

Restricting promotions of food and drink high in fat, sugar or salt – Consultation on the detail of proposed regulations: AVA Response

Foods subject to restriction

In this section, we are seeking views on the food categories that we propose to include in promotions restrictions. Further information on previous consultation responses, and how our proposals compare with UK Government regulations and Welsh Government consultation proposals are set out in Section 1 of the [consultation paper](#).

Food categories

We propose that the food categories within scope of promotions restrictions are:

Soft drinks with added sugar (including soft drinks such as cola or lemonade, as well as juice based and milk based drinks with added sugar, fruit juices and smoothies with added sugar).

Savoury snacks (including crisps, corn puffs, tortilla chips, savoury crackers or rice cakes such as pretzels, papadums, salted popcorn and prawn crackers).

Breakfast cereals (including ready-to-eat cereals, granola, muesli, porridge oats and other oat-based cereals).

Confectionery (including chocolates and sweets).

Ice cream, ice lollies, frozen yogurt, water ices and similar frozen products.

Cakes and cupcakes (including swiss rolls, tray bakes and cake bars).

Sweet biscuits and bars based on one or more of nuts, seeds or cereal.

Morning goods (including croissants, pains au chocolat and similar pastries, crumpets, pancakes, buns, teacakes, scones, waffles, Danish pastries and fruit loaves).

Desserts and puddings (including pies, tarts and flans, cheesecake, gateaux, dairy desserts, sponge puddings, rice pudding, crumbles, fruit fillings, powdered desserts, custards, jellies and

meringues).

Sweetened yoghurt and fromage frais

Pizza

Roast potatoes, chips and other similar potato products

Ready meals (including ready to cook or reheat meals intended to be consumed as a complete meal, or meal centres, such as ready to heat stews, curries, bolognese or pies, in addition to breaded or battered vegetable, meat, fish or poultry products.)

Defining food categories

We propose to be consistent with the food category descriptors set out in [Schedule 1 of the UK Government regulations for England](#) (see Annex D of the [consultation paper](#)) as far as possible.

Identifying food and drink products within scope of restrictions

We propose that promotions restrictions will only apply to pre-packed food and drink products that are high in fat, sugar or salt (HFSS) as defined by the 2004/05 nutrient profiling model (NPM).

1. Do you agree with the proposal to be consistent with the category descriptors set out in Schedule 1 of the UK Government regulations for England?

- **Yes**
- No
- Don't know

Please explain your answer

However the final regulations are structured, they should echo completely the regulations currently in place for England (and Wales) such as the Food (Promotion and Placement) (England) Regulations 2021.

We would advocate strongly that details of any proposed regulations to restrict the promotion of HFSS foods in Scotland be consistent with existing UK regulations.

[Schedule 1 of the UK Government regulations for England](#)

2. Do the food category descriptors set out in Schedule 1 (and included in Annex D of the consultation paper) sufficiently describe the food categories within scope of regulations?

- **Yes**

- No
- Don't know

Please explain your answer

We would welcome further clarification on what products constitute a meal deal, if combined, or are in scope of the proposed multibuy restrictions. For example, is a meal deal in scope if none of the components are included within the categories in scope of the regulations?

Price promotions

Price promotions refer to special offers where there is a reduction in the usual price of a product. These may be time-limited or conditional on some other requirement, such as purchasing another item(s) or being a member of a loyalty scheme. It does not include other marketing and promotional strategies such as product placement or advertising.

We propose that the following types of price promotion will be within scope of restrictions:

Multi-buys

Multi-buy means:

- where the purchase of multiple items is cheaper than purchase of each individual item separately. Examples include: 2 for £1, 3 for 2, buy 6 and get 25% off.
- where a promotion indicates that an item, or part of an item, is free. Examples include: buy one, get one free and 50% extra free.

We propose that multi-buy restrictions will apply to targeted foods which are pre-packed and are high in fat, sugar or salt (HFSS) (as defined by the 2004/05 NPM).

Unlimited refills

Unlimited refill in this consultation means a promotion that offers the consumer at least one refill of the same drink or another drink (within scope of the restrictions) for free (including top ups) after the consumption of the first drink.

We propose that unlimited refills for a fixed charge on soft drinks with added sugar that are HFSS or "less healthy" [as defined by the nutrient profiling model (NPM)], whether pre-packed or non-pre-packed, will be restricted. Non-pre-packed refills of other targeted foods are not proposed to be within scope of the policy at this time.

Meal deals

Meal deals are a form of multi-buy promotion where the purchase of multiple items is cheaper than the purchase of individual items separately, which could encourage consumers to purchase more in order to obtain a discount.

We propose that a meal deal promotion is:

an offer of a discounted price for multiple items promoted as intended to be consumed together as, or as part of, a meal by one, or by two or more people. Examples include lunchtime meal deals and dine in offers.

We have proposed three different options for the inclusion of meal deals within scope of these restrictions. The options are outlined in section 2 of our consultation.

Temporary price reductions

Temporary price reductions (TPRs) are short term reductions in the price of food and drink products. Most retailers will run such offers on specific items for a typical duration of 2-4 weeks before reverting back to the full price but this can vary.

We propose to broadly define TPRs as follows:

Temporary price reductions are a promotion where the normal price of an item is discounted for the duration of a defined, time limited period before reverting back to the item's usual price.

Further information can be found in Section 2 of [our consultation](#).

~~3. Please provide any additional comments on the proposed approach to foods in scope of the policy?~~

4. Is the proposed description of the following sufficiently clear for the purpose of implementation and enforcement:

	Yes	No	Don't Know
a) Multibuy?	X		
b) Extra free?	X		

Please explain your answer

As stated in our answer to Q.1 – there must be consistency across all UK regulations to avoid price disparity, significant structural costs across the Home Countries and consumer confusion.

~~5. Is the proposed timescale of 12 months at paragraph 53 of the consultation sufficient to allow price promotions on packaging to be phased out?~~

- ~~• Yes~~
- ~~• No~~
- ~~• Don't know~~

Please explain your answer

[More information on proposed timescale](#)

6. What, if any, implications do you expect there would be for businesses if meal deals are included within scope of this policy? (please include evidence where available)

Please give us your views

The definition of a 'meal deal' needs greater clarification to provide clear guidance on the types of deals that would be considered in-scope of the relevant restrictions as well as what foods and drinks would be in scope if part of a meal deal. The AVA would press for exclusion of unattended/automated retail from the scope of these regulations.

7. If meal deals are included within scope of the policy, which would be your preferred option for targeting them?

- Option 1 - Meal deals cannot contain high in fat, sugar or salt targeted foods.
- Option 2 - Meal deals can contain up to one high in fat, sugar or salt targeted food.
- Option 3 - Meals deals cannot contain targeted high in fat, sugar or salt discretionary foods.

Please explain your answer, including any alternative suggestions for how promotion regulations could help improve meal deals to better support a healthy diet.

[Options for including meal deals in the policy](#)

[Discretionary foods](#)

8. If temporary price reductions (TPRs) are included within scope of the policy, is the proposed broad definition sufficient for implementation and enforcement?

- Yes
- No
- Don't Know

Please explain your answer

The AVA does not agree with the inclusion of TPR's with the outline of the legislation and proposed policy Banning TPRs will, by the Scottish Government's own admission increase the cost of the weekly shop for Scottish households who facing a grave cost of living crisis.

Removing TPRs removes one of the strategies that businesses can use to encourage consumers to try healthier/reformulated options within a product category, and if they would be unable to do this, it would undermine the reformulation programme and development of healthier, lower sugar and calorie

9. What, if any, implications do you expect there would be for businesses if temporary price reductions (TPRs) are included within scope of this policy? (please include evidence where available)

Please give us your views

See response to Q.8

Location restrictions: in store

We propose to restrict the location of targeted foods in prominent places in physical premises where they are sold to the public.

We propose that targeted foods could not be placed in store at:

Checkout areas

Meaning:

- i. any area within 2 metres of the checkout facility, which is the facility intended to be used by consumers to make a purchase, including a self-checkout terminal and a counter at which a cash register is used. Targeted high in fat, sugar or salt (HFSS) foods would be able to be placed in an aisle (but not at the end of an aisle) even if it is within 2 metres of a checkout.
- ii. any area within 2 metres of a designated queuing area or queue management system. Targeted HFSS foods would be able to be placed in an aisle (but not at the end of an aisle) even if it is within 2 metres of a checkout.

End of aisles

Meaning a display at the end of (but not within) an aisle, where the aisle end is adjacent to a main customer route through the store. Includes displays on a separate structure, such as an island bin, pallet, free standing unit, side stack or clip strip connected or adjacent to, or within 50cm of, such an aisle end.

Store entrances

Meaning any point within the prohibited distance of the midpoint of any public entrance to the store's main shopping area. (Prohibited distance - the smaller of 15m or the following: $\sqrt{(0.03 \times a)}$)

Covered external area

Meaning a covered area outside and connected to a store's main shopping area, through which the public passes to enter the main shopping area (such as a foyer, lobby or vestibule).

Free standing displays

Meaning free standing displays of products away from other products to increase their visibility. Display locations can include the middle of an aisle, along main customer routes through store, and other highly noticeable places. This would include displays using free standing structures such as pallets, fridges, freezers, island bins, aisle units and gondolas.

The location restrictions would apply to pre-packed targeted foods. Promotions of non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge would also be within scope of location restrictions.

More information can be found in Section 3 of [our consultation](#).

10. Are the proposed descriptions of the following prominent in-store locations sufficiently clear for implementation and enforcement?

	Yes	No	Don't Know
a) Checkout?		X	
b) End of aisle?			
c) Store entrances?			
d) Covered external area?			
e) Free-standing displays?			

Please explain your answers

Vending & Micromarkets units are small and the payment mechanism is therefore physically close to the 'point of purchase'. Obviously unattended/Automated retail should be excluded from these regulations.

11. Do you agree with the proposed approach to applying store entrance criteria to dedicated food areas within stores, as described at paragraphs 97-99 of our consultation?

• Yes

- No
- Don't know

Please explain your answer

[More information on store entrance criteria](#)

12. Do you agree with the proposed description for relevant floor area?

- Yes
- No
- Don't know

Please explain your answer

[Relevant floor area](#)

13. Please provide any additional comments on the proposals for in-store locations within scope of the policy.

Please give us your views

Location restrictions: online

We propose that restrictions on the placement of targeted high in fat, sugar or salt (HFSS) foods would apply to equivalent locations online as follows:

(1) on a **home page**, whether or not the consumer enters the online marketplace via the home page. "Home page" means any of: (i) an online marketplace's highest level public page; (ii) the highest level public page of an online marketplace's grocery section.

(2) whilst a consumer is **searching for or browsing products**: (i) other than targeted foods; (ii) in targeted food categories unless:

- a consumer browses or searches for a general category of product which includes the targeted food e.g. seasonality or nutritional or dietary characteristics.
- a search term entered by the consumer matches in whole or in part the name under which the targeted food is marketed or an ingredient listed on the packaging of the targeted food.

(3) on a **favourite products page** unless the consumer has previously purchased the targeted food (whether in store or online) or intentionally identified it as a favourite product. "Favourite products page" means a page opened by a consumer for the purpose of browsing products they have previously purchased or intentionally identified as favourite products.

(4) on **pages not opened intentionally by the consumer** (such as "pop-ups" or a "brand burst").

(5) on a **checkout page**, meaning a page shown to a consumer as part of the checkout process, such as a page listing items the consumer has so far selected for purchase or a page dealing with payment, collection or delivery.

~~14. Are the proposed descriptions of the following online equivalent in-store locations sufficiently clear for implementation and enforcement?~~

	Yes	No	Don't know
a) Home page			
b) Favourites page			
c) Pages not opened intentionally by the consumer			
d) Checkout pages			

Please explain your answers

~~15. Are there any other equivalent online locations that should be within scope of the policy?~~

- ~~• Yes~~
- ~~• No~~
- ~~• Don't know~~

~~Please explain your answer~~

~~16. Please provide any additional comments on the proposals for online locations within scope of the policy.~~

~~Please give us your views~~

Businesses in scope

We propose that price and location restrictions (both instore and online) will apply to a *qualifying business*. This would include retail, out of home, wholesale and other businesses as set out at

paragraph 109 of the consultation paper.

Proposed exemptions from location restrictions are explored in more detail in section 5 of the consultation.

We propose that a qualifying business would be:

(i) a business which offers pre-packed targeted foods, (and non-pre-packed soft drinks with added sugar in respect of unlimited refills for a fixed charge) for sale to the public in the course of business (whether in-store or online);

(ii) a business with 50 or more employees

We propose that the restrictions would not apply to:

- wholesale outlets (where sales are only to trade);
- where sales are not in the course of business, for example food provided through charitable activities, for example bake sales;
- care homes; and
- schools

Manufacturers would not be considered a qualifying business unless they are selling pre-packed targeted foods directly to consumers.

We propose that concessions are separate businesses which operate in a designated area within the premises of a qualifying business if they operate their own payment facilities.

Where a qualifying business sells targeted foods to the public through a website or other online platform, such as an aggregator or delivery app, they will be required to comply with price and location restrictions in respect of those online sales [of targeted foods]. Parts of online aggregator sites or apps may be captured by promotions restrictions, such as checkout pages or pop-ups on the qualifying business' sections of the app or site.

More information can be found in Section 4 of [our consultation](#).

17. Are the types of business within the scope of the policy sufficiently described for the purpose of implementation and enforcement?

- Yes
- **No**
- Don't know

Please explain your answer

The wording is sufficiently loose that Vending & Micromarkets could be deemed to be included as Out-of-Home outlets. They are unattended/automated units so will not fall within the 50 employees criteria – unless the operating company in total is included. Vending & Micromarkets (unattended/automated retail units) should be expressly excluded from these regulations and the Glossary of Terms.

18. Is the proposed extension of restrictions to online sales, including through online aggregator sites and apps, (see paragraph 116 of the consultation paper) sufficiently described for the purpose of implementation and enforcement?

- Yes
- No
- Don't know

Please explain your answer

19. Are the arrangements for franchises and symbol groups sufficiently described for the purpose of implementation and enforcement?

- Yes
- No
- Don't know

Please explain your answer

Symbol groups and franchises

20. Do you foresee any impacts on the ability of businesses to trade either within the UK market or internationally from any of the proposed measures?

- Yes
- No
- Don't know

Please explain your answer

21. Please provide any additional comments on the businesses proposed to be within scope of the policy.

Please give us your views

Exemptions from location restrictions

We recognise that the food business landscape is incredibly diverse, comprising outlets of various sizes and layouts, selling a range of products. Consequently, the extent to which businesses may be

able to comply will location restrictions will also vary.

Therefore, in considering whether there should be any exemptions, we continue to be guided by the following key principles:

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

We propose the following exemptions for qualifying businesses, as defined at paragraph 113 of our [consultation document](#), from locations restrictions:

- **Business type** - Specialist businesses with a limited product range, such as chocolatiers and sweet shops, will be exempt from location restrictions.
- **Store size** - Stores with a relevant floor area of less than 185.8 square metres (2,000 square feet) would not be within the scope of the location restrictions. Relevant floor area is discussed in more detail, including a proposed definition, at paragraph 100-101 of the consultation paper.

~~22. Are the proposed exemptions from location restrictions based on business type clear and sufficiently defined to enable implementation and enforcement?~~

- ~~• Yes~~
- ~~• No~~
- ~~• Don't know~~

~~Please explain your answer~~

23. Are the exemptions from location restrictions based on individual store relevant floor area clear and sufficiently defined to enable implementation and enforcement?

- Yes
- **No**
- Don't know

Please explain your answer

With unattended micromarkets replacing canteens, these may be in areas where there was counter service or dedicated canteen space/rooms. Micromarkets will always fall well under the 185.8 m² floor space. But clarification is required on whether seating or office space is included in the calculation.

24. Please provide any additional comments on proposed exemptions from locations restrictions.

Please give us your views

Vending & unattended/automated retail should be excluded from all definitions and location restrictions.

Enforcement and implementation

In this section, we are seeking views on enforcement and implementation of the policy.

The intention is to use powers in the [Food Safety Act 1990](#) and the [Food \(Scotland\) Act 2015](#) to provide for enforcement of the Regulations.

We propose that local authorities will be responsible for enforcing the policy on the basis that they have experience of similar enforcement, have local knowledge and can incorporate enforcement of the policy into other inspection visits, where appropriate.

In addition, we propose:

- The enforcement process should be fair and proportionate, with a focus on supporting compliance;
- Relevant enforcement powers for handling non-compliance with legal requirements and relevant offences will be available to local authorities;
- Guidance will be issued to local authorities to support effective enforcement; and
- Guidance will be developed for industry to support effective implementation.
- A 12 month lead in time from when regulations are laid to them coming into force to allow preparation for enforcement and implementation of the policy.

Non-compliance with the requirements or restrictions set out in the Regulations will amount to an offence, the ultimate penalty for which could result in a criminal penalty.

The maximum criminal penalty proposed is that a person found guilty of an offence will be liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500). However, the intention is for local authorities to be able to issue administrative sanctions as an alternative to prosecution.

~~25. Do you agree with the proposed use of administrative sanctions for enforcement of the policy?~~

- ~~• Yes~~
- ~~• No~~
- ~~• Don't know~~

~~Please explain your answer~~

[Information on administrative sanctions](#)

[Compliance notice](#)

Fixed penalty notice

26. Do you agree with the maximum penalties proposed for the offences in relation to enforcement of the policy?

- Yes
- No
- Don't know

Please explain your answer

Maximum penalties

27. Is the proposed 12 month period following the introduction of regulations sufficient to prepare for?

	Yes	No	Don't know
a) Implementation?			
b) Enforcement?			

Please explain your answers

Additional comments

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

Please give us your views

AVA: The Vending & Automated Retail Association is the trade association of the vending industry, representing machine and ingredient manufacturers and suppliers, cup manufacturers and vending machine operating companies throughout the United Kingdom and Eire. Vending operator companies in membership represent approximately 80% of the turnover of the vending industry in the UK.

The UK vending industry has an annual turnover of £3.5bn, with a turnover in Scotland of approximately £240million. It is an industry employing 24,500 people directly in the UK with over 2,000 in Scotland; a figure which is supplemented by those employed within the wider vending channel supply chain. AVA members operate over 420,000 vending machines in the UK of which approximately 35,000 are in Scotland (AVA Census 2022), vending snacks, food, soft drinks, water, hot and cold beverages. Our members also operate and run approximately 800 micromarkets – unattended retail units traditionally under 20m²

There have been significant changes in the structure of products offered through vending and



Automated Retail over the past few years: 79% of confectionery & sweet lines are now under the 250kCal required by Government Buying Standards; 38% of Savoury Snacks are under 30g; 80% of pre-packaged cold drinks contain less the 5g of added sugar per 100ml (AVA 2023 Census).

Vending operator companies, those who provide, fill and maintain vending machines, are, with one or two exceptions, small or medium sized companies, often family owned. There are 64 such companies in Scotland.