

BDA Scotland Board Response to Scottish Government Consultation on Reducing Health Harms of Foods High in Fat, Sugar or Salt

Question 1

To what degree do you agree or disagree that mandatory measures should be introduced to restrict the promotion and marketing of foods high in fat, sugar or salt to reduce health harms associated with their excessive consumption?

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree

Please explain your answer.

BDA Scotland Board believes mandatory regulations to restrict the promotion and marketing of foods high in fat, sugar or salt are essential to establish healthy environments that encourage and enable people to select and eat a healthy diet more easily. As the factors contributing to overweight and obesity are complex, no single intervention can halt the obesity epidemic, however creating environments, including healthy retail environments, will encourage and enable healthier eating choices. Research indicates that retail promotions are used extensively on goods which are high in fat, sugar and salt¹. There is also considerable evidence of the effectiveness of such promotions especially to children². BDA Scotland Board strongly recommends mandatory measures backed by legislation need to be taken to restrict promotion and marketing. To date such initiatives have been voluntary and therefore failed to affect change, for example, Public Health England Responsibility Deal food pledges³.

¹ <https://esrc.ukri.org/news-events-and-publications/evidence-briefings/food-price-promotions-and-public-health/>

² <https://stirlinghealthsciences.wordpress.com/2015/12/10/junk-food-marketing/>

³ <https://www.sciencedirect.com/science/article/abs/pii/S0306919215000391>

Question 2

Should this policy only target discretionary foods? [confectionery, sweet biscuits, crisps, savoury snacks, cakes, pastries, puddings and soft drinks with added sugar]

Yes

No – there are additional categories that should also be targeted, please specify

Ice cream and dairy desserts

Smoothies and flavoured milk drinks

Breakfast cereals and breakfast bars

No – fewer categories should be targeted, please specify what should not be targeted

No – no foods should be targeted

Other – please specify

BDA Scotland Board requests clarification on the definition of each category with a clear indication of what is included within each category. For example, within the 'pastries' category, consideration should be given to include breakfast pastry items, e.g. croissants, brioche, pain au chocolate, crumpets etc.

Don't know

Please explain your answer.

BDA Scotland Board agrees with targeting discretionary foods. From the consultation, it appears the categories have not yet been defined with this being the task of a technical working group. BDA Scotland Board would like more detail on who will be on this technical working group along with explanation on how the categories will be defined. Until these questions are answered, BDA Scotland Board is unable to fully support the food category approach.

BDA Scotland Board is aware of several existing measures of healthiness, for example, UK Nutrient Profile Model and UK front of pack colour coding criteria. BDA Scotland Board strongly recommend a consistent approach is taken across the UK and therefore suggest consideration is given to combining elements of the UK Nutrient Profile model with the proposed Scottish Government food category approach. This would also ensure that store-based restrictions on promotions remain consistent with UK wide restrictions on broadcast advertising. An example of this combined approach is the WHO Euro Nutrient Profile Model⁴. This approach involves certain food categories being covered by a blanket restriction with other categories having nutrient criteria set. BDA Scotland Board recommends this combined approach is explored in more detail.

As highlighted, consideration should be given to ice cream and dairy desserts, smoothies and flavoured milks as well as breakfast cereals and breakfast bars. BDA Scotland Board appreciates some products within some food categories may contain beneficial nutrients, however, these food categories also contain a substantial number of products which are high

⁴ http://www.euro.who.int/_data/assets/pdf_file/0005/270716/Nutrient-children_web-new.pdf

in fat, sugar and salt and are often eaten as snack foods by a high proportion of the population, especially children. The use of the nutrient profiling model for these categories could address this issue.

Question 3

Should this policy treat ice-cream and dairy desserts as discretionary foods?

Yes

No

Don't know

Please explain your answer.

Although the ice cream and dairy desserts category may contain some food products with sources of nutrients including calcium, this category contains a substantial number of food products which are high in fat, sugar and salt. Often these high fat, sugar and salt products are frequently eaten as snack foods and can be promoted towards the young. The ice cream and dairy dessert category offer so much variation in the fat, sugar and salt content meaning simple food categorisation is not enough to define their degree of healthiness. Another tool such as the nutrient profiling model would be required to assess degree of healthiness and allow ease in the decision if a food product in this category is excluded or not from marketing and promotion restrictions. BDA Scotland Board is concerned exclusion of ice cream and dairy desserts could lead to increased misunderstanding of the healthiness or otherwise of this food category.

Question 4

Please comment on our approach to defining categories and exclusions of particular foods/products from those definitions (paragraphs 9-11)?

BDA Scotland Board is in favour of clearly described definitions for each category and welcomes the opportunity to comment on technical expert advice. At this stage, BDA Scotland Board would like to know who will be providing this technical support and recommend dietitians are involved due to their expertise in the area.

BDA Scotland Board recommends consideration is given to unpackaged foods to ensure there is not a loop hole whereby retailers can promote products high in fat, sugar or salt. Several the food categories included in this consultation could contain a wide number of products which may not be pre-packaged. Consideration on how to include these foods would be important. Experience from Scotland's Healthy Living Award (HLA) could be taken on board.

BDA Scotland Board has concerns in relation to the suggestion sugar free sweets would not be included. It would prefer all sweets are categorised as confectionary to avoid any confusion⁵. For the same reason, BDA Scotland Board recommends 'diet' drinks are included within marketing and promotion restrictions.

⁵ <https://www.sciencedirect.com/science/article/pii/S0195666317301101?via%3Dihub>

Question 5

In relation to the foods being targeted, should this policy seek to

Restrict multi-buys **Yes**

Restrict sales of unlimited amounts for a fixed charge **Yes**

Not restrict temporary price reductions **No**

Not restrict multi-packs? **No**

Other – please specify _____

Please explain your answers.

BDA Scotland Board does not agree with the rationale presented within the consultation to not restrict temporary price reductions and to not restrict multi-packs. The argument to not restrict these price promotions is not convincing and taking this action could potentially lead to a large loop hole in the system whereby retailers will continue to market and promote a wide range of foods high in fat, sugar or salt. The definition of the term ‘temporary’ could be misused/ misrepresented. BDA Scotland Board recommends the restriction of discretionary foods should be across the board without these exceptions. BDA Scotland Board therefore recommends further consideration is given to ensure clarity, support simplification for implementation and avoid otherwise likely confusion and exploitation.

Question 6

Please comment on the approach we are proposing to take to restricting forms of promotion and marketing outlined in section 5.

BDA Scotland Board is supportive of the suggested proposals to restrict other forms of promotion and marketing. However, it does not support all the proposed exemptions. Evidence indicates that shelf position, end of aisle and low tech cardboard displays^{6 7 8} can be as effective in driving sales as a price reduction or promotion. BDA Scotland Board regards ‘position on shelf or number of products on display’ to be important and need further consideration before a decision regarding inclusion within restrictions can be reached. It finds the point not restricting the number of aisles or locations of aisles for foods within the outlet, very confusing and ambiguous. BDA Scotland Board would like further clarity on this issue along with explanation on what and where are ‘known locations that encourage sales’. It also requests clarification on what is a ‘proportionate approach’.

In relation to size/volume of foods, BDA Scotland Board would like further explanation. BDA Scotland Board considers food packaging labelled with ‘recommended portions’, is often not a suitable means of determining appropriate size and volume. Public Health England (PHE) has undertaken considerable work as part of the ongoing sugar and calorie reduction programme to calculate realistic ‘single serve’ portion sizes based on what people actually eat, as opposed to those published by manufacturers and retailers which are often considerably smaller. BDA Scotland Board recommends information from this PHE work is considered and incorporated within Scottish Government proposals.

⁶ <https://adage.com/article/news/store-displays-effective-price-cuts/132767/>

⁷ <https://www.sciencedirect.com/science/article/pii/S0277953614001361>

⁸ <https://www.slideshare.net/Mahirstanbullu/the-impact-of-shelf-levels-on-product-sale>

BDA Scotland Board urges consideration of restriction of promotions that offer larger individual pack sizes for the same price, e.g. “20% extra free”. Size and volume of foods on promotion may also include degree of store, aisle and shelf space devoted to foods high in fat, sugar or salt. Size/volume of foods is therefore open to interpretation and requires further clarification.

BDA Scotland Board considers it is important that existing relevant Scottish Government policies are cross referenced in this document. The Healthcare Retail Standard (HRS) should be recognised in the current consultation as the aims are similar, to facilitate consuming a healthy diet⁹.

Question 7

Should the restrictions apply to any place where targeted foods are sold to the public, except where they are not sold during business (e.g. charity bake sales)?

Yes

No

Don't know

Please explain your answer.

BDA Scotland Board is supportive of the restrictions applying to any place where targeted foods are sold to the public. BDA Scotland Board is encouraged to see the restriction will include community pharmacies as it considers the promotion and marketing of high fat, sugar or salt foods by community pharmacies a betrayal of trust. BDA Scotland Board appreciates how charity bake sales may be exempt. It also appreciates how difficult it may be to apply restrictions to business for whom unhealthy snacks comprise the only sales, for example sweet shops, as this may threaten the viability of a small business. In contrast, BDA Scotland Board does not agree with the case put forward for wholesale outlets to be exempt. It understands that promotion and marketing of foods high in fat, sugar or salt within wholesale outlets will encourage and increase purchase of such foods by the retail trade. In turn, the retail trade will have increased stock of high fat, sugar and salt food to sell on to the public. Therefore, this would be defeating the purpose of aiming for a healthier retail environment.

Question 8

Please comment on whether, and if so to what extent, restrictions should be applied online.

BDA Scotland Board recommends the restriction be applied online.

Please explain your answer.

Although BDA Scotland Board appreciates there may be difficulties with implementation and management of online restrictions, it believes uniformity in approach is essential. Online sales are of relevance due to online grocery shopping doubling in the UK in recent years. It recommends the control of ‘pop ups’ promoting food and drink sales online is given consideration. We ask for restrictions to include pop ups of foods high in fat, sugar or salt as

⁹ <https://www.gov.scot/publications/criteria-healthcare-retail-standard/pages/2/>

suggested purchases. Such an approach is only fair to conventional retail outlets, given existing pressures from online competition.

Question 9

Should restrictions to displaying targeted foods at end of aisle, checkouts etc., not apply where there is no reasonable alternative to displaying them elsewhere?

Yes

No

Don't know

Please explain your answer.

BDA Scotland Board is not supportive of positioning exemptions. It believes such exemptions would lead to misuse and undermining of the promotion and marketing restrictions. Instead BDA Scotland Board calls for the retailers to give creative thought and innovation on how to position foods without the need for exemptions. Shops who sell only sweets, ice creams and fizzy drinks may require an exemption.

Question 10

Should food marked as discounted because it is close to expiry be exempt from

Positioning restrictions (end of aisle, checkouts etc.) **No**

'Promotion of value' restrictions? **No**

Please explain your answer.

BDA Scotland Board values the importance of reducing food waste, however it believes exempting foods high in fat, sugar or salt close to expiry undermines the scheme. The foods high in fat, sugar or salt are discretionary foods independent of their expiry date. Most discretionary foods would have a best-before date code with relatively long shelf life therefore stock control should be managed by seller. Exception could be some chilled dairy desserts which would have a use-by date code. Discounting and promoting such foods provides inconsistent and mixed messages and will only lead to increased sales of foods with little or no nutritional benefit. In turn, as more money is spent on these discretionary foods, this may cause the shopper to reduce the purchase of healthier foods with greater nutritional benefit. BDA Scotland Board suggests more could be achieved in relation to food waste by offering discount fruit and vegetables.

Question 11

Please list any other exemptions we should consider. Please explain your answer.

No

Question 12

Please comment on our proposals for enforcement and implementation outlined in section 8.

BDA Scotland Board welcomes the proposals for enforcement and implementation. It agrees local authorities are ideally placed to undertake the role of enforcement however do not think they have the capacity to do so. BDA Scotland Board considers it is essential whoever takes on the role is adequately trained and supported. BDA Scotland Board strongly recommends a substantial penalty is agreed for those who do not comply. Without a substantial fine, retailers may consider it easier to pay the fine than to implement the marketing and promotion restrictions. BDA Scotland Board supports the recommendation to produce clear guidance, co-designed by the industry to support effective implementation.

BDA Scotland Board considers that this consultation should incorporate the aims and approaches already advocated by other current Scottish Government legislation. Two initiatives are relevant – the HRS <https://www.gov.scot/publications/criteria-healthcare-retail-standard/pages/1/> and the HLA <https://www.gov.scot/publications/sgf-healthy-living-programme-guidance-promoting-produce/>. Reference should be made to these two programmes within the foods high in fat, sugar or salt legislation.

Question 13

Please comment on the proposed flexible approach outlined in section 9.

BDA Scotland Board recognises the need for flexibility in approach to ensure policy development, to allow for redefinition of target foods and food categories as necessary. However, it deems flexibility not to diminish or reduce the restrictions in any way.

Question 14

If you sell, distribute or manufacture discretionary foods, please comment on how the restrictions in this consultation paper would impact you. Please explain your answer.

N/A

Question 15

What support do sellers, distributors and manufacturers need to implement the restrictions effectively? Please explain your answer.

BDA Scotland Board recommends the provision of clear guidance, training and support. Provision of tools online would be of value. Learning and recommendations should be considered and applied from the HLA and HRS.

Question 16

How would the proposed restrictions impact on the people of Scotland with respect to age, disability, gender reassignment, pregnancy and maternity, ethnicity, religion or belief, sex, sexual orientation or socioeconomic disadvantage?

Please consider both potentially positive and negative impacts, supported by evidence, and, if applicable, advise on any mitigating actions we should take.

BDA Scotland Board considers that implementation of the strategies in this policy should help improve health outcomes for all. Success with this policy would assist in addressing the increasing health challenges in Scotland relating to excessive purchase and consumption of foods high in fat, salt and sugar.

Question 17

Please outline any other comments you wish to make

BDA Scotland Board strongly recommends mandatory measures backed by legislation need to be taken to restrict promotion and marketing of foods high in fat, salt and sugar. It questions how the proposed strategies in this consultation could be implemented in national companies and supermarkets specifically for Scotland. BDA Scotland Board suggests a joined up consistent approach is required nationally across the UK. Wider advertising and promotion, may be more feasible, if UK policy in this area was consistent. Taking a UK wide tactic would represent a robust approach where brands as well as specific products could be challenged. Scottish Government could share learning, challenges, successes and evaluations from the work on the HLA and HRS.

Success with this policy will help address the challenges faced in Scotland with increasing health issues relating to the excessive purchase and consumption of foods high in fat, salt and sugar. It is essential the proposals suggested align with the targets set within 'A healthier future: Scotland's diet and healthy weight delivery plan'. BDA Scotland Board agrees Scottish Government should act to make healthier choices in the retail environment easier. To maximise effectiveness, an aligned UK wide approach should be taken using a tried and tested model such as the WHO Euro Nutrient Profile Model. Ease in implementation and enforcement are also important considerations.

January 2019