2.5. In general, industry respondents were less likely than non-industry organisations to specify an overall viewpoint (i.e. give a tick box answer). There

[10] For example: restaurant, fast food outlet, coffee shop

[11] This category included a variety of organisations such as professional bodies, academics and a regulator.

were occurrences where industry respondents that had not selected a tick box did not favour a particular answer option on its own merit or generally disagreed with the proposals to introduce restrictions, but indicated a preference that if restrictions are implemented a particular course of action should be taken. Where this equated to one of the tick box options, efforts have been made to describe qualitatively where these views may increase the overall level of support for a specific answer option.

Individual respondents

2.6. It was not always clear what interest or knowledge was held by individual respondents. Overall, the number of individual respondents was low and therefore caution should be used when interpreting the percentages that held a specific view to the multiple choice (closed) questions.

Responses to individual questions

2.7. Not all respondents answered all the questions in the consultation questionnaire and, at times, the responses to a given question related to other questions or to a related topic not directly covered by the consultation. Respondents that answered via citizen space were likely to provide a tick box answer to the questions, whereas responses submitted by email varied in respect of how closely they followed the consultation question and answer structure. Often respondents that did not provide a multiple-choice (tick box) response or selected 'don't know' did not provide a comment on that issue. Where they did, these have been integrated at the most relevant point.

2.8. The final question provided the opportunity to outline any other comments. Responses to this question varied greatly and have been integrated into relevant sections of the findings.

3. Foods that would be subject to restrictions (Qs 1-3)

3.1. The consultation explored the categories of foods that would be subject to restrictions and how to define whether a particular product is HFSS and within scope of the restrictions. It sought views on (i) the food categories that promotion restrictions should target, (ii) whether to use nutrient profiling within targeted food categories to identify non-HFSS foods and (iii) if nutrient profiling was used, whether to only target pre-packed products and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge.

Food categories

3.2. The consultation paper presented a number of different options for the food categories to be targeted by promotion restrictions. Starting with discretionary foods only (option 1), then adding in ice-cream and dairy desserts (option 2), then expanding to include all the categories of most concern to childhood obesity (according to the UK-wide reformulation programmes) (option 3), and then finally adding in all categories included in the UK-wide reformulation programmes (option 4).

3.3. The consultation paper noted that option 3 is consistent with the categories set out in the UK Government regulations for England.

Question 1: Which food categories should foods promotion restrictions target?

Overview

3.4. Numbers were somewhat dispersed across the answer options. Non-industry respondents tended to favour option 4 (36%) primarily as this was considered to be a more comprehensive approach. Taking into account the proportion of industry respondents that selected option 3 (37%) and also those that selected ‘other’ or did not select a tick box answer but expressed that if restrictions are implemented they support alignment with regulation in the UK, industry respondents showed a preference for option 3. Individuals did not show a clear preference. The full breakdown of tick box responses is provided in Table 3.1.

Table 3.1 Categories targeted by food promotion restrictions

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Option 1: Discretionary food categories	2	5%	2	7%	3	8%
Option 2: Discretionary foods + ice-cream and dairy desserts	0	0%	5	16%	6	16%
Option 3: Categories that are of most concern to childhood obesity	15	37%	1	3%	9	24%
Option 4: All the categories included in the UK-wide reformulation programmes	3	7%	11	36%	8	21%
Other	8	20%	5	16%	10	26%
Don't know	0	0%	2	7%	1	3%
Not answered	13	32%	5	16%	1	3%
Total	**41**	**101%**	**31**	**101%**	**38**	**101%**

In this and all subsequent tables within the report 'n' is the number of respondents and % is of all respondents to the consultation.
Due to rounding error percentages do not always add up to 100%.

Support for 'Option 1'

3.5. While support for this option was low overall, reasons included:

- It is a pragmatic solution, that would be simpler (than the other options) to implement and communicate to the public;
- That there were drawbacks to some of the categories included in the other options. For example, ice-cream and dairy desserts were identified as examples of foods needed by those requiring extra calories in their diets.

3.6. One industry representative body (that selected 'other') noted they did not support restrictions but that if they go ahead, option 1 should be seen as a threshold not to go beyond. This respondent recommended the Scottish Government work in partnership with wholesalers to encourage stocking of healthier products, rather than restrict commercial freedom and sector innovation.

Support for 'Option 2'

3.7. Reasons for agreement with option 2 among non-industry and individual respondents included:

- The categories being viewed as the most problematic in terms of being of limited nutritional value and often the consequence of impulse buys;

- The approach would provide a simple and effective model which would be easy for consumers to understand and accept;
- A few individuals that selected option 2, suggested options 3 or 4 could impact on people struggling with money and/or the elderly who may be reliant on foods in those categories; and would include products which were noted to provide important nutrients;
- One individual noted that while option 3 may be best overall, option 2 was a more appropriate starting point;
- One third sector respondent noted option 2 would allow for a whole category approach, reducing the need for use of the Nutrient Profile Model (NPM) and thereby simplify implementation and enforcement. Further, this respondent suggested the focus of restrictions should be on encouraging dietary improvement rather than reformulation.

Support for ‘Option 3’

3.8. A prominent view among industry respondents was that they supported option 3 on the basis that this would align with the regulation in England thereby benefiting from lessons learned and reducing the potential for confusion and the cost burden on businesses of applying different rules in different locations. Notably some of those supporting option 3, highlighted that they were not in favour of the restrictions due to concerns about the impact on food affordability, businesses generally and small businesses specifically, but if restrictions are to be implemented their preference is for alignment with England.

3.9. A number of industry respondents, primarily those showing support for option 3, noted that they held specific concerns with the categories included in option 4. Concerns (each from one or two respondents) included:

- Some of the categories listed included staple products and foods that form part of the ‘Eatwell’ guide and other nutritional guidelines and thus are part of a healthy diet and should not be included in restrictions;
- Foods that would be included under option 4 have already been subject to successful reformulation programmes and contribute few calories to the Scottish diet, meaning their inclusion would be disproportionate;
- There may be unintended consequences of restrictions on items in option 4; People may be discouraged from using cooking sauces and pastes which would normally be consumed as part of a healthy meal and thereby from trying and cooking new meal options;
- Extra guidance would be required from the Scottish Government if option 4 was chosen with significant resources and time required to adapt;
- It would contradict other Scottish Government policies such as ‘Ambition 2030’ to double the Scottish food and drink industry’s turnover by 2030;
- The accuracy of option 4 was queried, highlighting that items listed under that option, were not within the scope of the UK reformulation programme;
- Concern was raised about how small and micro out of home catering businesses would be impacted by increased costs caused through option 4.

3.10. One manufacturer highlighted the importance of not limiting legislation to discretionary categories which would define some foods as ‘bad’ and could undermine the Government's ambition to empower people to make healthier food choices.

3.11. Some (individuals and one public sector respondent) supported option 3 because they felt there is a need to change the habits and diets of young people and support parents to make informed choices for their children.

3.12. A small number of respondents that did not select option 3, nonetheless indicated a level of support for this answer option:

- One individual indicated that they supported option 3, once the current cost of living crisis has eased;
- One third sector respondent suggested starting with option 3 and progressing to option 4 in due course.

Support for 'Option 4'

3.13. Support for option 4 among non-industry and individual respondents centred on the need for a comprehensive and systematic approach to address the increasing incidence and impact of obesity and a focus on creating environments that facilitate this change. The comprehensive approach was noted to not exclude any HFSS food that could be targeted for promotions, creating a 'level playing field' and viewing diets 'holistically' rather than targeting specific types of food. This was viewed as more likely to generate change and fairer for business.

3.14. Other views expressed in relation to support for option 4 (each by one respondent) included:

- It has the benefit of ensuring the NPM is used to encourage reformulation across the board rather than excluding whole categories from the encouragement to do so;
- A focus on pastries and processed meat products is essential to meet the 'Revised Dietary Goals for Scotland' goal for saturated fat and salt;
- There is a need for far reaching regulation with regards to the promotion of HFSS foods, such as through option 4. However the respondent questioned whether the food system was ready for this transition and felt that priority should be placed on addressing the fundamental causes of restricted access to healthy foods before restricting promotions of HFSS products.

Extending option 4

3.15. A small number of respondents suggested additional products that should be included:

- Alcohol on the basis that it contains 'empty calories' therefore contributing to obesity, or that it is also very damaging to health;
- Any processed foods that contain food allergens;
- All foods that contain animal-based products.

Disagreement with the options

3.16. Respondents that did not select the tick box (or show some level of preference) for options 1-4, provided a range of views:

- General disagreement with any foods being subject to restrictions;

- The Scottish Government should not try to interfere with what the public eat;
- The regulations will be ineffective and there are better ways to encourage healthy living;
- The scope should be wider still (all HFSS foods; or all HFSS foods plus highly processed foods with artificial sweeteners);
- Inability to select an option because soft drinks were present in all 4 options.

Exclusions

3.17. A small number of respondents suggested specific exclusions they thought should apply to the categories:

- Products which provide nutritional benefits despite some containing high levels of sugar, such as dairy, yoghurt and cereal;
- Specialist products on medical grounds, for example, those designed for infants and young children (already governed by European Legislation and have been exempted from the restrictions in England).

Nutrient profiling

3.18. The consultation paper proposed to apply nutrient profiling to the foods within each targeted food category to define whether a product is HFSS and within scope of the restrictions. Specifically, the 2004/05 Nutrient Profiling Model (NPM) was proposed as a recognised, evidence-based tool already used by the food industry. In the consultation paper it was noted that this method would be consistent with the UK Government regulations for restrictions in England but consideration would be given to using the modified (2018) version of the model if it is published in time.

Question 2: Should nutrient profiling be used within all targeted food categories to identify non-HFSS foods?

Overview

3.19. Individual (61%) and industry respondents (59%) tended to support the use of the 2004/05 NPM within targeted food categories to identify non-HFSS foods. Non-industry respondents were more muted but still tended to agree (48%). The results are shown in Table 3.2.

Table 3.2 Should nutrient profiling be used to identify non-HFSS foods

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Yes	24	59%	15	48%	23	61%
No	3	7%	7	23%	8	21%
Don’t know	1	2%	2	7%	4	11%
Other	5	12%	2	7%	3	8%
Not answered	8	20%	5	16%	0	0%
Total	**41**	**100%**	**31**	**101%**	**38**	**101%**

Views in favour of using nutrient profiling

3.20. Respondents in favour referred to the NPM being:

- Appropriate, or more appropriate than applying a category approach (which for example would not enable reformulation to achieve healthier content);
- Useful for identifying which foods are healthier;
- Consistent with the regulations being introduced in England, thereby reducing complexity and costs for businesses and maintaining parity in choice for Scottish consumers;
- Some retailers felt the approach encouraged innovation and product development.

3.21. A few industry respondents that agreed with the approach nonetheless noted concern that the model does not recognise reformulated or smaller portioned products. One manufacturer noted that a review of the 2011 Technical Guidance (that accompanies the NPM) should be conducted if the NPM is adopted, due to concern about outdated or inaccurate guidance, for example regarding ‘as consumed’ versus ‘as sold’ and what constitutes a fruit or vegetable.

Views against using nutrient profiling

3.22. Those who disagreed with the use of the NPM typically either stated that they disagreed with the concept of imposing any restrictions (typically individuals and industry respondents), or that they favoured whole category restrictions instead (typically non-industry respondents). Some third sector respondents favoured blanket restrictions for discretionary foods (based on WHO recommendations on ending childhood obesity), and especially if options 1 or 2 were implemented.

3.23. One manufacturer who was against restriction of any food in principle, provided feedback which supported the use of the 2004/05 NPM if the government were to introduce restrictions. The respondent noted though that the NPM classifies food as either ‘healthier’ or ‘less healthy’ and they suggested the adoption of a more nuanced approach with a ‘step category’ (i.e. that sits between ‘healthy’ and ‘less healthy’) that should be subject to less promotional restrictions than the higher HFSS products. The respondent suggested this would incentivise reformulation and recognise efforts made by industry.

3.24. Other concerns included that the NPM is only suitable for children over five and adults not on prescribed or recommended diets, and that the approach could generate negativity towards fat in foods when in practice fat is needed for a healthy diet.

Version of the Nutrient Profile Model (NPM)

3.25. There was support from a few third sector respondents for using the 2018 NPM (if finalised). The importance was noted of a clear evidence-based appraisal of a product, which could be carried out using an up to date NPM. However, one noted that the NPM alone is not sufficient to determine whether food is healthy and was concerned that by prioritising HFSS products the industry would pivot towards promoting ultra-processed non-nutritious foods low in fat, salt and sugar. The respondent felt that other approaches were required to complement the regulations, such as certification schemes for foods meeting minimum standards of freshness and nutritional content.

3.26. Industry respondents were far less supportive of using the 2018 NPM and favoured the 2004/2005 model instead. The primary concern with the 2018 model was that divergence from the model used in England would create significant costs for manufacturers and put excessive burden on retail and businesses. Other concerns included that the 2018 model would:

- Widen the range of products that would be restricted due to a reduced sugar threshold; (expressed by 8 respondents)
- Disincentivise reformulation and/or the selling of reformulated products; (5)
- Result in Scottish consumers having fewer reformulated products available than other UK consumers; (2)
- Include the sugars in plant-based drinks in its definition of ‘free sugars’ (but not those in cow’s milk), despite research to suggest that plant-based drinks should be treated the same as cow’s milk and despite having been given parity in the Soft Drinks Industry Levy. Treating them differently for the purpose of restrictions on promotions in Scotland was thought to create an uneven playing field between animal and plant-based drinks which could be detrimental to consumer choice in respect of both health and environmental grounds. (2)

3.27. One manufacturer suggested a full consultation should be conducted if there is an intention to implement the updated NPM. Another highlighted that there is a lack of a final model and technical guidance associated with the draft 2018 model, meaning it is impossible to be appropriately consulted on, and suggested there is a need for an impact assessment of the adoption of the 2018 model and further consultation.

Targeting pre-packed products and non-pre-packed soft drinks with added sugar

3.28. The consultation paper proposed that restrictions would apply to pre-packed targeted foods and also unlimited refills of non-pre-packed soft drinks with added sugar for a fixed charge. Non-pre-packed foods such as loose bakery items, would not be subject to restrictions as relevant nutritional information to apply the NPM would be less readily available.

Question 3: If nutrient profiling were used, do you agree with the poposal to only target pre-packed products and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge?

Overview

3.29. Industry respondents were generally in favour of the proposal when taking into account both the number that indicated agreement (42%) and also those that selected ‘other’ or did not select a tick box but commented that their preference is for alignment with England. Non-industry respondents tended to disagree (52%) primarily due to concerns that this would undermine the overall effectiveness of the legislation by introducing loopholes. Individuals were mixed - 53% agreed primarily due to viewing the approach as sensible, however 42% disagreed primarily due to sharing the concerns held by non-industry respondents. The tick box responses are shown in Table 3.3.

Table 3.3 Whether only pre-packed products and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge should be targeted

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Yes	17	42%	6	19%	20	53%
No	5	12%	16	52%	16	42%
Don’t know	2	5%	1	3%	2	5%
Other	3	7%	3	10%	0	0%
Not answered	14	34%	5	16%	0	0%
Total	**41**	**100%**	**31**	**100%**	**38**	**100%**

Agreement with the proposal to include pre-packed and non-pre-packed soft drinks

3.30. Across all respondent types, those in favour of the proposed approach suggested it was practical and pragmatic. Industry respondents also cited again the importance of alignment with restrictions in England.

3.31. One industry representative body agreed but noted concern that micro and small businesses – such as bakers and cafes would be unable to comply.

Disagreement with the proposal to include pre-packed and non-pre-packed soft drinks

3.32. Generally, those that disagreed were in favour of restricting non-pre-packed products because they were concerned that not doing so would introduce loopholes in the legislation and thereby undermine its effectiveness. Predominantly it was individuals and non-industry respondents that held this view. Some public sector respondents suggested there is a need to target loose foods specifically in the out of home environment where loose HFSS foods were noted to be prominently available, such as, bakeries and takeaways. There was concern that the legislation should prevent businesses from using tactics to avoid restrictions, for example, providing a free doughnut with a bought coffee, or moving away from packaging to avoid restrictions.

3.33. A number of industry respondents drew attention to the disparity created by exempting non-pre-packed foods and suggested there is a need for a level playing field across all HFSS products. Responses also expressed concern about a potential distortion of the marketplace, where those providing nutritional information were penalised, and noted the possibility that non-pre-packed HFSS would be promoted in their place resulting in consumers opting for less healthy non-pre-packed foods. This was thought to present a confusing message, and to be likely to reduce the impact of the measures.

3.34. Some (non-industry) respondents disagreed with the consultation statement that businesses may not have access to nutritional composition. It was suggested that mandatory calorie labelling and requirements regarding knowledge of ingredients in products meant that information was available to include non-pre-packed goods (including in the out of home sector) within legislation.

3.35. Other issues each raised by a small number of respondents included:

- The need to future proof regulations against new ways of purchasing food, including reductions in packaging;
- More information is desired to understand how the policy will interact with mandatory calorie labelling in the out of home sector;
- Restrictions should apply to non-pre-packed foods in large businesses only.

4. Price promotions (Qs 4-8)

4.1. The consultation paper explored the types of price promotions to be targeted by restrictions and sought views on (i) the proposal to include extra free and meal deals in the scope of ‘multi-buy’ restrictions, (ii) the proposal to restrict refills for a fixed charge on targeted soft drinks with added sugar; (iii) whether other targeted foods should be included in restrictions on unlimited amounts for a fixed charge, (iv) the proposal to restrict temporary price reductions (TPRs) and (v) whether there are any other forms of price promotion that should be within scope of restrictions.

Multi-buys

4.2. In addition to restricting multi-buy offers on pre-packed HFSS products (such as buy one get one free and 3 for 2 offers), the consultation paper proposed to include ‘extra free’ in restrictions on the basis that this promotion is also a way of indicating that the purchaser is getting something for free. It also proposed to include ‘meal deals’ because they are a form ‘Y for £X’ that could encourage consumers to purchase more than required in order to obtain the discount. Promotions on meal deals that do not contain targeted foods or the targeted foods included are not HFSS (as defined by the NPM) would not be restricted.

4.3. The consultation paper noted that while the UK Government regulations for restrictions in England encompass volume-based price promotions such as ‘buy one get one free’ or ‘3 for 2’, they do not include meal deals.

Question 4: What are your views on the proposal to include the following within the scope of multi-buy restrictions:

- Extra Free
- Meal Deals

Overview

Extra free

4.4. Non-industry (81%) and individual (61%) respondents tended to support the inclusion of extra free in multi-buy restrictions. When taking in to account the number of industry respondents that selected ‘agree’ (27%) but also the number that selected ‘don’t know’, ‘disagree’ or did not select a tick box but noted that if restrictions go ahead they support consistency with regulation in England, industry respondents showed some preference for including extra free. There was however also a notable level of disagreement among industry respondents (27%) on the basis that these offers do not drive over-consumption and/or that restricting them would undermine fair competition and hamper smaller businesses and new products. Table 4.1 provides the tick box responses.

Table 4.1 Views on the proposal to include extra free in multi-buy restrictions

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Agree	11	27%	25	81%	23	61%
Disagree	11	27%	1	3%	12	32%
Don’t know	4	10%	0	0%	3	8%
Not answered	15	37%	5	16%	0	0%
Total	**41**	**101%**	**31**	**100%**	**38**	**101%**

Meal deals

4.5. Non-industry (71%) and individual (58%) respondents tended to support the inclusion of meal deals in multi-buy restrictions. Industry respondents however opposed this (71%) either on the basis that this would not align with restrictions in England or the view that meal deals are distinct from other multi-buy offers and do not drive over-consumption. The full breakdown is provided in Table 4.2.

Table 4.2 Views on the proposal to include meal deals in multi-buy restrictions

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Agree	0	0%	22	71%	22	58%
Disagree	29	71%	1	3%	13	34%
Don’t know	1	2%	3	10%	3	8%
Not answered	11	27%	5	16%	0	0%
Total	**41**	**100%**	**31**	**100%**	**38**	**100%**

Agreement with including ‘extra free’ and ‘meal deals’

4.6. Non-industry respondents tended to direct their comments in respect of meal deals. They noted the prevalence of meal deal promotions and the need to include them as a result. One respondent pointed to how the sugar tax had not resulted in fewer soft drink sales, but driven change, and that the proposals could similarly lead to change in the food environment. A number suggested that restrictions on meal deals with HFSS items would motivate a shift to more healthy alternatives being offered as part of meal deals.

4.7. Individual respondents noted that these types of promotions encourage over consumption, and a few pointed to meal deals being particularly likely to encourage consumers to buy HFSS items that they would not have otherwise purchased. Some industry respondents acknowledged that extra free (but not meal deals) may drive overconsumption.

4.8. Respondents that were uncertain (i.e. selected 'don't know') tended to relate to the view that restrictions should apply to the most unhealthy foods i.e. that they would agree with these types of restriction if the foods subject to restrictions are limited to the most unhealthy but would disagree with this type of restriction if the foods subject to restrictions are extended to encompass a wider range.

Disagreement with including 'extra free' and 'meal deals'

4.9. Industry and individual respondents that disagreed with the inclusion of both offers expressed two main concerns: that there would be a potential negative impact on customers, particularly those in a low income household; and that they doubted whether these offers lead to overconsumption.

4.10. In respect of the latter point, industry respondents flagged that extra free offers drive 'value' rather than overconsumption. Also, that there is a lack of evidence to show that meal deals lead to overconsumption. They suggested meal deals instead ensure affordability and provide choice and convenience to customers. Meanwhile individuals pointed out that these promotions may be used to purchase products to be consumed over a number of days or by more than one person.

4.11. Industry respondents also held a number of concerns about the potential negative impacts of restricting these offers on:

- Fair competition which they thought would be undermined;
- Businesses that need to offer value to customers through promotions in order to be competitive;
- Local stores that may be unfairly impacted by the restrictions and being put at a competitive disadvantage against larger supermarkets who can use their purchase power to sell products cheaper;
- New companies that use these types of promotions to gain visibility and encourage trials of new products (including uptake of reformulated products).

4.12. There was again a view among industry respondents that if restrictions are implemented, they should align with England in order to avoid extra burden for Scottish businesses and consequently there was a level of support for including 'extra free' but excluding 'meal deals' (which are out of scope for England).

4.13. There were also a number of other specific reasons for disagreement in respect of meal deals (each expressed by one industry respondent):

- Including meal deals would be ineffective because many of the foods included in meal deals are exempt from restriction due to their category, or having been packed in store, or are non-HFSS;
- A distinction should be made for lunch time meal deals, and those designed for evening meals – which the respondent described as ‘occasional’ meal options. They felt that promotions of lunch time meal deals did encourage purchase of unhealthier items;
- Removing promotion on meal deals would not stop customers purchasing the items and they may spend more on the meal or buy treats in larger pack sizes instead;
- Independent takeaways use ‘bundling’ meals as a practical way of predicting order flows and that restrictions on this would increase food waste, creating financial and environmental costs;
- The definition of what constitutes a ‘meal deal’ needs to be made clear.

Unlimited refills for a fixed charge

4.14. Question 5 sought views on whether or not to include unlimited refills on soft drinks with added sugar for a fixed charge within scope of the restrictions. The basis for inclusion was that this type of promotion is an alternative form of ‘buy one get x free’ multi-buy offer. The consultation paper proposed that the restriction would apply to those that are HFSS as defined by the NPM (see question 3) and would include non-pre-packed as well as pre-packed drinks.

4.15. The consultation paper noted that the UK Government regulations for restrictions in England include free refills of non-pre-packed soft drinks that are HFSS or ‘less healthy’ (as defined by the NPM).

Question 5: What are your views on the proposal to restrict unlimited refills for a fixed charge on targeted soft drinks with added sugar?

Overview

4.16. Non-industry (77%) and individual (74%) respondents tended to support restricting unlimited refills for a fixed charge on targeted soft drinks with added sugar. A large proportion of industry respondents did not have a specific view on this issue (some noted this type of promotion was not relevant to the type of business(es) they represent). However, a level of support among industry was apparent when taking into account both those that selected ‘agree’ (22%) and those that selected ‘other’ or did not select a tick box but noted that the approach should align with England. The tick box responses are shown in Table 4.3.

Table 4.3 Views on restricting unlimited refills for a fixed charge

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Agree	9	22%	24	77%	28	74%
Disagree	1	2%	1	3%	9	24%
Don’t know	4	10%	1	3%	0	0%
Other	11	27%	1	3%	1	3%
Not answered	16	39%	4	13%	0	0%
Total	**41**	**100%**	**31**	**99%**	**38**	**101%**

Agreement with the restriction

4.17. Respondents across all categories tended to agree on the basis that they felt that unlimited refills for a fixed charge encourage over-consumption of unhealthy drinks. A number of industry respondents indicated that they favour parity with the regulations for England (where this type of restriction is in scope).

4.18. A number of non-industry respondents held concerns about whether this would result in a shift to promoting artificially sweetened drinks as they suggested that overconsumption of those would also be problematic for health. A number highlighted the need to promote healthy drinks.

4.19. Other comments included:

- If the approach is introduced it should not apply to ‘no sugar’ drinks (manufacturer);
- This restriction should be limited to purchases during a single visit and should exclude loyalty/reward schemes where a free drink may be acquired over a number of visits, on the basis that this rewards loyalty rather than increasing consumption (out of home provider).

Disagreement with the restriction

4.20. Reasons for disagreeing (typically among individuals) included that the proposal was unrealistic, unnecessary or would impact most on those on a low income. One manufacturer suggested that restricting free refills on HFSS drinks could lead to customers consuming more, on the basis that outlets may choose to increase the typical size of the single serve, the customer may purchase more regardless of size, and/or the customer may ask for less ice in order to receive more of the drink.

Including other foods in restrictions on unlimited refills for a fixed charge

4.21. The consultation paper sought views on whether any other targeted foods (i.e. beyond targeted soft drinks with added sugar) should be included in the 'unlimited amounts for a fixed charge' restriction.

Question 6: Should other targeted foods be included in restrictions on unlimited amounts for a fixed charge?

Overview

4.22. Views were mixed in respect of whether other targeted foods should be included in restrictions. Non-industry (55%) tended to indicate there are other foods to include. Individuals were split between agreement (42%) and disagreement (40%). Again, a very large proportion of industry respondents did not have a specific view on this issue (as this type of promotion was often not relevant to the type of business(es) they represent). Table 4.4 shows the tick box responses.

Table 4.4 Whether other targeted foods should be included in restrictions on unlimited amounts for a fixed charge

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Yes	2	5%	17	55%	16	42%
No	6	15%	2	7%	15	40%
Don't know	15	37%	4	13%	7	18%
Not answered	18	44%	8	26%	0	0%
Total	**41**	**101%**	**31**	**101%**	**38**	**100%**

Other foods to be included in 'unlimited refill' restrictions

4.23. Four main suggestions were made (predominantly by non-industry and individuals) for other foods to include within the scope of unlimited refill restrictions:

- All targeted HFSS foods; (expressed by 12 respondents)
- 'All you can eat' / buffet style options; (6)
- 'Diet' soft drinks; (3)
- Ice-cream/desserts. (2)

Disagreement with including other foods in ‘unlimited refill’ restrictions

4.24. Relatively few of those that disagreed provided a comment. Individual respondents tended to re-iterate the view that they did not think it appropriate to restrict any promotions. One public sector respondent suggested it would be too difficult to apply to situations such as ‘all you can eat’ buffets where there is a mixture of healthy and less healthy options. One industry representative body suggested that ‘all you can eat’ buffets should not be included because they are not pre-packed. A couple of industry respondents objected on the grounds that this would not align with the restrictions being applied in England. One manufacturer suggested specific examples would be needed to be able to comment.

Temporary price reductions (TPRs)

4.25. The consultation paper sought views on restricting TPRs on the basis that food purchases on TPRs have typically been greater than for other price promotions and therefore their inclusion may enhance the benefits of the restrictions.

4.26. The consultation paper noted that TPRs are not within scope of the UK Government regulations for restrictions in England.

Question 7: What are your views on the proposal to restrict temporary price reductions (TPRs)?

Overview

4.27. Non-industry respondents supported (74%) restricting TPRs primarily on the basis that they promote unhealthy products or encourage unintended purchases. Industry respondents were opposed (68%) primarily on the basis of insufficient evidence to justify their inclusion or a desire for alignment with England. The level of opposition increases when taking into account industry respondents that expressed the same view but did not select a tick box. Individuals were mixed between agreement (53%) – for the same reasons expressed by non-industry; and disagreement (42%) primarily due to concern for the potential impact on low-income households. Table 4.5 provides the tick box responses.

Table 4.5 Views on restricting TPRs

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Agree	0	0%	23	74%	20	53%
Disagree	28	68%	1	3%	16	42%
Don't know	1	2%	2	7%	2	5%
Not answered	12	29%	5	16%	0	0%
Total	**41**	**99%**	**31**	**100%**	**38**	**100%**

Agreement with restricting TPRs

4.28. Both non-industry and individual respondents that agreed with restricting TPRs suggested they promote unhealthy products or encourage the purchase of an item people would not normally buy.

4.29. Non-industry respondents also reported that the widespread use of TPRs meant that it is important that they come under the scope of the legislation or there was a risk of creating a loophole which undermined its effectiveness.

4.30. Two third sector respondents refuted an argument against their inclusion, that TPRs are difficult to define. They pointed to using consumer protection guidance as a way of resolving definitions.

Disagreement with restricting TPRs

4.31. Industry and individual respondents held concerns that restricting TPRs would be detrimental to those on a low income and could inadvertently result in increased food wastage.

4.32. Industry respondents generally felt that evidence in favour of TPR restriction was weak, outdated, and did not take into account recent events that have changed consumption patterns, and that any restrictions should be based on up-to-date evidence. Some mentioned the need for clarity on the definition of TPRs, the time periods to be applied, and what constitutes promotion of TPRs. Again a need for parity with England was noted (where TPRs are not within scope). Other points included that:

- TPRs do not drive over-consumption rather a switch from one product to another;
- TPRs are used to shift stock close to durability date, or where packaging changes were required, and to showcase new products;

- Small businesses are more dependent on TPRs to attract customers and therefore may be unfairly disadvantaged if they are restricted.

Other considerations

4.33. Some of those that noted agreement held concerns about:

- The timing of implementation, during the cost-of-living crisis;
- The need to ensure that restricting TPRs does not reduce the affordability of nutrient dense healthy food and that TPRs should still be allowed for healthier items and cupboard essentials;
- One third sector respondent suggested prioritising other measures first and introducing TPR restrictions later after further research on the impacts.

4.34. One out of home provider (who was neither for or against TPRs being in scope) indicated that if TPR restrictions are introduced this should be applied to TPRs on specific products, and that there should be an exemption for TPRs for whole shopping basket. It was felt it would be too costly to create a technology solution able to apply the discount only to the total of the non-HFSS items included in the shopping basket.

Other forms of price promotion

Question 8: Are there any other forms of price promotion that should be within scope of this policy?

Overview

4.35. Views were mixed in respect of whether any other forms of price promotion should be included in restrictions. Non-industry respondents (61%) tended to indicate there are other forms of price promotion to include. Industry respondents tended to oppose including other price promotions (66%). Individuals were mixed between being unsure (45%) disagreeing (34%) and agreeing (21%). The vast majority of respondents that selected ‘don’t know’ or did not select a tick box, did not provide a comment/view. The results are shown in Table 4.6.

Table 4.6 Whether other forms of price promotion should be in scope

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Yes	0	0%	19	61%	8	21%
No	27	66%	1	3%	13	34%
Don't know	1	2%	5	16%	17	45%
Not answered	13	32%	6	19%	0	0%
Total	**41**	**100%**	**31**	**99%**	**38**	**100%**

Other forms of price promotion to restrict

4.36. Only non-industry and individual respondents indicated other forms of price promotion that they felt should be in scope of restrictions. Not all respondents that explained why they thought they should be in scope; those that did tended to point towards them also driving overconsumption of HFSS products.

4.37. Other forms of price promotion suggested included:

- Loyalty schemes/pricing (mentioned by 9 respondents)
- Multipacks (8)
- Price marked packs (7)
- Upselling (7)
- Shelf-edge labels (4)
- Money off vouchers (3)
- Offering a discount on an HFSS product when another item (such as a newspaper) is purchased (2)
- 'Family sized' items (2)
- Reductions on 'fresh items' that are reaching the end of their shelf life (2)
- Yellow label items (1)
- Free or discounted 'side' orders and discounts on larger portions (in the out of home sector) (1)

Disagreement with restricting other forms of price promotion

4.38. Individuals that disagreed with restricting other forms of price promotion tended to suggest that restrictions on promotions were not appropriate in general. Industry respondents typically indicated either that they support alignment with the promotion types included in the regulations for England or that they were against the introduction of restrictions on any forms of price promotions in general.

4.39. A number of industry respondents held the view that the proposals are already ‘far reaching’ and that, if implementation goes ahead, an independent assessment of the approach and its impact should subsequently be conducted to review their appropriateness and before considering any further restrictions. One industry representative body suggested that further restrictions would be particularly onerous for small and micro businesses.

5. Location and other non-price promotions (Qs 9-13)

5.1. Highlighting that non-price promotions can also influence consumer purchasing behaviour, the consultation paper sought views on (i) locations in-store where targeted foods should be restricted, (ii) whether there are any other types of in-store locations to include in restrictions, (iii) locations online where targeted foods should be restricted, (iv) whether any other online locations should be included in restrictions and (v) whether there are any other types of promotions (in-store or online) not covered by the proposals for restricting price and location promotions that should be included.

In-store location restrictions

5.2. The consultation paper proposed restricting the location of targeted foods in prominent places in physical premises where they are sold to the public. The consultation sought views on each of the specific locations proposed (checkout areas, end of aisle, front of store and island/bin displays).

5.3. The consultation paper noted that UK Government regulations for restrictions in England will apply to store entrances, covered external areas, aisle ends, checkouts and designated queuing areas.

Question 9: Should the location of targeted foods in-store be restricted at:

- Checkout areas, including self-service
- End of aisle
- Front of store, including store entrances and covered outside areas connected to the main shopping area
- Island/ bin displays

Overview

5.4. Non-industry organisation respondents typically agreed with all four location restrictions on the basis that they believe that these encourage customers to purchase HFSS goods that they did not intend to buy. Individuals also tended more towards agreement than disagreement.

5.5. Responses from industry organisations were more mixed. There was some concern about a disproportionate impact on small stores. However there was general support that if restrictions are introduced these should align with restrictions in England. Consequently, a majority of industry respondents indicated restrictions should not include ‘island/bin displays’. There were a number of other specific concerns expressed in respect of restricting island/bin displays, such as their specific use for meeting high demand for seasonal products and for displaying clearance products.

Non-industry respondent views on in-store locations

5.6. Non-industry respondents tended to support location restrictions applying to all four in-store locations explored – i.e. checkouts (84%), end of aisle (74%), front of store (81%) and island/bin displays (77%). Table 5.1 displays the results.

Table 5.1 Non-industry views on areas that location restrictions should apply

Answer	Checkouts		End of aisle		Front of store		Island/bin displays	
	n	%	n	%	n	%	n	%
Yes	26	84%	23	74%	25	81%	24	77%
No	0	0%	1	3%	1	3%	2	7%
Don't know	0	0%	2	7%	0	0%	0	0%
Not answered	5	16%	5	16%	5	16%	5	16%
Total	**31**	**100%**	**31**	**100%**	**31**	**100%**	**31**	**100%**

Individual respondent views on in-store locations

5.7. Individual respondents tended to support location restrictions applying to checkouts (76%), front of store (66%) and end of aisle (58%). They were more muted in respect of island/bin displays (50%). Table 5.2 displays the results.

Table 5.2 Individuals views on areas that location restrictions should apply

Answer	Checkouts		End of aisle		Front of store		Island/bin displays	
	n	%	n	%	n	%	n	%
Yes	29	76%	22	58%	25	66%	19	50%
No	9	24%	13	34%	11	29%	14	37%
Don't know	0	0%	2	5%	2	5%	4	11%
Not answered	0	0%	1	3%	0	0%	1	3%
Total	**38**	**100%**	**38**	**100%**	**38**	**100%**	**38**	**100%**

Industry respondent views on in-store locations

5.8. A notable proportion of industry respondents did not provide a tick box answer to each of the four locations displayed and did not provide a comment/view. While agreement and disagreement appear to be quite evenly split for checkouts (27% agreed; 27% disagreed), end of aisle (22% agreed; 32% disagreed) and front of store (24% agreed; 29% disagreed), there was a proportion of respondents that had selected ‘no’ or ‘don’t know’ or did not select a tick box that indicated that if restrictions are implemented, they support alignment with restrictions in England. Ultimately therefore, there was a level of preference among industry for applying location restrictions in these three areas that is not apparent from the tick box responses.

5.9. Taking into account both the level of industry respondents that disagreed with including island/bin displays (49%) and those that selected ‘don’t know’ or did not select a tick box but expressed a desire for alignment with restrictions in England, there was clear opposition among industry respondents to including island/bin displays. Table 5.3 displays the tick box responses.

Table 5.3 Industry views on areas that location restrictions should apply

Answer	Checkouts		End of aisle		Front of store		Island/bin displays	
	n	%	n	%	n	%	n	%
Yes	11	27%	9	22%	10	24%	1	2%
No	11	27%	13	32%	12	29%	20	49%
Don’t know	3	7%	3	7%	3	7%	5	12%
Not answered	16	39%	16	39%	16	39%	15	37%
Total	**41**	**100%**	**41**	**100%**	**41**	**100%**	**41**	**100%**

Agreement with the proposed locations

5.10. Both non-industry and individual respondents that expressed agreement with proposed location restrictions tended to do so on the basis that these locations are known to attract attention from customers and are likely to result in unintended purchases of HFSS products. A number of non-industry respondents saw the restrictions as an opportunity to use those locations to encourage the purchase of healthy foods. One public sector respondent made the point that all four location restrictions were needed, because without them, retailers would be able to display HFSS products in whichever location was not included. Similarly, another noted the importance of defining these locations clearly to avoid loopholes being found.

5.11. While some individual respondents agreed with some locations but not others, they very rarely explained why. However, one individual that agreed only with location restrictions at checkouts explained that at this point the customer has selected everything that they want and should not be tempted into spending more.

5.12. Industry respondents that supported location restrictions applying in checkout areas, end of aisle and front of store (but not island/bin displays) noted the importance of alignment with England.

Disagreement with the proposed locations

5.13. Relatively few individual respondents disagreed with all four locations and even fewer gave a reason. Reasons (each by one respondent) included:

- The Government should not control how businesses sell their products;
- Location restrictions would be ineffective because people will still want to buy HFSS products and will look for them where ever they are located;
- It would create inconvenience for customers resulting in them spending more time looking for items and potentially buying even more as a result.

5.14. Industry respondents commonly expressed concern that smaller and convenience type stores would be disproportionately impacted by location restrictions. Reasons for this included that:

- Their layout is based on aiding movement around a small space;
- Their product range and other services they provide could be adversely impacted;
- The costs associated with redesigning the layout to be able to comply would be prohibitive. While some made this point generally in respect of all locations, it was also mentioned specifically in respect of end of aisle and island/bin displays.

5.15. Other points raised, each by one industry respondent included that:

- The proposals are already extensive and are likely to disincentivise voluntary reformulation and increase costs for Scottish households;
- Location restrictions will lead to domination of the marketplace by large well-known brands which will stifle innovation and restrict consumer choice;
- Greater definition is needed on the meaning of 'available store space' in respect of small units (such as corner shops, garage forecourts and coffee shops);
- In some wholesalers and retailers, specific spaces may be rented by suppliers and manufacturers, and restrictions would thereby prevent these additional revenue sources.

5.16. Overwhelmingly, industry respondents were against restrictions applying to island/bin displays. A number of respondents highlighted that this would not align with the locations included in the restrictions for England. Other rationale included:

- That these are additional display units used to meet high demand for seasonal products and that restricting their use for HFSS products would create logistical difficulties for replenishing shelves and storing large volumes of stock back of store;
- That these are also used for product clearance and to promote new products and that retailers may have to reduce their product range to accommodate the volume of products in higher demand, reducing choice for customers;
- A lack of evidence that island/bin displays impact on over consumption;
- That there is no 'universal' definition of an island or bin display and therefore this may lead to confusion; one retailer specifically suggested focusing restrictions on set physical locations within a store rather than types of store furniture would facilitate understanding and implementation of restrictions;

- That restricting the use of ‘free standing display units’ in the other areas subject to location restrictions (such as front of store) would already cover a significant area of stores and that it is not therefore necessary to include all free standing units within a store.

5.17. Other concerns relating to the specific locations, each by one industry respondent included:

- In respect of front of store/entrances clarity is needed as to whether restrictions would apply only to the ‘main’ entrance or other entrances as well, and further how the ‘main’ entrance would be determined (for example whether this would be the most prominent entrance or perhaps a less prominent entrance that has higher footfall);
- End of aisles are commonly used to promote ‘local’ foods. This should be allowed to support local food producers to shorten supply chains which the respondent saw as contributing to environmental, social and economic goals.

5.18. One manufacturer noted there should be an exemption for charitable, social or environmental campaigns and initiatives in stores as including promotions linked to them within the restrictions would reduce visibility and therefore donations.

Other in-store locations

Question 10: Should any other types of in-store locations be included in restrictions?

Overview

5.19. Views were mixed in respect of whether any other types of in-store locations should be included in restrictions. A majority of non-industry respondents (55%) felt there were other locations to include. Industry respondents tended to disagree (63%). Individuals were mixed between disagreeing (45%) and being unsure (40%). The vast majority of respondents selecting ‘don’t know’ or not selecting a tick box did not provide a comment/view. The results are shown in Table 5.4.

Table 5.4 Whether other in-store locations should be in scope

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Yes	0	0%	17	55%	6	16%
No	26	63%	4	13%	17	45%
Don’t know	3	7%	2	7%	15	40%
Not answered	12	29%	8	26%	0	0%
Total	**41**	**99%**	**31**	**101%**	**38**	**101%**

Other in-store locations to include

5.20. Other locations suggested by non-industry respondents included:

- Seasonal/promotional aisles (7)
- Designated/extended queuing areas (6)
- Branded chillers (4)
- Images of HFSS foods (such as Easter eggs in store windows) (3)
- The full extent of ‘non-price promotions’ described in the 2018 consultation on restrictions on promotion of HFSS products (although it should be noted not all of these are specific ‘locations’) (3)
- HFSS items should only be displayed in their ‘normal’ area/aisle (2)
- Temporary stands (2)
- HFSS products should not be displayed in the ‘eye line’ of children. (1)

Disagreement with including other in-store locations

5.21. Typically industry respondents that were not in favour of additional locations being included, expressed that they supported alignment with the restrictions in England (which additional locations would not be consistent with) or that they did not support location (or any) restrictions in general. Two public sector respondents commented that any further location restrictions would be too onerous for businesses.

Online location restrictions

5.22. The consultation paper proposed to apply location restrictions in online locations equivalent to those in-store and sought views on specific online locations (home page, favourite products page, pop ups, shopping basket and checkout page).

5.23. The consultation paper noted that UK Government regulations for restrictions in England include the online equivalents of in-store locations in scope, namely home pages, certain searching or browsing pages for other food categories, 'pop ups', favourites pages, shopping basket or checkout pages.

Question 11: If included, should the location of targeted foods online be restricted on:

- Home page
- Favourite products page
- Pop ups and similar pages not intentionally opened by the user
- Shopping basket
- Checkout page

Overview

5.24. Non-industry respondents tended to support all five online location restrictions on the basis that these encourage unintended purchases of HFSS items. Individuals shared a similar view although were a little muted in respect of the shopping basket and were split in respect of favourites, due in part to concerns that restrictions may result in products not being displayed at all in those areas (even when purposely selected by the customer). There was a level of support for restricting the online locations among industry respondents on the basis that they supported alignment with restrictions in England. There was some disagreement among industry and individual respondents which typically reflected general disagreement with the rationale for restricting the promotion of HFSS foods.

Non-industry respondent views on online locations

5.25. Non-industry respondents supported location restrictions applying online to all five locations – i.e. the home page (81%), favourites (71%), pop ups (81%), shopping basket (74%) and checkout page (84%). Table 5.5 displays the results.

Table 5.5 Non-industry views on where online location restrictions should apply

Answer	Home page		Favourites		Pop ups		Shopping basket		Checkout page	
	n	%	n	%	n	%	n	%	n	%
Yes	25	81%	22	71%	25	81%	23	74%	26	84%
No	1	3%	1	3%	1	3%	1	3%	0	0%
Don't know	0	0%	3	10%	0	0%	2	7%	0	0%
Not answered	5	16%	5	16%	5	16%	5	16%	5	16%
Total	**31**	**100%**	**31**	**100%**	**31**	**100%**	**31**	**100%**	**31**	**100%**

Individual respondent views on online locations

5.26. Individual respondents tended to support location restrictions applying online to pop ups (79%), the home page (69%) and checkout pages (68%). Agreement was a little lower with respect to the shopping basket (61%) and for favourites views were split (50% disagreed; 45% agreed). Responses indicated concern that the products may not be visible at all in favourites (and to some extent the shopping basket) even when selected by the customer. Table 5.6 displays the results.

Table 5.6 Individuals views on where online location restrictions should apply

Answer	Home page		Favourites		Pop ups		Shopping basket		Checkout page	
	n	%	n	%	n	%	n	%	n	%
Yes	26	69%	17	45%	30	79%	23	61%	26	68%
No	10	26%	19	50%	7	18%	13	34%	11	29%
Don't know	2	5%	2	5%	1	3%	2	5%	1	3%
Not answered	0	0%	0	0%	0	0%	0	0%	0	0%
Total	**38**	**100%**	**38**	**100%**	**38**	**100%**	**38**	**100%**	**38**	**100%**

Industry respondent views on in-store locations

5.27. Agreement and disagreement appeared to be split for each of the five locations - homepage (29% agreed; 20% disagreed), favourites (24% agreed; 22% disagreed), pop ups (32% agreed; 20% disagreed), shopping basket (20% agreed; 22% disagreed) and checkout page (29% agreed; 20% disagreed). However, there was a proportion of industry respondents that had ticked 'no' or 'don't know' or did not select a tick box that commented that if restrictions are implemented, they support alignment with restrictions in England. Ultimately therefore, there was a level of preference among industry for applying all five online location restrictions that is not apparent from the tick box responses. Table 5.7 displays the responses.

Table 5.7 Industry views on where online location restrictions should apply

Answer	Home page		Favourites		Pop ups		Shopping basket		Checkout page	
	n	%	n	%	n	%	n	%	n	%
Yes	12	29%	10	24%	13	32%	8	20%	12	29%
No	8	20%	9	22%	8	20%	9	22%	8	20%
Don't know	4	10%	5	12%	4	10%	7	17%	4	10%
Not answered	17	42%	17	42%	16	39%	17	42%	17	42%
Total	**41**	**101%**	**41**	**100%**	**41**	**101%**	**41**	**101%**	**41**	**101%**

Agreement with online location restrictions

5.28. Non-industry and individual respondents that agreed with some or all online location restrictions tended to do so on the basis that foods are displayed in these locations in order to encourage people to buy them and therefore are likely to lead to unintended purchases and over consumption. A number of non-industry respondents also highlighted the importance of locations 'matching' those in-store in order to create a level playing field across the in-store and online environment. A suggestion was made that these locations should be used to display healthy foods. One individual that took a general stance against the restrictions proposed supported a general ban on pop ups.

5.29. A small number of respondents suggested the home page, pop ups and checkout were locations that were most likely to encourage additional purchase because they are places where people were not 'looking' for HFSS products, however respondents were generally less certain in respect of favourite and shopping basket pages (explored further below in respect of 'disagreement').

5.30. There was a general view among industry respondents that online locations should align with the UK regulations for England. A number noted the difficulty that would arise if websites (many of which are UK wide) are required to apply different rules for different countries. One out of home provider suggested responsibility for complying should rest with retailers rather than online food order platforms that facilitate sales between businesses and customers.

5.31. Other specific points (each made by one respondent) in respect of applying online location restrictions included:

- HFSS products should not be displayed on the home page if customers would be able to add products directly to their basket from there; (retailer)
- There should be an exemption for paid product placement in the appropriate online 'aisle'; (manufacturer)

- There is potential for ‘digital loopholes’ and ‘shop bots’ which need to be explored fully to ensure fairness between online and in-store restrictions; (industry representative body)
- Convenience retailers would suffer competitive disadvantage if the rules only applied in-store and not online, on the basis that relatively few convenience retailers in Scotland have a website; (industry representative body)
- There would be merit in evaluating the impact of online food marketing on children to inform future policy development. (‘other’ organisation)

Disagreement with online location restrictions

5.32. Aside from re-iterating overall disagreement with the rationale for applying restrictions to the promotion of HFSS products, there was little consistency in reasons for disagreement among industry respondents. Reasons for disagreement and concerns expressed (each by one or two industry respondents) include:

- There is limited evidence of the impact of promotions in the online environment;
- That the websites of hospitality businesses are a ‘sales tool’ and as such should be allowed to bring products to the attention of customers;
- Online purchasing is not directed at children and therefore should not be in scope;
- In-store and online shopping environments are not sufficiently similar to allow direct application of in-store location restrictions to be applied online;
- Websites that operate differently to retailer websites (e.g. those such as online food ordering and delivery sites where customers go with the specific intention of buying a one off meal) should not be in scope.

5.33. Individual respondents that disagreed with all online location restrictions reiterated their overall stance against restrictions. One individual suggested that at the shopping basket, a cheaper alternative to a product already selected by the customer should be allowed to be displayed.

Uncertainty regarding the favourites page and the shopping basket

5.34. Generally there was a level of uncertainty in respect of the favourites page and the shopping basket which may account for them receiving less clear support than the other online locations explored. This seemed to hinge on the interpretation that the restrictions may result in products not being visible <u>at all</u> in those locations (even where the customer has purposely selected them) as opposed to not being advertised/presented on those pages when they had not already been selected by the customer.

Other online locations

Question 12: Should any other online locations be included in restrictions?

Overview

5.35. Views were mixed in respect of whether any other types of online locations should be included in restrictions. A majority of non-industry respondents (58%) felt there were other online locations to include. Industry respondents tended to disagree (56%). Individuals were mixed between disagreeing (42%) and being unsure (37%). The vast majority of respondents that selected ‘don’t know’ or did not select a tick box did not provide a comment/view. Table 5.8 displays the results.

Table 5.8 Whether any other online locations should be in scope

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Yes	1	2%	18	58%	8	21%
No	23	56%	3	10%	16	42%
Don’t know	3	7%	3	10%	14	37%
Not answered	14	34%	7	23%	0	0%
Total	**41**	**99%**	**31**	**101%**	**38**	**100%**

Other online locations to include

5.36. A number of other online locations were proposed by non-industry and individual respondents (some indicated more than one):

- Apps/ supermarket apps; (suggested by 6 respondents)
- Social media; (6)
- Online adverts that pop up when using the internet; (4)
- Promotions via email; (3)
- All pages that customers may see on websites; (3)
- Loyalty card scheme apps. (2)

5.37. One third sector respondent suggested the approach should be based on the ‘effect’ (i.e. locations that encourage people to purchase unhealthy foods) rather than the specific names of different ‘locations’ in order to encompass all relevant locations.

5.38. A number of non-industry respondents suggested online food ordering and delivery websites/apps should be included on the basis that since the pandemic online purchases have increased and therefore play a part in overconsumption of HFSS products. However, it should be noted that in the consultation document, these were already specified as in scope.

Disagreement with including other online locations

5.39. Typically industry respondents that were not in favour of additional online locations being included expressed a preference for alignment with restrictions in England (which additional locations would not be consistent with) or that they did not support location (or any) restrictions in general. Individuals rarely explained their reasons for disagreement beyond a couple reiterating that it was not the place of the Government to apply any restrictions.

5.40. One manufacturer suggested that online restrictions could result in advertising revenue being driven to other media channels which they believed would affect competition in the food and drink industry.

Other promotions

Question 13: Are there other types of promotion (in-store or online) not covered by our proposals for restricting price and location promotions that should be within scope?

Overview

5.41. Views were again mixed in respect of whether any other types of promotion (in-store or online) should be in scope. Industry respondents tended to disagree (61%). A proportion of non-industry respondents indicated there are other promotions to include (45%). Individuals tended towards uncertainty (50%). The vast majority of respondents that selected ‘don’t know’ or did not select a tick box did not provide a comment/view. Table 5.9 displays the results.

Table 5.9 Whether other types of promotion should be in scope

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Yes	0	0%	14	45%	7	18%
No	25	61%	2	7%	12	32%
Don’t know	1	2%	8	26%	19	50%
Not answered	15	37%	7	23%	0	0%
Total	**41**	**99%**	**31**	**101%**	**38**	**100%**

Other promotions to include

5.42. Other promotions that had not already been suggested in response to question 8 (any other price promotions) or 10 (any other in-store locations) included: -

- Coupons; (suggested by 2 respondents)
- Cinema advertising for snack outlets; (1)
- Vending machines; (1)
- Promotions that include a toy. (1)

Disagreement with including other restrictions on promotions

5.43. Respondents that explained their reasons for disagreeing tended to indicate that the proposals are already comprehensive. A number of industry respondents suggested any further restrictions would need to be based on an evaluation of the implementation of the restrictions already proposed. Again, a number of industry respondents expressed that they supported alignment with the restrictions in England (which additional restrictions would not be consistent with) or that they did not support any restrictions.

6. Places that would be subject to restrictions (Qs 14-16)

6.1. The consultation paper proposed to apply restrictions to any place where pre-packed targeted foods, and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge, are sold to the public in the course of business. The consultation sought views on (i) specific locations that the restrictions should apply to, (ii) whether there are any other places/types of business to which the restrictions <u>should</u> apply and (iii) whether there are any other places/types of business which the restrictions should <u>not</u> apply to.

Places where targeted foods are sold to the public

6.2. The consultation paper sought views on a number of specific places where targeted foods are sold to the public (retail, out of home, wholesale - where sales are also made to the public, other outlets), including physical premises and online sales.

6.3. The consultation paper noted that UK Government regulations for restrictions in England includes all retail businesses which sell food and drink within scope of the regulations, including their franchises and online outlets. For out of home outlets only free refill promotions are in scope of the regulations for England.

Question 14: Which places, where targeted foods are sold to the public, should promotion restrictions apply to?

- Retail
- Out of home
- Wholesale (where sales are also made to the public)
- Other outlets

Overview

6.4. Non-industry respondents tended to support promotion restrictions applying to all four places explored in the consultation to ensure consistency across the locations where HFSS products are sold to the public so that the restrictions are effective. Individual respondents answered in a similar fashion although support for restrictions applying to ‘other outlets’ was more muted (but with no clear reason why). Industry respondents tended to agree with restrictions applying to retail but were more mixed in respect of the other three places, with some believing all four should be included to ensure a level playing field across businesses but others believing there should be alignment with England where the primary focus is on retail. There were also some specific concerns about the inclusion of the out of home sector that meant that overall there was a small level of preference among industry not to include the out of home sector.

Non-industry respondent views on places

6.5. Non-industry respondents tended to support promotion restrictions applying to all four places explored – i.e. retail (81%), out of home (71%), wholesale (81%) and other outlets (65%). Table 6.1 displays the results.

Table 6.1 <u>Non-industry</u> views on places that promotion restrictions should apply

Answer	Retail		Out of home		Wholesale		Other outlets	
	n	%	n	%	n	%	n	%
Yes	25	81%	22	71%	25	81%	20	65%
No	1	3%	2	7%	1	3%	3	10%
Don't know	0	0%	2	7%	0	0%	3	10%
Not answered	5	16%	5	16%	5	16%	5	16%
Total	**31**	**100%**	**31**	**101%**	**31**	**100%**	**31**	**101%**

Individual respondent views on places

6.6. Individual respondents tended to support promotion restrictions applying to retail (74%), out of home (63%), and wholesale (61%). They were less certain in respect of other outlets, with 47% agreeing and 16% selecting 'don't know' although there was a lack of feedback to explain why. Table 6.2 displays the results.

Table 6.2 <u>Individuals</u> views on places that promotion restrictions should apply

Answer	Retail		Out of home		Wholesale		Other outlets	
	n	%	n	%	n	%	n	%
Yes	28	74%	24	63%	23	61%	18	47%
No	10	26%	12	32%	12	32%	13	34%
Don't know	0	0%	1	3%	3	8%	6	16%
Not answered	0	0%	1	3%	0	0%	1	3%
Total	**38**	**100%**	**38**	**101%**	**38**	**100%**	**38**	**101%**

Industry respondent views on places

6.7. The views of industry respondents were somewhat complex. A number of industry respondents that did not select a tick box indicated support for consistency across all locations so that there is a level playing field, suggesting that agreement with all four places is higher than the tick box responses indicate. However, there was also a number of industry respondents that did not select a tick box that indicated preference for alignment with England which suggests that support for restrictions to apply to retail was even higher still, but that disagreement with restrictions applying to out of home, wholesale and other outlets was also higher than the tick box answers indicate. Consequently, industry respondents tended to support promotion restrictions applying to retail; responses were more mixed in respect of the other three places – there was some preference for restriction to apply to wholesale; and some preference for restrictions not to apply to out of home (some respondents had other specific concerns about the potential inclusion of out of home). Table 6.3 displays the tick box responses.

Table 6.3 Industry views on places that promotion restrictions should apply

Answer	Retail		Out of home		Wholesale		Other outlets	
	n	%	n	%	n	%	n	%
Yes	15	37%	9	22%	11	27%	7	17%
No	5	12%	14	34%	7	17%	10	24%
Don't know	3	7%	2	5%	4	10%	5	12%
Not answered	18	44%	16	39%	19	46%	19	46%
Total	**41**	**100%**	**41**	**100%**	**41**	**100%**	**41**	**99%**

Agreement with the places

6.8. Non-industry and individual respondents that provided an explanation for their responses typically agreed with all four places being within scope of restrictions to ensure consistency across all places where the public purchase food and drink in order for the approach to be effective.

6.9. The most common viewpoint for supporting the inclusion of these places among industry respondents that commented was that there should be a level playing field across all businesses to prevent certain businesses from being disadvantaged. Notably, this view was not held by any out of home providers.

6.10. Other points raised included:

- Restrictions should apply only to retail (and not the other three places) indicating that retail is 'enough'; (individual)
- There should be an exemption for businesses that are substantially different to retail e.g. out of home where food is prepared onsite. (manufacturer)

Disagreement with the places

6.11. Only four individual respondents explained their reasons for disagreeing with the places explored by the consultation. Predominantly this was due to overall disagreement with applying any form of restrictions.

6.12. The main reason for disagreement among industry respondents was preference for alignment with the restrictions for England.

6.13. One manufacturer that only agreed with restrictions applying to retail suggested that the other locations do not reflect the same behaviours in terms of causing over-consumption.

Specific disagreement with including the out of home sector

6.14. A number of industry respondents indicated specific disagreement with restrictions applying to the out of home sector (with each point made by one or two respondents):

- Because the out of home sector would already be addressed by proposals for mandatory calorie labelling;
- Insufficient evidence had been presented to show that restricting promotions in the out of home sector would contribute to a reduction in obesity;
- The out of home sector is very different to the retail environment, for example, customers do not purchase items in the same way (they make a selection for immediate consumption) and are not equivalent to retail in terms of driving over-consumption;
- Regardless of overall size of the business the layout and limited space in the out of home sector for displaying products meant that products are displayed near entrances and the till by necessity and therefore it is not practical to comply with location-based restrictions.

6.15. A further two respondents (public sector and individual) suggested the out of home sector should be excluded as people go with the intention of treating themselves.

Specific disagreement with including wholesale

6.16. One manufacturer expressed specific concerns in respect of wholesale, for example that customers may travel to UK based wholesalers to make their purchases thereby disadvantaging Scottish wholesalers and also that the restrictions may impact negatively on the hospitality sector which use wholesalers to buy goods in bulk. An industry representative body also held specific concerns in respect of wholesale, as they were aware of a wholesaler that sells large bulk packs, mainly to trade customers, but also to individual club members (that follow a qualifying application process and pay membership fees). The respondent suggested that wholesaler would be penalised for its different business model.

Specific disagreement with including 'other outlets'

6.17. Two public sector respondents thought 'other outlets' should be excluded, one on the basis that it would be excessive to include them and the other on the basis that more specialist outlets should be exempt if individuals have purposely visited the outlet with the existing intention to buy a particular product. One individual suggested other outlets should not be included as they would be difficult to monitor and people were unlikely to purchase a lot of HFSS products from them.

Other places/types of business to include

Question 15: Are there other places/types of business to which the restrictions should apply?

Overview

6.18. Views were very mixed, in respect of whether restrictions should apply to any other places/types of business. Non-industry respondents (61%) tended to identify other places to be considered. Individuals were evenly split between disagreement (40%) and uncertainty (40%). Industry respondents disagreed (49%) with many not providing a definitive answer (52%). The vast majority of respondents selecting ‘don’t know’ or not selecting a tick box did not provide a comment/view. Table 6.4 displays the results.

Table 6.4 Whether there are other places/types of businesses to include

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Yes	0	0%	19	61%	8	21%
No	20	49%	4	13%	15	40%
Don’t know	6	15%	1	3%	15	40%
Not answered	15	37%	7	23%	0	0%
Total	**41**	**101%**	**31**	**100%**	**38**	**101%**

Other places to include in restrictions

6.19. A number of other places were proposed by non-industry and individual respondents:

- Transport and transport hubs; (suggested by 8 respondents)
- Education settings (e.g. schools, universities); (7)
- Places visited by children (e.g. parks, children’s party venues); (7)
- Entertainment venues (e.g. cinemas); (5)
- Attractions and museums; (4)
- Delivery companies/takeaways; (3)
- Everywhere. (3)

Disagreement with including other places

6.20. Typically, industry respondents that were not in favour of additional places being included, expressed that they supported alignment with the restrictions in England (which additional places would not be consistent with) or that they did not support restrictions in general. Individuals rarely explained their reasons for disagreement, where they did it was due to overall disagreement with introducing restrictions.

6.21. One retailer noted an interest in understanding how the restrictions would affect charity events/promotions in stores where the store and products are both in scope, but the sales go to the charity rather than the store facilitating the event.

Other places/types of business to exclude

Question 16: Are there any other places/types of business which should not be within the scope of the restrictions?

Overview

6.22. Around half of each respondent type (industry, non-industry and individuals) did not express a view in respect of this question. Non-industry (42%) and individuals (34%) tended to disagree with any other exclusions; industry respondents were mixed between indicating there should be other exclusions (29%) and there should not (20%). Table 6.5 displays the results.

Table 6.5 Whether any other places/types of business should be excluded

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Yes	12	29%	3	10%	6	16%
No	8	20%	13	42%	13	34%
Don’t know	5	12%	8	26%	18	47%
Not answered	16	39%	7	23%	1	3%
Total	**41**	**100%**	**31**	**101%**	**38**	**100%**

Other places to exclude

6.23. Among respondents that provided a suggestion, other places that should be excluded from restrictions (predominantly by industry respondents) included:

- Small businesses; (suggested by 7 respondents)
- Places where other regulation already applies (such as healthcare); (4)

- Out of home sector; (3)
- ‘Airside’ stores (located in airports having gone through security checks); (1)
- ‘Economically vulnerable’ locations on the high street; (1)
- Workplace canteens. (1)

Disagreement with excluding other places

6.24. Respondents that provided a comment on why they disagreed with other places being excluded from restrictions tended to reiterate the need for consistency across places that sell HFSS products (particularly non-industry respondents) and that there should be a level playing field among businesses (particularly industry respondents). A number of non-industry respondents highlighted their view that there should be no ‘exemptions’.

6.25. A small number of non-industry respondents indicated uncertainty in respect of charity sales as these are small in scale but do promote HFSS foods. One industry representative body indicated that there is a need to carefully define charity events to ensure that their exclusion does not prevent fundraising for causes that are not ‘formal OSCR charities’ – to ensure fairness across different causes.

7. Exemptions to restrictions (Qs 17-21)

7.1. The consultation paper acknowledged that the food business landscape is diverse and as such the restrictions would need to apply to a wide range of contexts, but that it may prove more challenging for some businesses to comply than others. The consultation therefore sought views on a number of specific exemptions, (i) the proposal to exempt specialist businesses that mainly sell one type of food product category from location restrictions, (ii) in the event that exemptions are extended beyond specialist businesses, whether number of employees and/or floor space should be used to determine eligibility for exemption from location restrictions; (iii) if number of employees is used to determine eligibility, what size of business should be exempt; (iv) if floor space is used to determine eligibility, what size of business should be exempt; (v) whether any other types of exemptions should apply.

Exemptions from location restrictions

Specialist business exemption

7.2. The consultation paper proposed to exempt specialist businesses with a limited product range (such as chocolatiers and sweet shops) from location restrictions on the basis that such businesses would not be able to avoid locating HFSS products in the locations subject to restrictions. Restrictions on price promotions would still apply (in-store and online).

7.3. The consultation paper noted that the UK Government regulations for England include an exemption from location restrictions for specialist retailers that sell one type of food product category.

Question 17: Do you agree with our proposal to exempt specialist businesses that mainly sell one type of food product category, such as chocolatiers and sweet shops, from location restrictions?

Overview

7.4. Non-industry (71%) and individual (68%) respondents tended to support the proposal to exempt specialist businesses. Industry respondents also tended to support the exemption, taking into account both the number that agreed with the exemption (46%) but also those that selected ‘don’t know’ or did not select a tick box but expressed a desire for alignment with restrictions in England or noted the exemption was reasonable. The tick box responses are shown in Table 7.1.

Table 7.1 Whether to exempt specialist businesses from location restrictions

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Yes	19	46%	22	71%	26	68%
No	0	0%	2	7%	8	21%
Don't know	4	10%	0	0%	4	11%
Not answered	18	44%	7	23%	0	0%
Total	**41**	**100%**	**31**	**101%**	**38**	**101%**

Agreement with the specialist business exemption

7.5. Non-industry respondents that explained their reasons for agreement tended to indicate that it would not be reasonable or practical for specialist businesses to implement location restrictions, although many of these flagged the importance of price promotion restrictions still applying to specialist businesses. A number of non-industry and individual respondents highlighted that purchases at these types of businesses are more purposeful; people visit with the intention to buy HFSS products and therefore are not unduly tempted to make additional purchases based on the location of items. Some individual respondents agreed with the exemption on the basis of their general disagreement with any restrictions.

7.6. Industry respondents indicated two main reasons for supporting the exemption – that they supported alignment with the restrictions in England (which the exemption would align with) (particularly manufacturers), or that it would not be reasonable or practical for specialist businesses to implement location restrictions (particularly industry representative bodies).

7.7. Other points raised, each by one industry respondent, included:

- A need to consider widening the exemption to other hospitality businesses that have a limited range of products; and to widen the exemption to other small businesses to prevent unfairness between e.g. small convenience stores and large specialist shops.
- That the definition of 'specialist retailer' should include gift/souvenir products sold in airports;
- That there is a need for a clear definition of 'mainly sell'; and 'specialist'.

Disagreement with the specialist business exemption

7.8. There was very little direct disagreement with the exemption. The most common reason was a view that consistency across businesses was needed for the approach to be effective. Other points included:

- The exemption should apply to specialist shops that were independent businesses, but not to national or multi-national businesses; (individual)
- An exemption specifically for specialist retailers was not fair to businesses selling a more diverse range of products, but that specialist businesses may reasonably be captured in an exemption for small businesses; (retailer)
- The exemption should apply to locally produced products but not to shops selling well known commercial brands; (individual)
- Concern about the logic of exempting businesses that focus all their attention on HFSS products. (individual)

Small business exemption (from location restrictions)

7.9. Recognising that smaller businesses may have limited scope to comply with location restrictions, the consultation paper sought views on using number of employees and/or floor space as a basis for determining which businesses would be eligible for an exemption from location restrictions.

7.10. The consultation paper noted that UK Government regulations for restrictions in England include an exemption by number of employees from location restrictions and volume price restrictions. They also include an exemption by floor space from location restrictions.

Question 18: If exemptions are extended beyond our proposal to exempt specialist businesses that mainly sell one type of food product category, should exemptions be applied on the basis of:

- Number of employees
- Floor space
- Other (please specify)

Overview

7.11. Non-industry respondents tended to disagree with the additional exemptions explored in the consultation primarily due to concern that allowing exemptions would reduce the overall impact of the restrictions. Individuals tended to be split between agreement (primarily due to opposing the restrictions) and disagreement (for the same reason as non-industry respondents). Industry respondents tended to support the exemptions either due to a preference for alignment with England or a view that it would not be practical for smaller businesses to comply. Very few respondents suggested 'other' ways of calculating a small business exemption.

7.12. It should be noted that it was not always clear whether respondents had made the distinction between price promotion and location restrictions and that the exemption being explored in the consultation paper is only proposed to apply to location restrictions.

Number of employees

7.13. Views were mixed as to whether using number of employees is an appropriate basis for an exemption to location restrictions. Non-industry respondents tended to disagree (42%), although 45% did not provided a definitive answer. Individuals were split between disagreement (47%) and agreement (37%). While industry respondents appeared to be quite mixed between agreement (34%) and disagreement (20%), there was an overall preference for the exemption when also taking into account the number that selected ‘don’t know’ or that did not select a tick box but expressed a preference for alignment with England. Table 7.2 displays the tick box responses.

Table 7.2 Whether to use number of employees as a basis for exemption

Answer	**Organisations**				**Individuals**	
	Industry		**Non-industry**			
	n	**%**	**n**	**%**	**n**	**%**
Yes	14	34%	4	13%	14	37%
No	8	20%	13	42%	18	47%
Don’t know	2	5%	5	16%	6	16%
Not answered	17	42%	9	29%	0	0%
Total	**41**	**101%**	**31**	**100%**	**38**	**100%**

Floor space

7.14. Views were also mixed as to whether using floor space is an appropriate basis for exemption. Non-industry respondents tended to disagree (36%) although 55% did not provide a clear view on the issue. Individuals were mixed with disagreement (53%) a little higher than agreement (37%). Industry respondents were in favour of the exemption when taking into account those that agreed (54%) and those that selected ‘don’t know’ or did not select a tick box but expressed a preference for alignment with England. Table 7.3 displays the tick box responses.

Table 7.3 Whether to use floor space as a basis for exemption

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Yes	22	54%	3	10%	14	37%
No	3	7%	11	36%	20	53%
Don't know	3	7%	7	23%	4	11%
Not answered	13	32%	10	32%	0	0%
Total	**41**	**100%**	**31**	**101%**	**38**	**101%**

Other

7.15. As Table 7.4 shows, very low numbers of respondents indicated they thought there was an 'other' approach that should be used to determine exemption.

Table 7.4 Whether to use an 'other' basis for exemption

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Yes	2	5%	2	7%	9	24%
No	2	5%	5	16%	13	34%
Don't know	7	17%	5	16%	8	21%
Not answered	30	73%	19	61%	8	21%
Total	**41**	**100%**	**31**	**100%**	**38**	**100%**

Agreement with the approaches

7.16. Some of the respondents that agreed with applying exemptions on the basis of employee number and/or floor space (particularly individuals) did so on the basis that they did not agree with restrictions for any type of business.

7.17. Specific reasons for supporting these approaches included:

- The consistency they offered with exemptions in England (particularly among industry respondents);
- That they offer a sensible way of differentiating between large commercial settings and smaller businesses that may have more limited ability to apply the restrictions and may therefore be more adversely affected by their introduction.

7.18. Other points raised were:
- For the 'number of employee' exemption to be used, it would need to relate to the number of employee hours, otherwise businesses with a large number of part time employees could be disadvantaged; (individual)
- In respect of number of employees there should be alignment with the Sunday Trading Act. (manufacturer)

The issue of symbol groups[12]

7.19. Two industry respondents noted strong concerns about eligibility rules that may apply to the exemptions if they are introduced. Specifically, they were concerned that where a small independent business partners with a larger group (for example to source stock) any metrics for calculating whether the exemption applies (such as number of employees) should not include those belonging to the larger group.

7.20. Conversely one third sector respondent suggested small retailers should be exempt where it would not be practical to implement the requirements without causing difficulty to the running of the business; but not when they are connected to franchises that can support them to implement the requirements.

Disagreement with the approaches

7.21. The majority of respondents that offered a reason for disagreeing with number of employees and/or floor space being used did so on the basis that they did not agree with further exemptions being applied (particularly non-industry organisations and individuals). The main reasons expressed for this were:
- To ensure restrictions would have the maximum effect;
- To create a 'level playing field' and avoid loopholes.

7.22. A few respondents disagreed with using number of employees but agreed with using floor space, however no clear reasons were provided.

'Other' ways of calculating a small business exemption

7.23. Very few respondents suggested other approaches. Suggested criteria included the types of products sold (i.e. specialist shops) and financial metrics such as turnover, income or profit. One industry representative body suggested there should be an exemption for hospitality businesses that mainly sell HFSS foods on the basis that customers will have already chosen to purchase those products when entering.

[12] A 'symbol group' is a form of franchise of convenience shops. While they do not own or run the shop(s), they act as a supplier to independent shops which trade under their brand.

Number of employees exemption

7.24. The consultation also sought views on the specific number of employees that the exemption from location restrictions should be based upon and offered a number of different options. The consultation paper indicated that the ‘micro and small businesses (fewer than 50 employees)’ option would be consistent with exemptions set out in the UK Government regulations for England.

Question 19: If you agreed in question 18 that businesses should be exempt from location restrictions based on number of employees, what size of business should be exempt?

Overview

7.25. Specific responses to the question were relatively low and the vast majority of respondents that did not select a tick box answer did not provide a comment/view. Industry respondents indicated a preference for the exemption to be applied to businesses with fewer than 50 employees when taking in to account the number that selected that option (32%) and also those that selected ‘other’ or did not select a tick box but expressed a preference for alignment with England. Non-industry respondents showed no preference for a number of employees that should be exempt. A high proportion of individual respondents did not express a view on the number of employees; but of the specific options explored they showed a slight preference for exempting businesses with fewer than 10 employees (18%) but with no clear view why. Table 7.5 displays the tick box responses.

Table 7.5 The size of business, by number of employees, that should be exempt

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
All businesses in scope of restrictions (i.e. no exemptions based on employee number)	2	5%	1	3%	11	29%
All in scope except businesses with fewer than 10 employees (micro)	0	0%	2	7%	7	18%
All in scope except businesses with fewer than 50 employees (small and micro)	13	32%	0	0%	3	8%
All in scope except businesses with fewer than 250 employees (medium, small and micro)	1	2%	0	0%	1	3%
Other	5	12%	5	16%	5	13%
Not answered	20	49%	23	74%	11	29%
Total	**41**	**100%**	**31**	**100%**	**38**	**100%**

Support for exempting businesses with fewer than 10 employees

7.26. Relatively little commentary was provided in respect of support for this answer option. One individual suggested only the smallest businesses should be exempt as larger businesses will already be more profitable. One public sector respondent felt that enabling the survival of the smallest businesses would not adversely impact on the health goals of the overall approach. One ‘other’ organisation respondent suggested a need for the Government to work with exempted small businesses to encourage them to reduce promotions of unhealthy products.

Support for exempting businesses with fewer than 50 employees

7.27. The most prevalent view expressed in support of exempting businesses with fewer than 50 employees was that this option would align with the proposed exemption to restrictions in England (particularly manufacturers).

7.28. A small number of industry respondents also indicated small businesses would not reasonably be able to comply with the restrictions.

Support for exempting businesses with fewer than 250 employees

7.29. While this option did not receive much support, the views expressed were:

- Despite overall disagreement with restrictions if they are implemented, small businesses should be exempt; (individual)
- Restrictions should not apply to the out of home sector, but if they do, this option would protect independent hospitality businesses from the costs associated with the proposals. (industry representative body)

‘Other’ approaches

7.30. Respondents that indicated ‘other’ did not propose an alternative number of employees.

Calculating the number of employees

7.31. Specific thoughts on how the number of employees would be calculated (each from one respondent) included:

- The approach should be based on how many employees each individual ‘shop’ has, not the size of the businesses as a whole; (out of home provider)
- Only employees at production and point of sales areas should be included in the number of employees calculation, not those involved in delivery and logistics; (individual)
- The approach of using employee number would need to be clearly defined; if ‘global’ employee numbers were used, this would need to ensure companies cannot use tactics (such as ‘shell’ companies[13]) to avoid the restrictions. (manufacturer)

Floor space exemption

7.32. The consultation sought views on the specific size of business in terms of floor space that the exemption from location restrictions should be based upon and offered a number of different options. The consultation paper noted that the option for businesses with a floor space ‘less than 186 square metres (2,000 square feet)’ would be consistent with the UK Government regulations for an exemption to location restrictions in England.

Question 20: If you agreed in question 18 that businesses should be exempt from location restrictions based on floor space, what size of business should be exempt?

Overview

7.33. Specific responses to the question were relatively low and the vast majority of respondents that did not select a tick box answer did not provide a comment/view. Industry respondents indicated a preference for the exemption to be applied to businesses less than 186 square metres when taking in to account the number that selected that option (34%) but also those that selected ‘other’ or did not select a tick box but expressed a preference for alignment with England. Non-industry respondents showed no preference. A high proportion of individual respondents did not express a view on floor space; but of the specific options

[13] A ‘shell’ company is one that exists only on paper with no physical office or employees. It may have a bank account or hold investments or own assets.

explored they showed a level of preference for exempting businesses less than 93 square metres (26%). The tick box responses are shown in Table 7.6.

Table 7.6 The size of business, by floor space, that should be exempt

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Less than 93 square metres (1000 square feet)	0	0%	1	3%	10	26%
Less than 186 square metres (2000 square feet)	14	34%	0	0%	0	0%
Less than 279 square metres (3000 square feet)	5	12%	0	0%	2	5%
Other	6	15%	3	10%	11	29%
Not answered	16	39%	27	87%	15	40%
Total	**41**	**100%**	**31**	**100%**	**38**	**100%**

Support for exempting businesses less than 93 square metres (1000 sq ft)

7.34. The very small number of respondents who provided an explanation felt that this would allow an exemption while enabling the restrictions to have a large impact. One ‘other’ organisation respondent suggested the Government should still encourage exempt businesses to reduce the number of HFSS products they sell and promote healthier products.

Support for exempting businesses less than 186 square metres (2000 sq ft)

7.35. The most prevalent view expressed by those that explained their answer was that this option would align with the exemption to location restrictions in England (particularly manufacturers).

Support for exempting businesses less than 279 square metres (3000 sq ft)

7.36. Two industry representative bodies noted that there is an accepted definition within the industry that a convenience store is typically under 3000 square feet, Therefore their view was this option should be the basis of the calculation in order to encompass convenience stores, as they are already facing a number of challenges to their viability and would be the most likely to be adversely affected by the introduction of the restrictions. Similarly, one retailer suggested that 186 square metres should be the ‘absolute’ minimum, but they believed 279 square metres would be more appropriate given that this size has already been used in Scotland to distinguish between smaller and larger shops.

7.37. Another industry representative body noted the important role convenience stores play in providing local services to the community (such as Post Office, cash facilities and bill payment). One manufacturer suggested that 279 square metres was the size beneath which it would be difficult to comply with restrictions.

'Other' approaches

7.38. Some respondents reiterated their general view that there should be no restrictions at all (particularly individuals) or that it was not within their expertise to answer. Specific suggestions (each by one respondent) included:

- Out of home should be out of scope of restrictions because of the limited floor space they have for queuing, checkout and to display products given that the majority of floor space is used for seating areas. The respondent felt an exemption for the out of home sector would be clearer than trying to identify an appropriate floor space threshold (out of home provider);
- There should not be a general exemption for small stores but they should have different location restrictions to larger businesses, based on the 'workable' floor space (retailer).

7.39. One public sector respondent commented that it would be too complicated to enforce the restrictions based on size and businesses would find ways to keep within thresholds set to qualify for an exemption.

Calculating the floor space

7.40. Two respondents noted that the calculation should not include all floor space but should focus on the area where food is sold. In the context of hospitality one of the two respondents indicated the calculation should exclude floor space for cooking and seating. In the context of retail the other respondent suggested the calculation should exclude floor space for other (non-food) products and services (such as Post Office facilities). In respect of Post Offices specifically the respondent felt that restrictions could put them under strain if the commercial viability of the store they are located within was undermined by the restrictions.

Other types of exemptions

Question 21: Are there any other types of exemptions that should apply?

Overview

7.41. Very few respondents indicated other types of exemptions that should apply. The vast majority of those that selected 'don't know' or did not select a tick box, did not provide a comment/view. Table 7.7 displays the results.

Table 7.7 Whether any other types of exemptions should apply

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Yes	5	12%	1	3%	5	13%
No	11	27%	13	42%	12	32%
Don't know	8	20%	9	29%	16	42%
Not answered	17	42%	8	26%	5	13%
Total	**41**	**101%**	**31**	**100%**	**38**	**100%**

Other exemptions

7.42. Beyond exemptions already mentioned elsewhere, a few additional suggestions were made here (each by one respondent):

- Advertising of company names even where that company produces HFSS products (although it should be noted the consultation paper did not state any intention to restrict the promotion of company names); (manufacturer)
- Point-of-sale advertising of HFSS products online (to be consistent with physical stores) for example, once a customer has navigated to the location for a particular HFSS product, sponsored banners should be allowed to draw attention to products; (manufacturer)
- Consideration should be given to an exemption for shops which are remote (in terms of their proximity to other shops) - the respondent demonstrated concern for businesses that may be more economically vulnerable. (individual)

Disagreement with other exemptions

7.43. The main reasons given for disagreement with other exemptions were the view that no further exemptions should be permitted (particularly non-industry respondents) or that exemptions should align with those in England (particularly industry respondents).

8. Enforcement and Implementation (Qs 22-25)

8.1. The consultation paper set out the proposals for enforcement and implementation of the restrictions. They sought views on (i) whether local authorities are best placed to enforce the policy, (ii) what resources would be required (by local authorities if they were to enforce the policy) to support enforcement, (iii) what would be an appropriate lead-in time to prepare for enforcement and implementation of the policy, and (iv) whether there are any further considerations, for example as a result of the coronavirus pandemic, EU exit or rise in cost of living, that need to be taken into account in relation to enforcement.

Enforcement by local authorities

8.2. The consultation paper proposed that local authorities (LAs) are best placed to support delivery and enforcement of the policy on the basis that they remain responsible for enforcing existing food law in the businesses within scope of the policy. It notes that the proposals are ‘comparative’ to the approach for enforcement of the UK Government regulations in England.

Question 22: Do you agree with the proposal that local authorities are best placed to enforce the policy?

Overview

8.3. Individuals (63%) tended to support the proposal for local LAs to enforce the policy. Non-industry respondents were more muted in their support (48%) and industry respondents even more so (32%) although disagreement was very low among the latter two. A substantial proportion of industry and non-industry respondents selected ‘don’t know’ or did not select a tick box of which many did not provide a comment/view. Table 8.1 displays the results.

Table 8.1 Whether local authorities are best placed to enforce the policy

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Yes	13	32%	15	48%	24	63%
No	2	5%	1	3%	9	24%
Other	0	0%	1	3%	1	3%
Don't know	12	29%	9	29%	4	11%
Not answered	14	34%	5	16%	0	0%
Total	**41**	**100%**	**31**	**99%**	**38**	**101%**

Agreement with proposals for enforcement

8.4. Those that agreed with the proposals acknowledged that local LAs are well placed to enforce the restrictions based on their existing knowledge and relationship with relevant businesses. A number noted concerns as to whether LAs have sufficient resources (considered in detail in respect of question 23).

8.5. A number of industry respondents expressed support for the approach on the basis that it would facilitate alignment with the approach to regulation in England. A number of industry respondents (particularly retailers) suggested the 'Primary Authority' model[14] should be adopted in Scotland to ensure consistent interpretation of the requirements.

8.6. A small number of non-industry respondents expressed concerns about the extent to which industry would be involved in developing the approach given their vested interest.

Disagreement with proposals for enforcement

8.7. The main reason for disagreement was a concern that LAs do not have sufficient capacity to be able to undertake enforcement. Two individuals suggested enforcement should be undertaken nationally for consistency.

8.8. Two manufacturers suggested there would be significant difficulties for an enforcing authority to distinguish between products using the NPM since they would

[14] A Primary Authority enables a business to form a legal partnership with one local authority to receive tailored advice on complying with environmental health, trading standards or fire safety regulations that other local regulators must respect. See the UK Government website: https://www.gov.uk/guidance/local-regulation-primary-authority

not be in a position to audit the accuracy of the NPM claims being made by manufacturers.

Other considerations

8.9. Other considerations provided by respondents included:

- A suggestion that online marketing of HFSS products could be monitored ‘centrally’;
- A suggestion around a need for a body to support LAs with enforcement and to supervise their approach;
- One respondent commented that consideration be given to a partnership approach with NHS boards;
- A suggestion that the Government should support the additional resources that would be required by the LAs and that businesses should not have to incur further costs (on top of those already associated with the changes needed to comply) through funding the regulation.

Resources to support enforcement

Question 23: If local authorities were to enforce the policy, what resources (for example staffing/funding) do you think would be required to support enforcement?

8.10. In total 47 respondents gave a specific response to the question. Across all respondent types the view was that LAs would need appropriate funding in order to:

- Ensure sufficient staff are in place;
- Provide training to staff on the requirements;
- Put systems in place;
- Create resources and clear guidance to assist LA staff, businesses, and the public.

8.11. Some industry and non-industry respondents noted the importance of consistency across LAs and highlighted that sufficient guidance, resources and capacity would need to be in place to ensure parity in the approach to enforcement.

8.12. Other suggestions (each by one respondent) included:

- An ‘app’ could be created that would provide information on all restrictions that apply to a specific product, upon scanning the barcode; (public sector)
- There should be a central government service able to provide guidance to LA enforcement staff; (individual)
- An education route into the Environmental Health Officer profession would be needed to ensure sufficient capacity to undertake the work required; (individual)
- Enforcement should not be restricted to Environmental Health Officers and that LAs should be able to call on others such as Trading Standards Officers and Licensing Support Officers to undertake the work. (public sector)

8.13. One ‘other’ organisation respondent had conducted research of UK businesses and indicated they had found a ‘concerning’ lack of preparation and awareness in the industry for the restrictions coming into force and suggested that outreach and education work with businesses would be essential.

Lead-in time

Question 24: What do you think would be an appropriate lead-in time to allow preparation for enforcement and implementation of the policy?

Overview

8.14. Industry respondents tended to favour 24 months (32%) although some of those that did not indicate a specific timeframe suggested the time would depend on the final scope of the restrictions and/or the extent to which they align with restrictions in England. Individuals were mainly split between 12 months (37%) and 24 months (26%). Non-industry respondents were split across the options and a relatively high proportion selected ‘don’t know’ or did not select a tick box (some noted this issue was outside of their expertise). Table 8.2 displays the tick box responses.

Table 8.2 The appropriate lead-in time for implementation of the policy

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
6 months	0	0%	0	0%	4	11%
12 months	3	7%	3	10%	14	37%
18 months	4	10%	5	16%	1	3%
24 months	13	32%	3	10%	10	26%
Other	5	12%	1	3%	6	16%
Don’t know	2	5%	9	29%	2	5%
Not answered	14	34%	10	32%	1	3%
Total	**41**	**100%**	**31**	**100%**	**38**	**101%**

Views in relation to lead-in time

8.15. Respondents that selected a specific timeframe (regardless of what it was) tended to point to it being an appropriate amount of time for businesses to make arrangements for the changes, such as re-designing store layout and training staff.

8.16. 12 months (or a minimum of 12 months) was viewed as feasible by some industry respondents if the restrictions are consistent with those in England.

8.17. Respondents indicating 24 months suggested this amount of time would be needed for LAs to prepare their workforce to enforce the restrictions; that time was needed for businesses and the LAs to recover from the impacts of the Covid-19 pandemic before changes were introduced; and that the public would need to adapt to the cost of living crisis before changes that affect prices are introduced. Other specific reasons for specifying 24 months included:

- That other regulation was being introduced (such as calorie labelling) and that this should be taken into account in timescales set; (industry representative body)
- Existing restrictions in Scotland in relation to the sale of alcohol meant that if businesses needed to re-locate alcohol in order to facilitate the location restrictions on targeted foods, they would have to amend licenses for each store which would take time and could result in a surge of applications to the council which councils would need to be prepared to respond to; (retailer)
- A long timescale would allow food producers to reformulate, and in particular allow smaller producers to catch up with the larger producers that already had reformulation work underway. (third sector)

Other lead-in time

8.18. A number of industry respondents noted that it was not yet known whether certain businesses would be included in restrictions and therefore the final scope of the restrictions would impact on the lead-in time required. Similarly, a number of industry respondents felt that the exact amount of lead-in time would relate to how different the Scottish restrictions are to those implemented in England, indicating that the more similar they are, the less time would be needed.

8.19. One individual suggested there should be a two phased launch with larger businesses able to adapt quicker and therefore the restrictions should apply to them first, and smaller organisations needing longer and therefore the restrictions should apply to them subsequently.

Other considerations

8.20. Other considerations raised by respondents included:

- The lead-in time should start from the point where clear guidance is introduced; (industry respondents)
- In addition to the lead-in time, there should be a period of grace before the restrictions are enforced to allow businesses time to refine their approach and ensure they are compliant; (industry representative bodies and manufacturers)
- There should be one unified implementation date for all four nations within the UK; (industry respondents)
- If the lead-in time was too long, the larger companies may be able to find loopholes to avoid being impacted by the restrictions and also that piloting the approach before roll-out would be beneficial; (public sector)
- There is a need to develop clear definitions and undertake a public awareness campaign so that customers can understand the restrictions and how they may affect them. (public sector)

Further considerations for enforcement

Question 25: Are there any further considerations, for example as a result of the coronavirus pandemic, EU exit or rise in cost of living, that need to be taken into account in relation to enforcement?

8.21. In total 66 respondents gave a specific response to the question. Many respondents did not necessarily limit their responses to enforcement specifically.

8.22. A number of respondents indicated that enforcement would pose challenges for LAs in the current climate. LAs were noted to:

- Be occupied with clearing the backlog caused by the pandemic;
- Have limited resources; and have already experienced an increase in responsibilities for food regulations on account of the EU exit.

8.23. One public sector respondent made the specific point that the scale of resources needed to support businesses and undertake enforcement activities would reduce the resources available to cover existing work (such as inspection of high-risk businesses).

8.24. Industry respondents noted that businesses had gone through considerable disruption already with the pandemic, EU exit and the introduction of other regulation. They were concerned about how businesses would cope with the additional costs associated with making changes. They also noted there have been considerable challenges in the supply chain and staffing as a result of recent experiences and that these may impact on their ability to prepare for change. With other requirements also pending such as the Deposit Return Scheme, there was a view that a 'light touch' approach to enforcement would be appropriate.

8.25. Among those that made more general comments, across all respondent types, a consistent theme was that there were concerns about the current cost of living. Some specifically noted the proposals would result in increasing shopping costs for the public at a time when people are already struggling. Others noted that careful thought would need to be given to the timing of introducing restrictions to avoid exacerbating cost of living considerations.

8.26. However, a smaller number of respondents (particularly third sector organisations) highlighted that the restrictions would have a positive impact on the cost of living. This was on the basis that by discouraging people from buying more than they intended this would result in a reduction in expenditure. A small number of respondents (individuals and non-industry) also noted that in respect of the cost of living, it would be important to enable people to access lower cost healthy food.

9. Legislative framework (Q 26)

9.1. The consultation paper proposed to ensure that, in giving consideration to the legislation needed, there is sufficient flexibility to future-proof public health policy to develop over time to improve diet and levels of healthy weight. It sought views on making provision in secondary legislation, following consultation, to regulate in relation to specified less healthy food and drink and to arrange for enforcement.

Question 26: Do you agree that Scottish Ministers should be able to make provision in secondary legislation, following consultation, to regulate in relation to specified less healthy food and drink and to arrange for enforcement (including the setting of offences and the issuing of compliance notices and fixed penalty notices)?

Overview

9.2. Non-industry (65%) and individual (63%) respondents tended to support the proposed legislative framework. Industry respondents were much more mixed with some objecting due to concerns that changes may be made to the legislation without sufficient scrutiny. A high proportion of industry respondents did not select a tick box, the majority of which did not provide a comment/view, however a small number of these noted they disagreed with the use of fixed penalty notices suggesting that disagreement with the proposals may be a little higher than the tick box figure (22%) indicates. The results are shown in Table 9.1.

Table 9.1 Agreement with the proposed legislative framework

Answer	Organisations				Individuals	
	Industry		Non-industry			
	n	%	n	%	n	%
Yes	6	15%	20	65%	24	63%
No	9	22%	1	3%	11	29%
Don't know	4	10%	4	13%	3	8%
Not answered	22	54%	6	19%	0	0%
Total	**41**	**101%**	**31**	**100%**	**38**	**100%**

Agreement with the proposed legislative framework

9.3. Non-industry respondents that agreed with the approach tended to note their support for a design that has flexibility and the merits that this would have for responding to the changing environment. A small number of non-industry and individual respondents noted the need for enforcement in order for the restrictions to be effective. Two non-industry respondents and one retailer specifically noted the importance of further legislative changes being subject first to consultation.

9.4. Two retailers highlighted the importance of clarity in terms of the requirements for implementation, one of which noted that the secondary legislation and guidance for the regulations in England had not been clear enough thereby increasing the cost and burden to businesses. They felt the Scottish Government could learn from this experience.

Disagreement with the proposed legislative framework

9.5. A number of industry respondents were concerned that the proposed approach would give Ministers powers to amend the scope of regulation without sufficient scrutiny. They suggested that any changes to legislation should not be able to be made without involving consultation with the industry and being subject to full scrutiny.

9.6. A number of industry respondents noted that they disagree with the use of fixed penalty notices, suggesting that compliance notices are sufficient.

9.7. Other comments, each made by one industry respondent, included:

- Concern that ‘flexibility’ in the legislation would equate to uncertainty;
- Concern that there was disparity between the proposals aimed at retailers and the out of home sector, ‘where no such draconian action is proposed’;
- Small businesses are already facing a number of challenges and that the impact of regulations on medium and large businesses should be assessed before they are applied to small businesses.

9.8. Individuals that explained their reasons for disagreement tended to re-iterate their overall disagreement with introducing any restrictions of the type proposed. One individual suggested there is a need to support and educate and that this ‘less carrot more stick’ approach would be resisted and resented by the public.

10. Impact Assessments (Qs 27-30)

10.1. To inform equality and Fairer Scotland impact assessments and give due consideration to potential unintended consequences of the restrictions, the consultation paper sought views on (i) the impacts on different groups of people in respect of protected characteristics, (ii) the impacts on people living with socio-economic disadvantage, (iii) the impacts on other communities or groups and (iv) the impacts on businesses, consumers and others.

Impacts on different groups

Question 27: What impacts, if any, do you think the proposed policy would have on people on the basis of their: age, sex, race, religion, sexual orientation, pregnancy and maternity, disability, gender reassignment and marriage/civil partnership?

10.2. In total 52 respondents gave a specific response to the question.

No impact view

10.3. 40% of those that provided a response indicated that they did not think there would be any impacts on the basis of the characteristics listed within the question.

Potential positive impacts

10.4. 34% of respondents that provided a response flagged one or more groups that they felt would be positively impacted. A number of individual and non-industry respondents suggested the approach would be beneficial to the groups listed in the consultation question or all groups on the basis of improved health. A number of non-industry respondents suggested there would be a positive impact on the younger generation of improved future health, and that low income populations that disproportionately suffer from diseases related to poor diet would also benefit from improved health.

10.5. Other specific groups that were noted by individual respondents as benefiting included:

- Ethnic minority groups who are at higher risk of type 2 diabetes and cardiovascular disease;
- People with mental disabilities or illnesses who for various reasons may be more vulnerable to marketing messages;
- Single people and small family units (including the elderly), people on low incomes and people that do not own a car – in the respect that it would be easier for them to make healthier food choices and budget effectively.

Potential negative impacts

10.6. 38% of respondents that provided a response flagged one or more groups that they felt would be negatively impacted. While respondents explained their rationale for the group(s) noted they did not always clarify what type of negative impact they felt would result (e.g. whether it would be financial, adverse for health etc).

10.7. The groups most commonly observed to be negatively impacted (across all three respondent types) were those on a low income.

10.8. Other specific groups that were noted to be negatively impacted (each by one or two respondents) included:

- Groups that are more likely to be low-income such as women and older people (individual) or people with disabilities and from LGBTQ+; (individual)
- Ethnic minorities – as many shopkeepers were perceived to be from ethnic minority backgrounds; (individual and public sector)
- Certain religions that may not eat certain foods (public sector) or there may be culturally or religiously significant products that could be impacted by the policy; (public sector and individual)
- In pregnancy – there may be a need to have access to high sugar foods (individual); and that in pregnancy and childhood there would be an adverse impact in terms of health if nutrient rich dairy products were included in restrictions; (industry representative body)
- By age and disability – if people are less able to cook from scratch the processed foods they rely on may become more expensive; (third sector and two public sector)
- Those with compromised nutrition status (such as the elderly and cancer patients) that require HFSS products to reduce the risk of malnutrition (two public sector); and type 1 diabetics who use sugary products as an immediate response to manage hypoglycaemic episodes; (individual)
- That if cereal is included in restrictions, there would be an adverse impact for health during pregnancy (where folic acid is needed) and for groups known to be at risk of low level of Vitamin D (e.g. the elderly, those with darker skin types, and some religions that cover skin, and disabled groups that are confined indoors). (manufacturer)

Impacts on socio-economic disadvantage

Question 28: What impacts, if any, do you think the proposed policy would have on people living with socio-economic disadvantage?

10.9. In total, 65 respondents gave a specific response.

Potential positive impacts

10.10. A number of non-industry and individual respondents suggested that as people living with socio-economic disadvantage are most likely to suffer health inequalities, they are most likely to benefit from the improved health that will result from restricting promotions of the HFSS products. A number also suggested this group would benefit most from the possibility of saving money when consumers are no longer tempted to purchase more than they intended/needed. Some non-industry respondents also suggested the restrictions may encourage purchases of healthier foods.

Potential negative impacts

10.11. Respondents that suggested a negative impact on people living with socio-economic disadvantage most commonly felt that the restrictions would result in reduced affordability of shopping (expressed by individuals and both industry and non-industry respondents) which may worsen their overall level of socio-economic disadvantage.

10.12. Industry respondents in particular referenced that low-income households were already hard hit by the current cost of living crisis and that the restrictions were likely to exacerbate this issue. One manufacturer noted the timing of implementation of restrictions should be carefully considered as those living in the most deprived areas spend a greater proportion of their income on food.

10.13. Some non-industry and individual respondents suggested that healthier affordable choices would be needed to mitigate the potential impacts to those on a low income. A small number of individuals indicated there could be emotional impacts, such as feelings of deprivation and guilt which could create or trigger people's issues around eating.

10.14. Other specific impacts suggested included:

- The purchase of HFSS would reduce minimally, but prices would increase significantly; (industry representative body)
- Low-income groups may cut back on other (non-food) items such as rent and heating to still afford their shopping; (public sector)
- The restrictions would reduce food choice; (individual and public sector)
- Meal deals may be discontinued because it is not possible to reformulate all products that make up e.g. an 'evening' meal, and therefore cheaper meal options would be removed. (retailer)

Impacts on other communities or groups

Question 29: Please use this space to identify other communities or population groups who you consider may be differentially impacted by this policy proposal. Please consider both potentially positive and negative impacts and provide evidence where available.

10.15. In total, 37 respondents gave a specific response to the question. Some respondents re-iterated points already made above such as the potential negative impact on low-income households or the positive health benefits that may result. Other specific groups that may be differentially impacted included:

- Individuals with eating disorders or learning/sensory difficulties or neuro divergence; (four individuals)
- Those with health issues that require an HFSS diet (two individuals and one 'other' organisation) – specific examples provided included people with diabetes, cancer and other wasting-disease sufferers;
- Rural communities in Scotland due to the lack of choice in local businesses; (individual)
- People with food allergies/intolerances; (individual)

- Small business owners; (individual)
- People at risk of malnutrition; (public sector)
- Single parent households that may find it challenging to cook without HFSS foods (such as pre-made pasta sauce). (public sector)

10.16. One public sector respondent also flagged that rural/remote communities may be impacted with their remote location making enforcement of the restrictions possibly harder to achieve.

10.17. One manufacturer suggested there would be merit in carrying out a post-implementation review to establish any impacts or disparities.

Impacts on businesses, consumers and others

Question 30: Please tell us about any other potential unintended consequences (positive or negative) to businesses, consumers or others you consider may arise from the proposals set out in this consultation.

10.18. In total, 43 respondents gave a specific response to the question.

Potential positive consequences

10.19. A small number of potential positive consequences were put forward:

- The restrictions may aid smaller shops that cannot provide the offers that supermarkets do, levelling the playing field, and encouraging people to use their local shops; (individual)
- There would be less litter as this is often associated with HFSS products; (two individuals)
- Manufacturers and retailers may make more money as consumers pay higher prices; (individual)
- It may encourage reformulation and healthier business models. (public sector)

Potential negative consequences

10.20. A number of potential negative consequences were raised. These were somewhat varied and in some cases were specific to individual businesses.

10.21. A number of (industry, public sector and individual) respondents thought:

- The restrictions would reduce income and increase costs to businesses; some suggested this may lead to business closures;
- That restrictions may impact most on small and independent businesses which are an important local service.

10.22. A number of industry respondents also reiterated concerns explored throughout the responses to the consultation questions, that diverging with the restrictions introduced in England would create a number of problems for businesses such as: confusion and implementation errors, increased financial burden, and further complexity at a time where a number of challenges are already being faced.

10.23. Other negative consequences suggested by respondents included:

- Proposals could disproportionately impact businesses with unique business models – where there is a large area with non-food items and a small area selling food which could lead to store closures; (retailer)
- Competition distortions and trade disparity may arise in respect of: non-pre-packed versus pre-packed foods; branded manufacturer products versus retailer own brand products; in and out of scope stores; (manufacturer)
- Small Scottish manufacturers may be disadvantaged as they need to use promotions for their products to be able to compete with larger brands; (industry representative body)
- Removing promotions has potential to increase food waste, although it was noted products reaching the end of their shelf life could be passed to food banks which would help low-income households; (public sector)
- The proposals may exacerbate the position of vulnerable high street stores that may be at risk of closure; (retailer)
- That out of home providers may have to reduce the range of options for customers if their ability to display products is restricted which may impact their business. It was suggested that this could also have wider consequences in terms of reducing footfall to high streets and other retail settings given the role the out of home sector plays in attracting footfall to these areas. (out of home provider)

10.24. One retailer made a general request for regulatory burden to be as low as possible given the significant disruptions that the industry has already faced in recent years.

11. Other comments

11.1. A number of respondents took the opportunity to provide comments that did not directly relate to any specific question posed. These are presented here.

11.2. Industry respondents made general observations about the approach including:

- A need to pause before considering further regulation on the food industry because of significant concerns around the impacts of covid, EU exit, and the current economic situation; (industry representative body)
- A need for a policy to reward and incentivise business rather than penalise; (manufacturer)
- A need for policies to be proportionate, noting that in previous high inflationary periods promotions were used as a coping strategy to manage the worst effects of inflation; (manufacturer)
- There is a need for the Scottish Government to engage with industry to ensure appropriate clarity in any guidance that is issued on restrictions.

11.3. One public sector respondent highlighted the need to communicate changes effectively to the public and felt that there should be wider adoption of the traffic light system to assist consumers to make healthy choices. A number of respondents highlighted the importance of simplicity in food labelling. One ‘other’ organisation respondent suggested there is a need to improve pre-packed labelling so there are no hidden items.

11.4. One ‘other’ organisation respondent made the following points in respect of how the restrictions may interact with existing rules relating to advertising HFSS products:

- The Advertising Code (which covers food and related health or nutrition claims) covers advertising in ‘paid-for space’, in marketing communications that appear on businesses’ own online space (such as website and social media), and in promotional marketing that is not in ‘paid ad space’ (such as on product packaging and at the point of sale in-store).
- It would not be effective to attempt to reflect the Scottish Government restrictions on promotions of HFSS products into the Committee of Advertising Practice (CAP) Advertising Code but work will be undertaken by the UK advertising regulator to ensure the protections provided by the code are unlikely to lead businesses to undertake promotions that would be prohibited by the restrictions.
- Given that the CAP code requires advertising to be lawful, any prohibited promotions identified by the UK advertising regulator will be referred to the relevant authorities.
- There may be a need for the UK advertising regulator to provide guidance to businesses to ensure they are aware of the new restrictions and how the regulator will deal with cases.

Annex 1: Consultation questions

Section 1. Foods that would be subject to restrictions

Question 1
Which food categories should foods promotion restrictions target?

- ☐ Option 1: Discretionary food categories (paragraph 61)
- ☐ Option 2: Discretionary foods + ice-cream and dairy desserts (paragraph 62)
- ☐ Option 3: Categories that are of most concern to childhood obesity (paragraphs 63-64)
- ☐ Option 4: All the categories included in the UK-wide reformulation programmes (paragraph 65)
- ☐ Other (please specify)
- ☐ Don't know

Please explain your answer.

Question 2
Should nutrient profiling be used within all targeted food categories to identify non-HFSS foods? (see paragraphs 68-72 for information on nutrient profiling)

- ☐ Yes
- ☐ No
- ☐ Don't know
- ☐ Other (please specify)

Please explain your answer.

Question 3
If nutrient profiling were used, do you agree with the proposal to only target pre-packed products and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge? (see paragraphs 73-74 for further information):

- ☐ Yes
- ☐ No
- ☐ Don't know
- ☐ Other (please specify)

Please explain your answer.

Section 2. Price promotions

Question 4
What are your views on the proposal to include the following within the scope of multi-buy restrictions:

Extra Free:

☐ Agree

☐ Disagree

☐ Don't know

Meal Deals:

☐ Agree

☐ Disagree

☐ Don't know

Please explain your answers.

Question 5
What are your views on the proposal to restrict unlimited refills for a fixed charge on targeted soft drinks with added sugar?

☐ Agree

☐ Disagree

☐ Don't know

☐ Other (please specify)

Please explain your answer.

Question 6
Should other targeted foods be included in restrictions on unlimited amounts for a fixed charge?

☐ Yes

☐ No

☐ Don't know

Please explain your answer.

Question 7
What are your views on the proposal to restrict temporary price reductions (TPRs)?

☐ Agree

☐ Disagree

☐ Don't know

☐ Other (please specify)

Please explain your answer.

Question 8
Are there any other forms of price promotion that should be within scope of this policy?

☐ Yes

☐ No

☐ Don’t know

Please explain your answer.

Section 3. Location and other non-price promotions

Question 9
Should the location of targeted foods in-store be restricted at:

<u>Checkout areas, including self-service:</u>

☐ Yes

☐ No

☐ Don’t know

<u>End of aisle:</u>

☐ Yes

☐ No

☐ Don’t know

<u>Front of store, including store entrances and covered outside areas connected to the main shopping area:</u>

☐ Yes

☐ No

☐ Don’t know

<u>Island/ bin displays:</u>

☐ Yes

☐ No

☐ Don’t know

Please explain your answers.

Question 10
Should any other types of in-store locations be included in restrictions?

☐ Yes (please specify)

☐ No

☐ Don’t know

Please explain your answer.

Question 11
If included, should the location of targeted foods online be restricted on:

Home page:

☐ Yes

☐ No

☐ Don’t know

Favourite products page:

☐ Yes

☐ No

☐ Don’t know

Pop ups and similar pages not intentionally opened by the user:

☐ Yes

☐ No

☐ Don’t know

Shopping basket:

☐ Yes

☐ No

☐ Don’t know

Checkout page:

☐ Yes

☐ No

☐ Don’t know

Please explain your answers.

Question 12
Should any other online locations be included in restrictions?

☐ Yes (please specify)

☐ No

☐ Don’t know

Please explain your answer.

Question 13
Are there other types of promotions (in-store or online) not covered by our proposals for restricting price and location promotions that should be within scope?

☐ Yes

☐ No

☐ Don't know

Please explain your answer.

Section 4. Places that would be subject to restrictions

Question 14
Which places, where targeted foods are sold to the public, should promotions restrictions apply to?

<u>Retail:</u>

☐ Yes

☐ No

☐ Don't know

<u>Out of home:</u>

☐ Yes

☐ No

☐ Don't know

<u>Wholesale (where sales are also made to the public):</u>

☐ Yes

☐ No

☐ Don't know

<u>Other outlets:</u>

☐ Yes

☐ No

☐ Don't know

Please explain your answers.

Question 15
Are there other places/ types of business to which the restrictions should apply?

☐ Yes

☐ No

☐ Don't know

Please explain your answer.

It is proposed that the restrictions would not apply to: other wholesale outlets (where sales are only to trade); and where sales are not in the course of business, for example food provided through charitable activities, for example bake sales.

Question 16
Are there other places/ types of business which should not be within the scope of the restrictions?

☐ Yes

☐ No

☐ Don't know

Please explain your answer.

Section 5. Exemptions to restrictions

Question 17
Do you agree with our proposal to exempt specialist businesses that mainly sell one type of food product category, such as chocolatiers and sweet shops, from location restrictions?

☐ Yes

☐ No

☐ Don't know

Please explain your answer.

Question 18
If exemptions are extended beyond our proposal to exempt specialist businesses that mainly sell one type of food product category, should exemptions be applied on the basis of:

	Yes	No	Don't know
Number of employees	☐	☐	☐
Floor space	☐	☐	☐
Other (please specify)	☐	☐	☐

Please explain your answer.

Question 19
If you agreed in question 18 that businesses should be exempt from location restrictions based on number of employees, what size of business should be exempt?

☐ All businesses in scope of restrictions (i.e. no exemptions based on employee number)

☐ All in scope except businesses with fewer than 10 employees (micro)

☐ All in scope except businesses with fewer than 50 employees (small and micro)

☐ All in scope except businesses with fewer than 250 employees (medium, small and micro)

☐ Other (please specify)

Please explain your answer.

Question 20
If you agreed in question 18 that businesses should be exempt from location restrictions based on floor space, what size of business should be exempt?

☐ Less than 93 square metres (1000 square feet)

☐ Less than 186 square metres (2000 square feet)

☐ Less than 279 square metres (3000 square feet)

☐ Other (please specify)

Please explain your answer.

Question 21
Are there any other types of exemptions that should apply?

☐ Yes

☐ No

☐ Don't know

Please explain your answer.

Section 6. Enforcement and implementation

Question 22
Do you agree with the proposal that local authorities are best placed to enforce the policy?

☐ Yes

☐ No

☐ Other (please specify who)

☐ Don’t know

Please explain your answer.

Question 23
If local authorities were to enforce the policy, what resources (for example staffing/ funding) do you think would be required to support enforcement?

Please explain your answer.

Question 24
What do you think would be an appropriate lead-in time to allow preparation for enforcement and implementation of the policy?

☐ 6 months

☐ 12 months

☐ 18 months

☐ 24 months

☐ Other (please specify)

☐ Don’t know

Please explain your answer.

Question 25
Are there any further considerations, for example as a result of the coronavirus pandemic, EU exit or rise in cost of living, that need to be taken into account in relation to enforcement?

Please explain your answer.

Section 7: Legislative framework

Question 26
Do you agree that Scottish Ministers should be able to make provision in secondary legislation, following consultation, to regulate in relation to specified less healthy food and drink and to arrange for enforcement (including the setting of offences and the issuing of compliance notices and fixed penalty notices)?

☐ Yes

☐ No

☐ Don’t know

Please explain your answer.

Section 8. Impact Assessments

Question 27
What impacts, if any, do you think the proposed policy would have on people on the basis of their: age, sex, race, religion, sexual orientation, pregnancy and maternity, disability, gender reassignment and marriage/civil partnership?

Please consider both potentially positive and negative impacts and provide evidence where available. Comment on each characteristic individually.

Question 28
What impacts, if any, do you think the proposed policy would have on people living with socio-economic disadvantage? Please consider both potentially positive and negative impacts and provide evidence where available.

Question 29
Please use this space to identify other communities or population groups who you consider may be differentially impacted by this policy proposal. Please consider both potentially positive and negative impacts and provide evidence where available.

Question 30
Please tell us about any other potential unintended consequences (positive or negative) to businesses, consumers or others you consider may arise from the proposals set out in this consultation.

Question 31
Please outline any other comments you wish to make on this consultation.

Annex 2: List of organisation respondents

A total of 72 organisations took part in the consultation. These are listed below by their response to the question “If you are responding on behalf of an organisation, what type of organisation is it?”.

Industry representative body (16)

Association of Convenience Stores
British Soft Drinks Association
British Specialist Nutrition Association (BSNA) Ltd
British Takeaway Campaign
Dairy UK
Food and Drink Federation (FDF)
Nationwide Caterers Association (NCASS)
Plant-based Food Alliance UK
Provision Trade Federation
Scotland Food and Drink
Scottish Bakers
Scottish Grocers’ Federation
Scottish Retail Consortium
Scottish Wholesaler Association
UK Potato Processors’ Association
UKHospitality Scotland

Manufacturer (12)

AG Barr plc
Coca-Cola Europacific Partners
Danone UK and Ireland
Ferrero UK
Haribo
Kellogg Marketing and Sales Company (UK) Limited
Mondelez International
Nestlé UK & Ireland
Nomad Foods
Oatly UK
PepsiCo UK & Ireland
Suntory Beverage & Food GB&I

Public sector (12)

Aberdeen City Council
COSLA
Global Academy of Agriculture and Food Systems, University of Edinburgh
Health Improvement Department, NHS Lanarkshire Health and Social Care Partnership
NHS Ayrshire & Arran's Dietetic Health Improvement and Public Health Departments
NHS Orkney Health Improvement Team

NHSGG&C
Perth and Kinross Council
Public Health Nutrition Group c/o ScotPHN
Renfrewshire Council
SGF Healthy Living Programme
South Lanarkshire Council

Third sector (10)

Alcohol Focus Scotland
British Heart Foundation Scotland
Cancer Research UK
Diabetes Scotland
Edinburgh Community Food
Granite City Good Food and Community Food Initiatives North East (CFINE)
NCD Alliance Scotland
Nourish Scotland
Obesity Action Scotland
Scottish Obesity Alliance

Retailer (8)

Asda Stores Ltd
Boots UK Limited
Marks & Spencer plc
Ocado Retail Ltd.
Sainsburys
Tesco PLC
The Co-operative Group
WH Smith plc

Out of home provider (5)

Costa Limited
Deliveroo
Greggs
Just Eat
Uber Eats

Other (9)

Advertising Standards Authority
Glasgow Food Policy Partnership and Glasgow Centre for Population Health
GS1 UK
Reform UK Scotland
Royal College of Paediatrics and Child Health
Royal College of Physicians and Surgeons of Glasgow
Social and Public Health Sciences Unit, University of Glasgow
The Royal College of Physicians of Edinburgh
The SPECTRUM Consortium

Annex 3: Response to individual questions

The table below provides the number and (percentage of total respondents) that:

- Provided a tick box answer to each closed question
- Provided a specific written comment in response to each open questions (i.e. excluding blank and 'no comment' type responses).

Questions			**Number of responses**	**% of total responses** (n=110)
Q1	Which food categories should foods promotion restrictions target?		91	83%
	Please explain your answer.		88	80%
Q2	Should nutrient profiling be used within all targeted food categories to identify non-HFSS foods?		97	88%
	Please explain your answer.		72	66%
Q3	If nutrient profiling were used, do you agree with the proposal to only target pre-packed products and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge?		91	83%
	Please explain your answer.		62	56%
Q4	What are your views on the proposal to include the following within the scope of multi-buy restrictions:	Extra free Meal deals	90 94	82% 85%
	Please explain your answer		79	72%
Q5	What are your views on the proposal to restrict unlimited refills for a fixed charge on targeted soft drinks with added sugar?		90	82%
	Please explain your answer		64	58%
Q6	Should other targeted foods be included in restrictions on unlimited amounts for a fixed charge?		84	76%
	Please explain your answer		45	41%

Q7	What are your views on the proposal to restrict temporary price reductions (TPRs)?		93	85%
	Please explain your answer.		78	71%
Q8	Are there any other forms of price promotion that should be within scope of this policy?		91	83%
	Please explain your answer.		53	48%
Q9	Should the location of targeted foods in-store be restricted at:	Checkout	89	81%
		End of aisle	88	80%
		Front of store	89	81%
		Island/bin displays	89	81%
	Please explain your answer.		76	69%
Q10	Should any other types of in-store locations be included in restrictions?		90	82%
	Please explain your answer.		46	42%
Q11	If included, should the location of targeted foods online be restricted on:	Homepage	88	80%
		Favourite products page	88	80%
		Pop ups	89	81%
		Shopping basket	88	80%
		Checkout page	88	80%
	Please explain your answer.		73	66%
Q12	Should any other online locations be included in restrictions?		89	81%
	Please explain your answer.		50	45%
Q13	Are there other types of promotions (in-store or online) not covered by our proposals for restricting price and location promotions that should be within scope?		88	80%
	Please explain your answer.		42	38%
Q14	Which places, where targeted foods are sold to the public, should promotions restrictions apply to?	Retail	87	79%
		Out of home	88	80%
		Wholesale	86	78%
		Other outlet	85	77%
	Please explain your answer.		66	60%

Q15	Are there other places/ types of business to which the restrictions should apply?		88	80%
	Please explain your answer.		46	42%
Q16	Are there other places/ types of business which should not be within the scope of the restrictions?		86	78%
	Please explain your answer.		49	45%
Q17	Do you agree with our proposal to exempt specialist businesses that mainly sell one type of food product category, such as chocolatiers and sweet shops, from location restrictions?		85	77%
	Please explain your answer.		57	52%
Q18	If exemptions are extended beyond our proposal to exempt specialist businesses that mainly sell one type of food product category, should exemptions be applied on the basis of:	Number of employees Floor space Other	84 87 53	76% 79% 48%
	Please explain your answer.		65	59%
Q19	If you agreed in question 18 that businesses should be exempt from location restrictions based on number of employees, what size of business should be exempt?		56	51%
	Please explain your answer.		40	36%
Q20	If you agreed in question 18 that businesses should be exempt from location restrictions based on floor space, what size of business should be exempt?		52	47%
	Please explain your answer.		43	39%
Q21	Are there any other types of exemptions that should apply?		80	73%
	Please explain your answer.		33	30%

Q22	Do you agree with the proposal that local authorities are best placed to enforce the policy?	91	83%
	Please explain your answer.	56	51%
Q23	If local authorities were to enforce the policy, what resources (for example staffing/ funding) do you think would be required to support enforcement?	47	43%
Q24	What do you think would be an appropriate lead-in time to allow preparation for enforcement and implementation of the policy?	85	77%
	Please explain your answer.	60	55%
Q25	Are there any further considerations, for example as a result of the coronavirus pandemic, EU exit or rise in cost of living, that need to be taken into account in relation to enforcement?	66	60%
Q26	Do you agree that Scottish Ministers should be able to make provision in secondary legislation, following consultation, to regulate in relation to specified less healthy food and drink and to arrange for enforcement (including the setting of offences and the issuing of compliance notices and fixed penalty notices)?	82	75%
	Please explain your answer.	44	40%
Q27	What impacts, if any, do you think the proposed policy would have on people on the basis of their: age, sex, race, religion, sexual orientation, pregnancy and maternity, disability, gender reassignment and marriage/civil partnership? Please consider both potentially positive and negative impacts and provide evidence where available. Comment on each characteristic individually.	52	47%
Q28	What impacts, if any, do you think the proposed policy would have on people living with socio-economic disadvantage? Please consider both potentially positive and negative impacts and provide evidence where available.	65	59%

Q29	Please use this space to identify other communities or population groups who you consider may be differentially impacted by this policy proposal. Please consider both potentially positive and negative impacts and provide evidence where available.	37	34%
Q30	Please tell us about any other potential unintended consequences (positive or negative) to businesses, consumers or others you consider may arise from the proposals set out in this consultation.	43	39%
Q31	Please outline any other comments you wish to make.	70	64%

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