

Action on Sugar & Action on Salt Response to DHSC's Technical Consultation: Restricting promotions of products high in fat, salt and sugar: enforcement

Action on Sugar

Action on Sugar is a group of experts concerned with sugar and obesity and its effects on health. It is working to reach a consensus with the food industry and Government over the harmful effects of a high calorie diet, and bring about a reduction in the amount of sugar and fat in processed foods to prevent obesity, type 2 diabetes and tooth decay.

Action on Salt

Action on Salt (formerly Consensus Action on Salt & Health, CASH) is an organisation supported by 24 expert members and working to reduce the salt intake of the UK population to prevent deaths, and suffering, from heart disease, stroke, kidney disease, osteoporosis and stomach cancer.

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1. Does the legislation describe the volume price promotions accurately and clearly for both business and enforcement agencies to implement and enforce?

No. We welcome this legislation to restrict volume price promotions, an important step towards creating a healthier food environment. We do have strong concerns about the description of the types of promotions included within the scope of these restrictions. Many retailers have voluntarily stopped the type of volume price promotions as they are currently described in the legislation (1). Research by the Obesity Health Alliance in 2018 found that in Tesco just 16% of price promotions were multi-buy compared to 66% price reduction (2). Price promotions on larger package sizes of HFSS products e.g. sharing bag of confectionery, which are typically cheaper than a smaller bar, are of great concern. The proposed legislation states that products with a pack label that states a proportion of the product is free are included in scope, however there is no mention of grab bags and sharing bags – companies can simply increase pack size across their product portfolios and still not be subject to the restrictions. Temporary price promotions which are used frequently by retailers are similarly not covered, along with language used on packaging, such as recommended retail price. We strongly request that a broader description be included, to avoid loopholes and unintended consequences, and to create a much needed level-playing field.

The implementation timeline as it is currently described must be reconsidered. These restrictions should be identified as a first step, coming into force in 2021. Retailers and manufacturers have been aware of Government's intention to restrict price promotions on HFSS products since chapter 1 of the Childhood Obesity Plan was published in 2016. By April 2022, the legislation should be extended to cover promotions on all HFSS products.

1. The Independent, 2016 <https://www.independent.co.uk/news/business/news/sainsbury-s-first-supermarket-say-bogof-multi-buy-deals-a6867696.html>
2. Obesity Health Alliance, 2018. Out of Place.

2. Does the legislation describe the free refill restrictions accurately and clearly for both business and enforcement agencies to implement and enforce?

No. We are concerned that the definition is limited to beverages and excludes free refills of other HFSS products within the sugar (salt) and calorie reduction programme such as ice cream, toppings,

syrups and condiments, which are frequently offered in the out of home sector. We also oppose the exemption of out-of-home outlets below 50 employees from this regulation and believe it should apply to all outlets regardless of the size of business.

3. Does the legislation describe this exemption for stores below 185.8m² (2000 sq ft) accurately and clearly for both business and enforcement agencies?

We support the Government's proposal for the regulations to apply to stores above 2000 sq ft however the current description is unclear. If this is calculated on the basis of 'main floor space' we would like to see this clearly defined in the regulations to avoid potential loopholes where businesses may be able to claim some of their floor space is not a 'main floor space.'

4. Will enforcement officers readily be able to access information regarding the size of a store?

We are unsure if they will have access to this information, but it is particularly important that there is a robust and comprehensive way for enforcement officers to independently assess the size of retailers and identify which are in and out of scope. They must be well resourced to conduct this task.

5. Are there any operational implications of setting the size of the store at 185.8 square metres (2,000 square feet)?

We appreciate it may be more challenging for smaller retailers to apply the location restrictions. Government must ensure that smaller retailers have access to clear guidance and support to abide by the restrictions.

Evidence shows that many low income families shop predominantly at local outlets which tend to be small. Children are also more likely to shop at convenience stores on their way to and from school. Given the association with childhood obesity and deprivation, we are concerned that exempting small retailers will not help close the childhood obesity inequality gap.

We also oppose the exemption of smaller businesses from these restrictions as there is no physical size rationale for such an exemption, and such offers are known to stimulate impulse purchasing that is often done in local, convenience stores.

6. Which of the 2 options is most appropriate to describe the restricted store entrance area?

OPTION 1: In the prohibited entrance area;

- "prohibited entrance area" means an area immediately inside each public entrance to the store's main shopping area, being a square—
 - of area equal to the smaller of 225m² or 5% of the store's floor area, and
 - drawn so one edge of the square coincides with the line of the entrance, with the midpoint of that edge coinciding with the midpoint of the entrance.
 - irrespective of whether such area is obstructed by walls or other structural features of the store;

OPTION 2: At any point within the prohibited distance of the midpoint of any public entrance to the store's main shopping area;

- "the prohibited distance" means a distance being the smaller of 15m or the following—

- (square root of (0.05 x area))

Option 2 provides greater overall coverage than Option 1 – as a distance of 15m in any direction from the centre of the entrance is greater than drawing a 15m square. This is therefore our preferred option, if independent evidence (eg. from established local trading standards experts) indicate that there would be no significant enforcement difficulties with Option 2 compared to Option 1.

7. Do the check-out, aisle end and store entrance definitions accurately and effectively capture these prominent in-store locations?

The definitions appear clear, but the legislation must be flexible to avoid loopholes that would allow for alternative location promotions e.g. via mobile display units, mid-aisle special feature displays, additional stacking of products on shelves in other categories (above or adjacent to store cupboard, fresh, chilled and frozen produce).

The policy should restrict the location of HFSS products in store. In order to steer customers away from making impulse purchase decisions, all biscuits for example should only be available in the biscuit aisle, all confectionery in the confectionery aisle etc. In doing so, customers are making a purposeful decision to find and buy the product, therefore reducing the likelihood of unplanned purchases. Currently, queue areas for self-checkout areas tend to be lined by HFSS products even if the manned checkouts are lined by healthier products

8. Are the definitions clear for both business and enforcement agencies to implement and enforce?

We consider it particularly important that there is a robust and comprehensive way for enforcement agencies to independently verify the area that is in scope of the restrictions. They must have access to comprehensive guidance, legal and technical support and resources.

9. Do these definitions need any further clarity?

Yes. The limited definitions provided are clear, but not comprehensive. As such, we have concerns over the displacement of products to other prominent locations, such as temporary or seasonal promotion aisles, and this should be defined (or allow for modification) within the legislation to avoid loopholes or unintended consequences. Government must monitor and evaluate this policy and adapt as necessary to encompass other locations used to promote HFSS products.

The definition appears to exclude seasonal promotions and seasonal aisles, especially Christmas, Easter and Hallowe'en which feature HFSS products heavily and often include prominent displays in other areas of stores eg. Easter Eggs in standalone displays in the middle of aisles, or stacked above store cupboard groceries, or middle of aisle dumpbins of family packets of seasonal crisp flavours.

10. Does the legislation correctly capture the online equivalents to in-store locations?

We agree with the proposed descriptions.

11. Does the legislation describe the locations accurately and clearly for both business and enforcement agencies to implement and enforce online?

We consider it particularly important that there is a robust and comprehensive way for enforcement agencies to independently verify the area that is in scope of the restrictions. They must have access to comprehensive guidance, support and resources.

12. Does the legislation describe the symbol groups accurately under franchises?

We agree with the definitions, as they accurately reflects the prominence of this structure in the UK shopping landscape and is in the right direction in shaping a healthier food environment everyone.

HFSS products

Government decided that the restrictions should apply to product categories that are significant contributors to children's sugar and calorie intakes and are heavily promoted, and therefore are the categories of most concern for childhood obesity. We expect that products within these categories should be clear to identify for both retailers and enforcement agencies.

For these product categories, anything that is classed as HFSS cannot be promoted through volume or location promotions. HFSS is defined by the 2004/2005 Nutrient Profile Model (NPM). The NPM provides products with a score calculated based on their nutritional composition.

The product categories in scope are outlined in the consultation response and described in the regulations as follows:

Category 1: Non-alcoholic soft drinks with added sugar which are either ready to drink or which, to be made ready to drink, must be processed.

For the purposes of this category—

(a) "added sugar" means sugar added to a drink during production which is of a type or in such quantity not naturally occurring in the other ingredients;

(b) "non-alcoholic" means with a content of not more than 1.2% alcohol by volume;

(c) "processed" means one or more of the following—

(i) diluted with water;

(ii) mixed with crushed ice;

(iii) processed to make crushed ice;

(iv) mixed with carbon dioxide;

(d) "soft drinks" means—

(i) still or carbonated water-based drinks;

(ii) milk-based drinks;

(iii) fruit or vegetable juice-based drinks;

(e) "sugar" includes all monosaccharides and disaccharides, including—

(i) all types of cane and beet sugar;

(ii) sugar from other sources such as coconut palm sugar;

(iii) crystalline sucrose, invert sugar, dextrose, molasses;

(iv) sugars in honey, treacle, malt extract and all types of syrup including malt syrup, fruit syrup, rice malt syrup, corn syrup, high-fructose corn syrup, maple syrup, glucose syrup, glucose-fructose syrup;

(v) fructose, sucrose, glucose, lactose, hydrolysed lactose and galactose added as an ingredient;

(vi) sugars in all types of nectars such as coconut blossom nectar, date nectar, agave nectar;

(vii) sugars in juice concentrates.

Category 2: Crisps and other savoury snacks including all potato crisps and similar products made from potato, other vegetables, grain or pulses, including extruded, sheeted and pelleted snacks such as pitta bread based snacks, pretzels, poppadums, prawn crackers, pork scratchings, salted popcorn, and savoury crackers or biscuits which are in individually-portioned bags. This category does not include savoury snacks that are nuts, whether raw or to which other food has been added (such as salt).

Category 3: Breakfast cereals including ready-to-eat cereals, granola, muesli, porridge oats and other oat-based cereals.

Category 4: Confectionery including chocolates and sweets.

Category 5: Ice cream, ice lollies, frozen yogurt, water ices and similar frozen products.

Category 6: Cakes (including cupcakes).

Category 7: Sweet biscuits.

Category 8: Morning goods, meaning croissants, pains au chocolat and similar pastries, crumpets, pancakes, buns, teacakes, scones, waffles, Danish pastries and fruit loaves.

Category 9: 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.

Category 10: Yoghurt.

Category 11: Pizza (except plain pizza bases).

Category 12: Roast potatoes, potato and sweet potato chips, fries and wedges, potato waffles, novelty potato shapes (such as smiley faces), hash browns, rostis, crispy potato slices, potato croquettes.

Category 13: Products that are marketed as a meal that is ready for cooking or reheating without requiring further preparation and which include a carbohydrate accompaniment.

Category 14: Products that are marketed as a meal that is ready for cooking or reheating without requiring further preparation and which do not include a carbohydrate accompaniment, such as prepared fish, shellfish, meat, poultry and meat alternative products in a sauce, but not including fish, shellfish, meat, poultry and meat alternatives (either served plain or) in a marinade, glaze, dressing, seasoning or similar accompaniment.

Category 15: Breaded or battered fish, shellfish, meat, poultry and meat alternative products including fish fingers, fish cakes, chicken nuggets and breaded Quorn.

13. Does the legislation adequately capture the intended categories?

No. The current definition appears to omit:

- Sweet spreads (peanut butter, marmalade, jam, chocolate spread, honey, curd)
- Sweet breads e.g. tea loaves
- Garlic/cheesy bread
- Children’s meal bundles

With the narrow focus on sugar and calorie reformulation categories, a substantial number of HFSS products are omitted which currently sit under the salt reformulation programme, including:

- Savoury biscuits e.g. crackers, crispbreads, breadsticks, rice/corn cakes
- Bread, including bread with salty additions (cheese, olives)
- Savoury pastes e.g. salmon
- Savoury pastries I.e quiche, sausage rolls
- Scotch eggs
- Canned fish and vegetables
- Meal sachets (I.e sausage casserole mix)
- Sauces
 - Ketchup
 - Mayonnaise
 - Chilli sauce
 - Pasta sauce
 - salad dressings
 - soy sauce
 - fish sauce
 - Stir fry sauces
 - Marinades
 - Meal based sauces (I.e. sweet and sour)
 - Pesto
 - Brown sauce
- Condiments
 - apple sauce
 - mustard
 - cranberry sauce
 - horseradish
- Stocks and gravies
- Pickles
- Soup
- Dips
 - hummus
 - salsa
 - tzatziki
 - guacamole
 - sour cream based

- seafood based
- aioli
- Processed meat e.g. bacon, ham, sausages
- Cheese
- Baked beans
- Sandwiches
- Flavoured pastas and rice
- Butter and spreads
- Marmite
- Ready-made pastry
- Yorkshire puddings, dumplings, taco shells, pastry cases
- Other canned meals e.g. spaghetti pasta, chilli con carne, meatballs in sauce

14. Is it clear from the legislation which products are in scope? If not, how can this be clarified?

No.

Category 2

Are the following included?

- Corn puffs
- potato hoops
- tortillas
- sweet popcorn
- Children/toddler snacking
- Breadsticks
- Wasabi peas
- Rice/corn cakes

This category specifies ‘individually-portioned bags’ – does this include the more common grab-bag packs too, or will any product become exempt if the manufacturer changes the portion size on pack from eg serves 2 to serves 1?

Flavoured and coated nuts can be high in salt or high in sugar due to coatings and should be included, but agree plain nuts should be excluded.

Category 3

Are the following included?

- Cereal bars
- Nut-based bars
- Breakfast biscuits
- On-the-go breakfast drinks

Category 4

Does this include the following?

- Processed fruit snacks
- Children's gummy vitamins

Are all package sizes included in this definition?

Category 5

Are the following included?

- sorbet/gelato-style
- lactose/dairy free ice creams
- Vienetta

Are all package sizes included in this definition?

Category 6

Are the following included?

- Doughnuts
- Swiss rolls
- Brownies
- Flapjacks
- Traybakes
- Muffins – Savoury and Sweet
- Fruit bread
- Iced finger buns

Category 7

Does this cover all categories of sweet-based biscuits?

- Chocolate-covered sandwich style biscuits
- Jam filled biscuits
- Fruit filled biscuits,
- Wafer-style filled biscuits
- Choc-chip biscuits
- Cookies
- Chocolate coated biscuits
- Iced biscuits
- Shortbread style biscuits
- Gingerbread biscuits
- Oat/wheat biscuits

Category 8

Does this include the following?

- Hot cross buns
- Brioche
- English muffins
- Crumpets

Are frozen, bake-at-home products included in this definition too?

Category 9

Does this include the following?

- Sweet pies and choux pastry desserts
- Creams I.e whipped cream and flavoured/sweetened creams
- Mousses
- Christmas pudding
- Trifle
- All 'Free From' desserts
- Syrups
- Condensed caramel
- Dessert toppings

Category 10

Does this include all yogurts, including drinking yoghurt?

Category 12

Does this include all fresh potato dishes e.g. potato mash, potato dauphinoise?

15. Are there any products that are unclear as to whether they are in scope of the current categories?

Yes. We have serious concerns about alcohol products. Retailers have already started to adapt store layouts to prepare for these restrictions and alcohol products are increasingly appearing at checkout areas, entrances and end of aisle. Alcohol consumption is high in England; results from the 2016 Health Survey for England reported that 31% of men and 16% of women drank more than 14 units of alcohol in a normal week. Alcoholic beverages can be a high source of calories and sugar and contribute excessively to daily energy intake and may also increase the risk of obesity.

16. Should local authorities issue improvement notices in cases of non-compliance with promotions restrictions as the first formal action?

In most circumstances, a formal notice will be proportionate.

17. Are there other circumstances where an improvement notice may not be appropriate?

Once the policy is well established, issuing a formal notice rather than a penalty for non-compliance weakens the policy and could encourage retailers to display promotions for a short term, knowing that they will first be issued with a formal notice.

A formal notice would also not be appropriate for repeat offenders.

18. Where a business fails to meet the terms of an improvement notice is a fixed monetary penalty of £2,500 appropriate?

No. £2,500 is a small amount for multinational food businesses, not enough to be either prohibitive or punitive. It is imperative that the penalty is substantial to encourage companies to comply in the first instance. Steps must also be put in place in instances where companies repeatedly offend

or refuse to comply even after the penalty has been issued. A one-off penalty of £2,500 in this case will not be sufficient, so a clear timeline for paying the penalty should be put in place, along with payment increments as a result of non-compliance.

19. Are there circumstances where a different approach might be more appropriate?

The fine should be means tested, with larger fines for multinational food companies and smaller fines for smaller businesses to encourage compliance across the board.

20. Is 28 days an appropriate period to make representations and objections or to discharge liability for a Notice of Intent? The RESA specifies that 28 days is the longest period that can be permitted therefore any alternative suggestions must be less than 28 days.

Companies would have been given sufficient warning of non-compliance, which they have chosen not to address. We believe 14 days is more than adequate.

21. Where a fixed monetary penalty has been issued, for example, for failure to comply with an improvement notice, should a person be able to discharge liability upon being issued with a fixed monetary penalty at a rate of 50% of the penalty issued?

We do not agree that the penalty should be reduced by 50% if paid early. Companies will have been given sufficient warning of non-compliance, and an opportunity to rectify within an adequate period of time, which they have chosen not to address. In failing to do this, companies should be issued the penalty in full.

Whilst we appreciate the financial burden, this is the only incentive for companies to comply, and offering a 50% early payment option implies that the policy is for revenue raising, rather than for health improvement.

22. Is 28 days an appropriate length of time to pay or appeal a final notice? The RESA specifies that 28 days is the longest period that can be permitted therefore any alternative suggestions must be less than 28 days.

As above, companies would have been given sufficient warning of non-compliance, which they have chosen not to address. We believe the fine should be issued in full, and payable within 14 days

23. Should failure to pay or appeal a penalty within 28 days result in the penalty being increased by 50%?

Businesses must abide by the legislation and pay the penalty within the specified time frame; otherwise, they should be subject to legal action.

24. Are there any circumstances where it might be inappropriate for local authorities to publish details of cases where a civil sanction has been imposed?

No, we believe that transparency is key to the success of any public health strategy. In doing so, it will create a level playing field.

25. If there are any further matters that you would like to raise or any further information that you would like to provide in relation to this consultation, please give details here.

We recommend that a regular review is built into the enforcement process so the legislation can be updated to reflect future innovations in promotions by retailers and manufacturers. Government must commit to reviewing and potentially extending the legislation to smaller businesses within 5

years. We urge the Government to follow through with this so as to create a level playing field, providing there is sufficient support for smaller businesses.

The government should use the Spending Review to deliver truly sustainable funding for public health, so local authorities have the resources needed to act on obesity in their area and ensure there are no gaps in access to obesity prevention and treatment services.

As the UK is currently renegotiating trade deals with other nations, it is vital that these guidelines and other progress made improve the food environment for the public must be safeguarded within trade agreement negotiations. Past evidence has shown that trade deals can pose a risk as trade liberalisation floods the market with new products and some nations such as the US, view public health measures as ‘barriers to trade’ of their unhealthy food and drink exports and in a large amount of cases, successfully getting them removed¹.

The Global Burden of Disease shows that the consumption of products high in fat, salt and sugar are by far the biggest cause of premature death and ill health in the world. In the UK, two thirds of calories consumed by families come from highly processed packaged foods, which are likely to be high in fat, salt and/or sugar (HFSS) and low in fibre, fruit and vegetables. The diets of UK children are particularly worrying where 47% of primary school children’s calories come from HFSS foods, 85% of secondary school children are not eating enough fruit and vegetables, more than 90% are not eating enough fibre and all are eating too much salt and sugar

At the same time the UK has one of the highest overweight and obesity rates among developed countries. The UK currently spends about £6.1 billion a year on the medical costs of conditions related to obesity and overweight and more than £14 billion in treatment of type 2 diabetes.

We live in an environment that makes it easy for us to gain weight, and very difficult to lose it. The more socially deprived in particular, are more at risk of suffering from ill health; young people from poorer backgrounds are more likely to be obese, consume a range of less healthy products and be exposed to more adverts promoting unhealthy food. But now, more than ever, people are appreciating the importance of a healthy lifestyle. Research from the Obesity Health Alliance found that 74% of the public support government action on obesity in the wake of COVID-19.

¹ Kearney J. Food consumption trends and drivers. *Philos Trans R Soc Lond B Biol Sci.* 2010; 365:2793-807.