

SCOTTISH GOVERNMENT

CONSULTATION ON RESTRICTING PROMOTIONS OF FOOD AND DRINK HIGH IN FAT, SUGAR, OR SALT

RESPONSE FROM THE SCOTTISH GROCERS' FEDERATION

Scottish Grocers' Federation

The Scottish Grocers' Federation (SGF) is a trade association for the Scottish Convenience store sector. There are 5,098 convenience stores in Scotland, which includes all the major symbol groups, co-ops, and convenience multiples in Scotland. SGF promotes responsible community retailing and works with key stakeholders to encourage a greater understanding of the contribution convenience retailers make to Scotland's communities. In total, convenience stores provide over 49,000 jobs in Scotland¹.

Convenience stores trade across all locations (rural/ suburban/ urban) in Scotland, providing a core grocery offer and expanding range of services in response to changing consumer demands close to where people live. The valued services provided by local shops include mobile phone top-up (83%), bill payment services (78%), cashback (70%), free to use cash machines (49%) and branches of the Post Office network (27%)².

Over the last year, convenience stores in Scotland have invested £65m in their business. During this same period, the UK convenience sector contributed over £9.7bn in GVA and over £9bn in taxes³.

Introduction

SGF welcomes the opportunity to respond to this consultation and recognises the goal set by the Scottish Government (SG) to improve the health of the nation.

¹ Scottish Local Shop Report 2022

² Scottish Local Shop Report 2022

³ Scottish Local Shop Report 2022

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SGF

Scottish Grocers' Federation

www.scottishshop.org.uk

Promoting Responsible Community Retailing Since 1918
to ensure a sustainable and prosperous convenience industry in Scotland



The SGF Go Local programme, which is funded by the Scottish Government and is being delivered in close partnership with Scotland Food & Drink aims to support convenience stores the length and breadth of Scotland to provide dedicated, long-term display space for locally sourced Scottish products. It has a bias toward fresh and healthy and so alcohol and discretionary foods are not included in the programme.

The early results from the Go Local programme have significantly enhanced the local multiplier effect by £157,000 annually per store on the healthier compliant Scottish products, and a £64,000 annual improvement on the non-compliant Scottish products has been recorded as an unintended benefit. This before any economic benefit is considered from the refit work carried out in stores by local companies.

The SGF Healthy Living Programme – which is funded by SG – improves the supply provision of fresh produce and healthier food choices in local convenience stores. Across Scotland, the SGF Healthy Living Team are supporting retailers to deliver these options to the Scottish consumer. The Healthy Living Development Managers work closely with our retailers to promote healthier options throughout stores in all categories and to support the development of more effective point of sale.

To date, 2,400 convenience stores are participating in the SGF HLP of which 67% of participating stores are situated in Scotland's most deprived communities, as measured by the Scottish Index of Multiple Deprivation. The programme has grown, and now works with all the major symbol groups within the convenience sector to offer discounted prices on fresh produce and other healthier products as per the guidance from Food Standards Scotland.

Associated activity includes for example Healthy Living Days which are events in collaboration between schools and stores to educate pupils about the importance of healthy eating and a Recipe card scheme which provides customers with all the ingredients and knowledge they need to cook healthy meals.

More than ever modern convenience stores are seen as community assets and have an increasingly significant role in their local communities.

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CONSULTATION QUESTIONS

Below are the Scottish Grocers' Federation responses to some of the consultation questions.

Section 1. Foods that would be subject to restrictions

Q1: Which food categories should foods promotion restrictions target?

Option 1: Discretionary food categories

Option 2: Discretionary foods + ice-cream and dairy desserts

Option 3: Categories that are of most concern to childhood obesity

Option 4: All the categories included in the UK-wide reformulation programmes

If restrictions are to be introduced, SGF believe that it is important that there is a consistency of approach with the UK Government in relation to the regulations for England as a threshold not to go beyond.

This will help reduce operational pressures on those retailers, manufacturers and wholesalers which trade across the UK and so ensure interoperability between nations. Most large suppliers operate across the UK and it is essential that any decisions taken do not jeopardise Scotland's Food and Drink sector at this critical time when businesses are confronted with an exceptionally challenging environment which is characterised by the industry being exposed to soaring energy costs, rising inflation and rising interest rates, cost of living crisis, the implications of Brexit and the war in Ukraine.

Q2: Should nutrient profiling be used within all targeted food categories to identify non-HFSS foods?

Yes, it should follow the approach used in England for consistency.

If Nutrient Profile Model (NPM) is not used, it will misalign with England, adding further confusion to an already complicated regulatory landscape for businesses that operate in England and Scotland. This will create more interpretative issues surrounding which products are in or out of scope, adding an unnecessary regulatory burden and impacting business operations of wholesalers, suppliers, and retailers.

For example, wholesalers will have to find space in their warehouse to host Scottish specific products, while suppliers may to choose the reduce number of lines available. It could also deter business investment in local areas and reduce choice for Scottish consumers.

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If Scottish government choose not to use an NPM, then it should publish a separate consultation to invite views on this proposal. Having to work with a different model, product categories or product definitions may result in confusion, complexity and cost.

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?

Yes.

Section 2. Price promotions

Q4- 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

We would emphasise that, for Scottish independent retailers, promotions are a way of differentiating themselves, responding to competition, and to changing customer demands who now more than ever seek choice and quality but at an affordable price. Given the current cost of living crisis and rising inflation, promotions are an important tool for retailers to show they are delivering value for customers during these very challenging times.

The business model used by convenience stores is characterised by a low-margin high volume approach. The proposal to restrict multi-buys of pre-packed food, "X for Y" or "Y for £X" would have a considerable impact on retailers pricing strategies. Convenience stores are community assets, and this includes providing essential groceries for shopper missions.

The restrictions being proposed for example on Meal deals would leave local convenience stores at a competitive disadvantage compared to for example, larger supermarkets who have the purchasing powers to offer their products at reduced rates due to their larger wholesale volume purchases of products which allows them to buy and to sell them cheaper or use everyday low prices.

There would also be costs to retailers around staff training in terms of ensuring they were aware of and understood the changes. This diversion of time and resources could also potentially impact on a shop owners' ability to reinvest in their store.

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Q5: What are your views on the proposal to restrict unlimited refills for a fixed charge on targeted soft drinks with added sugar?

N/A.

Q6: Should other targeted foods be included in restrictions on unlimited amounts for a fixed charge?

N/A.

Q7: What are your views on the proposal to restrict temporary price reductions (TPRs)?

We do not agree with the proposal to restrict temporary price reductions (TPRs) as it would leave convenience stores at a competitive disadvantage compared to larger supermarkets.

It is very difficult to define promotional offers such as temporary price reductions and meal deals and there is a danger that this could complicate matters when trying to set these definitions out in the regulations. This in turn could make it more difficult to for those required to adhere to them such as retailers, to follow.

Consumers are being impacted by the cost-of-living crisis as household budgets are in effect being reduced by inflationary pressures across the board and so customers have tough decisions to make, eat or not eat. When they do spend however it is to a much lesser extent and understandably focuses more on key essentials. This scenario is expected to continue well into the coming years. Restricting TPRs therefore will not help alleviate those pressures but rather exacerbate them for customers.

There are many complex factors that influence a consumer's purchasing choice - temporary price reductions and meal deal type offers do not function to encourage higher volume purchasing of products. Temporary price reductions are designed to offer and deliver value for customer purchases rather than encourage volume purchasing. It should be noted that TPRs are necessary when products are going out of date to reduce wastage. Similarly tare used if retailers have overstocked on a product that perhaps has not sold through as expected.

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Q8: Are there any other forms of price promotion that should be within scope of this policy?

No.

Section 3. Location and other non-price promotions

Q9: Should the location of targeted foods in-store be restricted at:

Checkout areas, including self-service - Yes/ **No**/ Don't know

End of aisle - Yes/ **No**/ Don't know

Front of store, including store entrances and covered outside areas connected to the main shopping area - Yes/ **No**/ Don't know

Island/ bin displays - Yes/ **No**/ Don't know

We would not want restrictions in any of the above areas.

Scottish convenience stores tend to be of a smaller format and so the introduction of such restrictions would have a disproportionate effect on them. See our answer to question 20 which provides information on sales space.

As we pointed out in our response to the previous consultation in 2019, introducing such restrictions could be challenging for smaller format stores who would struggle to implement them at an operational level given the limited in-store space available. This would also leave them at a competitive disadvantage to, for example, larger retailers or superstores who will be able to accommodate such new restrictions more readily thereby jeopardising the future sustainability and viability of smaller format stores.

Indeed, these proposed location restrictions would also negatively impact on the ability of convenience stores to deliver essential services and product ranges. Key services include for example, bill payment services (78%), free to use cash machines (49%) and Post Offices (27%)⁴.

The Scottish Government should also consider that island / bin display units are important for convenience retailers to increase range and availability at key seasonal times of the year to enable convenience stores to compete better with larger retailers. If convenience retailers lose off shelf space during seasonal periods they will be at a competitive disadvantage.

⁴ Scottish Local Shop Report 2022

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Q10: Should any other types of in-store locations be included in restrictions?

No.

Q11: 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

SGF take the view that the on-line and in-store shopping environments are clearly different in nature and presentation and therefore is no straight read across or direct comparison that can be made. For example, the online experience of the shopper mission, the level of interaction and customer expectations are different in this setting.

We note however that the UK Government has already introduced measures in England which restrict the sale of in-scope products online. On that basis, if online restrictions are introduced, then in terms of consistency of approach and understanding across both Scotland (and the UK) consideration should be given to following the approach of the UK Government in relation to online shopping.

Q12: Should any other online locations be included in restrictions?

No.

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?

No.

Section 4. Places that would be subject to restrictions

Q14 - Which places, where targeted foods are sold to the public, should promotions restrictions apply to:

Retail - Yes/ No/ Don't know

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Out of home - Yes/ No/ Don't know
Wholesale (where sales are also made to the public) - Yes/ No/ Don't know
Other outlets - Yes/ No/ Don't know

We do not support the introduction of promotions restrictions. Please also see also our answer to question 9.

If the Scottish Government choses to introduce place restrictions, they will need to consider the fact that smaller format stores will struggle to adapt given that they already have very limited space available to them. This will then bring into question the sustainability of individual outlets and businesses particularly given the incredibly challenging trading environment within which they are currently operating which is characterised by soaring energy costs, rising inflation and interest rates, cost of living crisis, staff shortages, rising supply chain costs and cost of sourcing products.

Customers visit their local convenience store typically for a top-up shop, a one-off meal solution or for emergency purchases. Our Scottish Local Shop Report 2022 highlights that average basket spend is £7.27, with the average basket size being on average 3.0 items. In addition, the average customer visits their local store 2.7 times per week.

In terms of volume of sales, our Scottish Local Shop Report 2022 shows for example that neither confectionary (5.7%) or soft drinks (7%) are in the top three sales categories for the overall convenience market in the UK.

This demonstrates that the product mix and business focus are different in the convenience sector to supermarkets, which still dominate the majority of planned for purchases. It is important therefore that the Scottish Government recognise the impact promotions restrictions would have on different categories of retailers.

For independent convenience retailers, promotions are a way of differentiating themselves, responding to competition and providing the offering which their customers want. Larger retailers may have more flexibility to adapt to restrictions than smaller retailers, for example, using alternative promotional activity such as 'everyday low prices'.

SGF take the view therefore that smaller stores should be exempted, and we will expand on this further in our answers to questions in Section 5.

Q15: Are there other places/ types of business to which the restrictions should apply?

No.

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Q16: Are there other places/ types of business which should not be within the scope of the restrictions?

See our answers in Section 5.

Section 5. Exemptions to restrictions

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?

We agree that specialist businesses such as those cited could be exempted from the proposed restrictions.

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 – Yes/ **No**/ Don't know
- Floor space – **Yes**/ No/ Don't know
- Other (please specify)
- None
- Don't know

Exemptions should be applied based on floor space. See our answer to question 20.

SGF see floor space as a critical factor for Scottish convenience stores given that they are of a smaller format and so presents operational challenges in store.

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**

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Please see our answer to question 20.

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

SGF believe that for the regulations to be proportionate there should be exemptions for smaller stores, specifically for those less than 3000sq. ft. in trading area. Indeed, there has been a traditionally held, widely accepted definition within the industry that a convenience store is typically under 3,000sq ft.

Our Scottish Local Shop Report 2022 sets out below the sales space available in Scottish independents:

Sales space - Scottish independents		
1-999 sq. ft.	1,000-1,999 sq. ft	2,000-3,000 sq. ft
53%	34%	12%

The current trading environment is an incredibly challenging one for convenience retailers be that soaring inflation, rising interest rates, energy and fuel prices, the implications of Brexit, the war in Ukraine and the impact this has had on the supply chain and cost of sourcing products. Many convenience stores of are on the brink of going out of business due these exceptional pressures. On top of this, the grocery market in Scotland is hyper-competitive with retailers utilising all available sales space to survive.

To place, what would be highly disruptive and disproportionate restrictions on the vast majority of convenience retailers could seriously jeopardise the ongoing viability of stores given the potential implications such measures could have such as products having to be moved to alternative locations in-store and for smaller stores this could involve an overhaul to the whole store layout to comply.

The steady stream of legislation from both the UK and Scottish governments continues add to the regulatory burden of the food and drink sector just when the industry is still recovering from the Covid-19 pandemic. On top of this, the Scottish Deposit Return Scheme is scheduled to go live on

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16th August 2023 where space will be taken up in convenience stores by reverse vending machines or collections from manual take-back thereby limiting sales space even further.

Q21: Are there any other types of exemptions that should apply?

No.

Section 6. Enforcement and implementation

Q22: Do you agree with the proposal that local authorities are best placed to enforce the policy?

Yes. As outlined in the consultation, Local Authorities are responsible for enforcing existing food law in the businesses within the scope of this policy.

The implementation of any new restrictions will place a significant cost and administrative burden on convenience retailers and will also impact local authorities given that they will be tasked with monitoring enforcement (e.g., resource and training requirements).

Q23: If local authorities were to enforce the policy, what resources (for example staffing/funding) do you think would be required to support enforcement?

A key challenge presented by these proposed restrictions will be that retailers may find them complex to understand and implement thereby impeding their ability to run their businesses efficiently in the exceptionally challenging trading environment which looks likely to remain for some considerable time.

In the previous Scottish Government consultation from 2018, there was a suggestion that a guide for retailers would be considered. SGF is very well placed to work with the Scottish Government to produce this guide for the convenience sector. This would ensure that it is fit for purpose. SGF already has a proven track record in working in partnership with the Scottish Government and related departments. For example, SGF produced - in conjunction with Food Standards the Scotland – a retailer guide to enable retailers to fully understand and be fully compliant with the new regulations for new allergen labelling for prepacked for direct sale (PPDS) food which was introduced in October 2021. This guide has been positively received within our sector. We also previously, in partnership with the Scottish Government produced guidance on minimum unit pricing for retailers and Nicotine Vapour Products and Tobacco Compliance in Scotland.

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Q24: 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

SGF believe that there should be a minimum of 18 months before any new restrictions are introduced. It is essential that such a lead-in time is provided to enable retailers to prepare, understand and act in accordance with the associated regulations that would be introduced.

To support implementation and compliance, it will be of fundamental importance to ensure that definitions are clear, unambiguous, and easy to understand. At the same time there will require to be an impactful public awareness campaign so that customers are also aware of any new restrictions and what this will mean for them.

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?

See answer to Question 20.

The current trading environment and soaring costs across the board which retailers are facing is impacting on their current and future business survival. Any new legislation and regulations further add to the cost pressures which convenience retailers are attempting to contend with.

Section 7: Legislative framework

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)?

Any further legislative changes – in addition to that outlined in this current consultation - should be subject to dialogue and consultation with stakeholders from the industry so that they can provide their expert opinion and feedback. Also, retailers would require sufficient time to adapt their business model to any further changes without incurring significant additional costs.

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Section 8. Impact Assessments

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?

We would not envisage any equalities implications from this legislation.

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.

As mentioned earlier in our answer to question 4, promotions are an important tool for retailers to demonstrate that they are delivering value for customers during these very challenging times. Given that household budgets are being impacted by soaring inflation, promotions can help customer spend go further than what may have been possible in terms of products purchased. Additional restrictions may it more difficult for retailers to offer additional value and benefits to customers.

Q29 - Please use this space to identify other communities or population groups who you consider may be differentially impacted by this policy proposal.

N/A

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.

N/A

Section 9. Other comments

Q31: Please outline any other comments you wish to make on this consultation.

Promotions enable convenience retailers to differentiate themselves, stay competitive and respond to the needs of their customers all within the context of responsible community retailing. It is important that the Scottish Government understands the role and context that convenience stores play in relation to customers daily lives and shopping habits.

Convenience retailers recognise the importance of responsible community retailing and that they have a key role to play in facilitating healthier purchasing by consumers. Given the current

<p>Trade CEO of the Year 2021 Pete Cheema OBE, Scottish SGF - UK Corporate America Today</p>	<p>Europe CEO of the Year 2021 Pete Cheema, SGF UK M&A Today – Global Awards</p>	<p>Trade CEO of the Year 2021 Pete Cheema OBE, Scottish Grocers' Federation - UK M&A Today</p>	<p>Federation - UK M&A Today The Legal 100 – 2021 Awards Best Food Trade Association – Scotland</p>
<p>Trade CEO of the Year 2020 Pete Cheema OBE, SGF -UK M&A Today - Global Awards – 2020</p>	<p>CEO of the Year 2019 Pete Cheema CEO Monthly</p>	<p>Best Food Trade Association Scotland 2018-20 M & A Today Global Awards</p> <p>Best Trade Association 2018 Global Business Insights Awards Food & Drink</p> <p>Special Recognition SLR Rewards 2018</p>	<p>CEO Today Magazine United Kingdom Awards 2021</p> <p>CEO – Pete Cheema CEOToday United Kingdom Awards</p> <p>CEO of the Year – Scotland Pete Cheema Innovation & Excellence Awards</p>

SGF

Scottish Grocers' Federation

www.scottishshop.org.uk

Promoting Responsible Community Retailing Since 1918
to ensure a sustainable and prosperous convenience industry in Scotland



challenging trading environment any new regulations and restrictions will place extra costs on Scottish retailers and in particular convenience retailers who operate in a hyper competitive retail grocery market.

SGF will continue to engage with Scottish Government over the key challenges that may lie ahead, for example, the overall costs and impact of any measures which are taken forward from the consultation.

Scottish Grocers' Federation
September 2022

**Trade CEO of the Year
2021**

Pete Cheema OBE, Scottish SGF - UK
Corporate America Today

**Europe CEO of the Year
2021**

Pete Cheema, SGF UK
M&A Today – Global Awards

**Trade CEO of the Year
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Pete Cheema OBE,
Scottish Grocers' Federation - UK M&A Today

Federation - UK M&A Today

The Legal 100 – 2021
Awards Best Food
Trade Association – Scotland

Trade CEO of the Year 2020

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M&A Today - Global Awards – 2020

CEO of the Year 2019

Pete Cheema
CEO Monthly

**Best Food Trade Association
Scotland 2018-20**

M & A Today Global Awards

Best Trade Association 2018
Global Business Insights Awards
Food & Drink

Special Recognition
SLR Rewards 2018

CEO Today Magazine

United Kingdom Awards 2021

CEO – Pete Cheema
CEO Today United Kingdom Awards

CEO of the Year – Scotland
Pete Cheema
Innovation & Excellence Awards