Scottish Chambers of Commerce

Restricting promotions of food and drink high in fat, sugar or salt - proposed regulations - consultation

Response from Scottish Chambers of Commerce, May 2024

Introduction

Following consultation, the Scottish government is seeking views about the detail of proposed regulations to restrict the promotions of foods high in fat, sugar or salt (HFSS) where they are sold to the public. The regulations will be made under the Food Safety Act 1990 and the Food (Scotland) Act 2015.

They will restrict the promotion of HFSS foods where they are sold to the public, including across retail and out of home settings. They will target:

- foods such as confectionery, cakes, crisps, savoury snacks and soft drinks with added sugar; and
- promotion types including among other things, multi-buys, temporary price reductions, meal deals and positioning restrictions, such as at checkouts and front of store.

The regulations deal with:

- targeted foods within the scope of restrictions;
- price promotions within the scope of restrictions, including meal deals and temporary price reductions;
- the approach to placement restrictions of targeted foods in store and online;
- the qualifying businesses within the scope of restrictions, including proposed exemptions; and
- the proposed approach to enforcement and implementation.

While there are some consistencies with the approach being adopted on HFSS in other parts of the UK, there are significant disparities which are of concern to many across Scotland's world-renowned food and drink sector. An industry estimated to be worth £14 billion to the Scottish economy[1] with around £11 billion coming from exports, accounting for nearly 15% of all Scotland's exports.[2]

This submission will outline views shared by food and drink members of the Scottish Chambers of Commerce Network.

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[1] https://www.foodstandards.gov.scot/publications-and-research/publications/overview-of-the-total-food-and-drink-landscape-in-scotland-2021

[2] https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/07/growth-sector-statistics/documents/food-and-drink/food-and-drink/govscot%3Adocument/Food%2Band%2BDrink%2B-%2BGrowth%2BSector%2BBriefing.docx

Views of SCC

SCC represents a wide variety of food and drink companies, from producers to manufacturers and in retail. These members make and sell affordable, safe and high-quality food, creating jobs and providing sustenance for households across the UK and beyond.

We would note the challenges faced by the industry in recent years. Brexit, COVID-19, the current costs and inflationary crisis, have all resulted in significant headwinds and some going out of business altogether.

We continue our overarching call to the Scottish Government to work with business to ease regulatory burdens, not increase them.

We believe that these proposed regulations will potentially harm the food and drink sector in Scotland disproportionately whilst not achieving the overall objective of reduced obesity.

This is because the proposals as outlined focus on the supply side of the food and drink sector, while not focusing on the main underlying causes of obesity, which are more in line with health inequalities.

To be successful, they require further health policy measures to be implemented first.

Making it more difficult for households to afford less healthy foods will not guarantee the same households will suddenly move to ‘good’ food. We would urge the government to prioritise access to good food and promote positive dietary choices, thorough changes in health and social policy, rather than reverting to more regulation for business.

Instead, the government could look more closely at how it can support Scottish food and drink companies to continue the good work they are doing in areas such as reformulation.

This will benefit Scotland we look to expand our exports for selling into domestic and international markets, helping to make products suitable for these markets.

We are proud to have some of those businesses as chamber members and to be working with them to responsibly promote and grow sales into domestic and international markets.

These are companies which use quality, natural, locally sourced ingredients in a traditional way to produce food and drink we can all enjoy responsibly.

Scottish businesses who produce food and drink in this way should be championed for their ability to provide jobs, deliver economic growth, and move towards sustainable production methods.

The restrictions on placing these products in-store will make life harder for these Scottish businesses who will now have to compete with international brands with much greater consumer recognition.

Price Promotions

Businesses cannot support restrictions on temporary price promotions (TPRs) which are a hugely valued tool among Scotland's food and drink producers.

They help producers drive sales during more challenging periods of the year for retail. It also helps Scottish producers differentiate against international competitors and help with exposure to consumers.

Our members feel that TPRs will significantly disadvantage Scotland's food and drink producers.

The main concern is this would see significant deviation from the regulatory position currently adopted in England - where TPRs have not been included in HFSS regulations - thus impacting on businesses operating across the open border of the UK internal market.

TPRs are not designed to impact what is consumed or purchased, but to encourage a switch from one product to another. The evidence provided by the Scottish Government to justify restrictions in this area are not robust enough.

TPRs are designed to encourage a switch from one product to another, not to increase the overall volumes purchased or consumed.

A 2020 Kantar study produced for the UK Government which analysed over 64,000 supermarket promotions over a 2-year period found that over 82% of increase in purchase is switching within a product category from one product to another or from one brand to a rival brand. The same study demonstrated an average £72 saving for households per year.[3]

Bringing in restrictions on this measure would increase the cost of the weekly shop for Scottish households who continue to face a hefty cost of living crisis.

We do not support the inclusion of TPRs within the regulation.

Instead, we would suggest the government conduct further research into the potential impact of TPR restrictions on household budgets in Scotland.

Policy intervention that will impact on both businesses and households should be based on latest available and most relevant data sets.

Placement Restrictions

It is likely the proposed bans will disproportionately affect smaller Scottish businesses (SMEs) and who use pricing and promotions to encourage shoppers to switch brands within a category. For smaller companies with small budgets, an advertising campaign may not be possible, and promotions may be the only affordable marketing tool.

It is unclear how specialist retailers could implement location restrictions. If location restrictions are progressed and an exemption is introduced for smaller/specialist retailers this

[3] https://assets.publishing.service.gov.uk/media/5fe217cbe90e07452df92f65/Sugar_Reduction_analysis_of_price_promotions_on_the_household_purchases_of_food_and_drinks_high_in_sugar__4_.pdf

will mean that competing businesses must abide by different polices. This would therefore result in a distortion of competition between larger and smaller retailers.

By restricting what can be displayed in certain locations in store, overall shelf space for the products in scope is limited. This may lead retailers to prioritise shelf space to the biggest sellers.

This would risk distorting the market in favour of leading brands and established products and will limit the availability of new innovative products to consumers, including those from smaller Scottish businesses.

Reducing retail sales space will mean more competition for existing shelf space, potentially disproportionately impacting smaller food and drink producers.

Enforcement and Implementation

The proposals are already far reaching with limited evidence that they will have any impact on obesity in Scotland, however they will likely increase costs for Scottish households.

If the proposals are taken forward, a comprehensive and independent review of the policy should be undertaken within 2- 3 years from implementation and a sunset clause should be included.

The restrictions outlined within this consultation are being based on limited evidence that there will be any measurable impact on dietary health or obesity. Any further interventions would require research into their potential effectiveness.

We do not believe fixed penalty notices are required for selling food in a free market.

Compliance notices should be adequate to correct any mistakes by retailers.

The associated costs which will be forced upon the food and drink industry due to these proposals, will be significant and cannot be taken in insolation of other policies.

For example, the proposed business rate surtax from the Scottish Budget, which would add another cost burden onto retailers.

We would welcome the 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.

In addition, there should be a 6-month grace period where any breach of regulations would not result in penalties, rather advice to correct and signposting to guidance / training for staff.

Conclusion

While businesses can understand the intention of the proposals to reduce the discourage over purchasing of food to improve health, it is likely that the ongoing cost of living crisis will see many Scottish budgets continue to struggle to purchase extra food on top of essential items.

At the same time, the overwhelming volume of regulation and cost of doing business means that many food and drink producers particularly SMEs will go out of business, resulting in job losses.

The HFSS proposals are complex and cover potentially thousands of food products.

The recent example of how the UK Government has consulted on HFFS proposals for England, which has seen the legislation being delayed until October 2025, highlights the challenges and technicality of enacting the policy.

The Scottish Government should take this opportunity to minimise business and consumer confusion by aligning its own proposals with the rest of the UK. Ensuring the rules and timetable are in sync would be a sensible approach.

ENDS

ABOUT SCC: The Scottish Chambers of Commerce Network sits at the heart of local business communities, representing over 12,500 businesses in Scotland. With 30 local Chambers rooted in communities across Scotland, the Chamber Network provides practical advice and support to Scottish companies through unrivalled expert leadership, business-to-business connections, mentoring/coaching, business support services and international trade support.