

WELCOME...

Webinar: What's next for advertising and promotion of HFSS products across the UK?

25 July 2023

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Category Consultants to
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Welcome

Kate Halliwell

Chief Scientist, FDF



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Consumer Insight

Kai Virtanen

Head of Growth, Levercliff



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We build better businesses since 1992

- We're **category consultants** for the food and drinks industry
- We help our clients find growth opportunities with **category and consumer insights**
- We ensure clients growth ambitions are supported by best-in-class **commercial thinking**



You can't always outspend your competitors, but you can outsmart them



Commercial Category Consulting

Relevant consumer needs
Occasions, Demand spaces
Innovation whitespaces, renovation
Consumer Marketing Activity

Consumer

Client

Current constraints (capability and capacity) for growth
Business Case for investment
Manufacturing, Margins



RTM, Trade relationships
Shopper Behaviour
Alternative Channels
Margins, Pricing, Promotions
Trade Marketing Activity

Customer

Category

Substitutes, Competition
Consumer Centric Category definitions
Whitespace vs. consumer demand and retail distribution

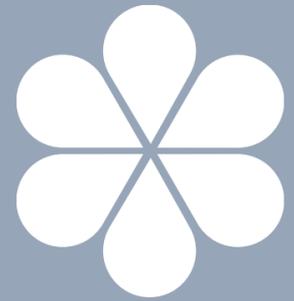
Our recent research on health

**Consumer priorities
Barriers
Evolving and emerging
trends**

May 2023

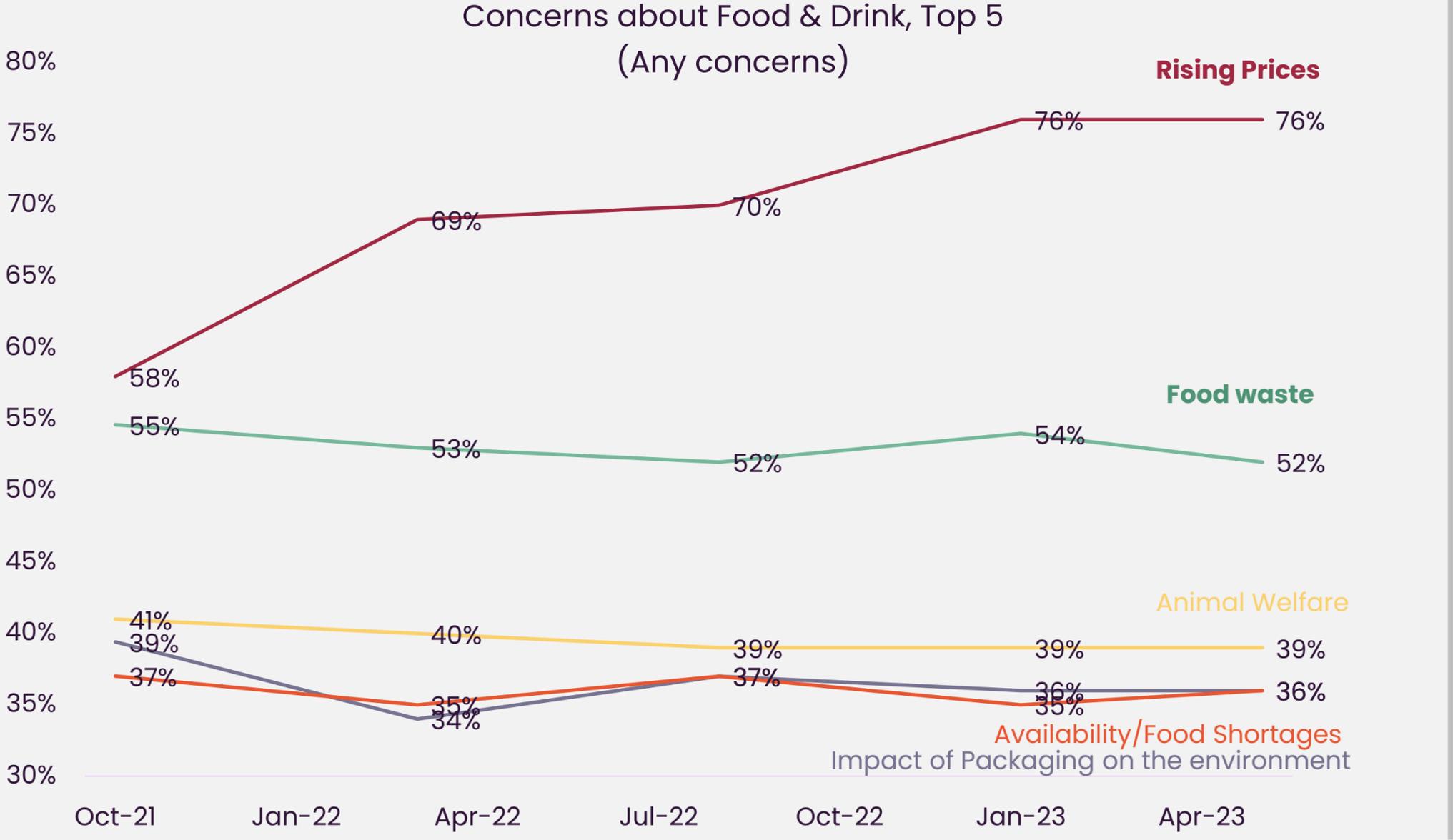
UK Representative Sample of 814
Boost Samples:
Scotland 164
Wales 138





How important is health & wellbeing in the current climate?

Within food & drink, concern about rising prices continues to eclipse all other areas



Concerns about Food & Drink (Single greatest concern)



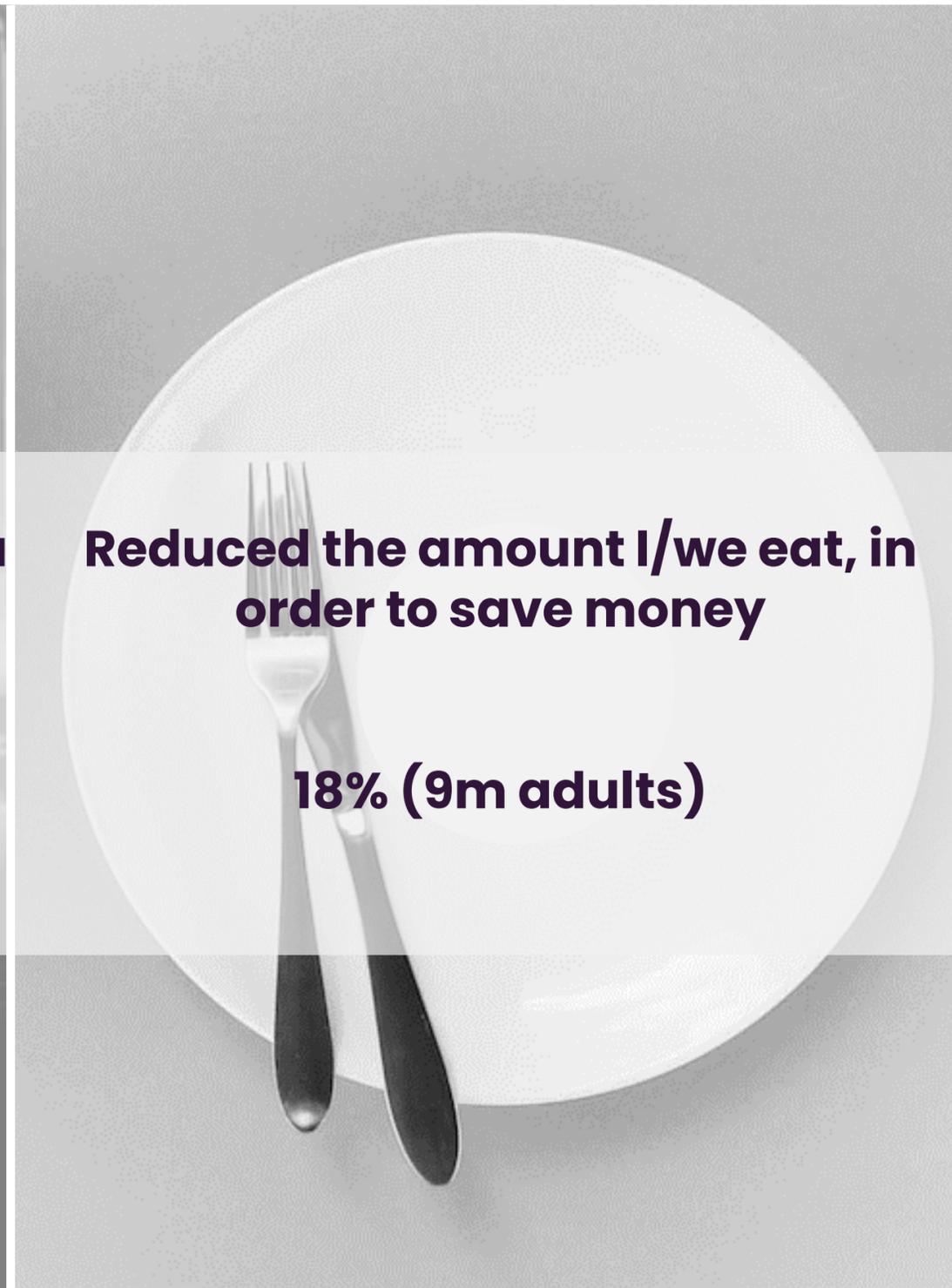
Base: 814 Q Thinking about food & drink, which of the following issues actively concern you? Please select all that apply. & Q And which of these issues regarding food & drink concerns you most?

34% (18m adults) have changed what or how much they eat in order to save money



Made changes to my shopping that allow me to cook/prepare meals in a more cost-effective way (using microwave or air-fryer etc.)

16% (8m adults)



Reduced the amount I/we eat, in order to save money

18% (9m adults)

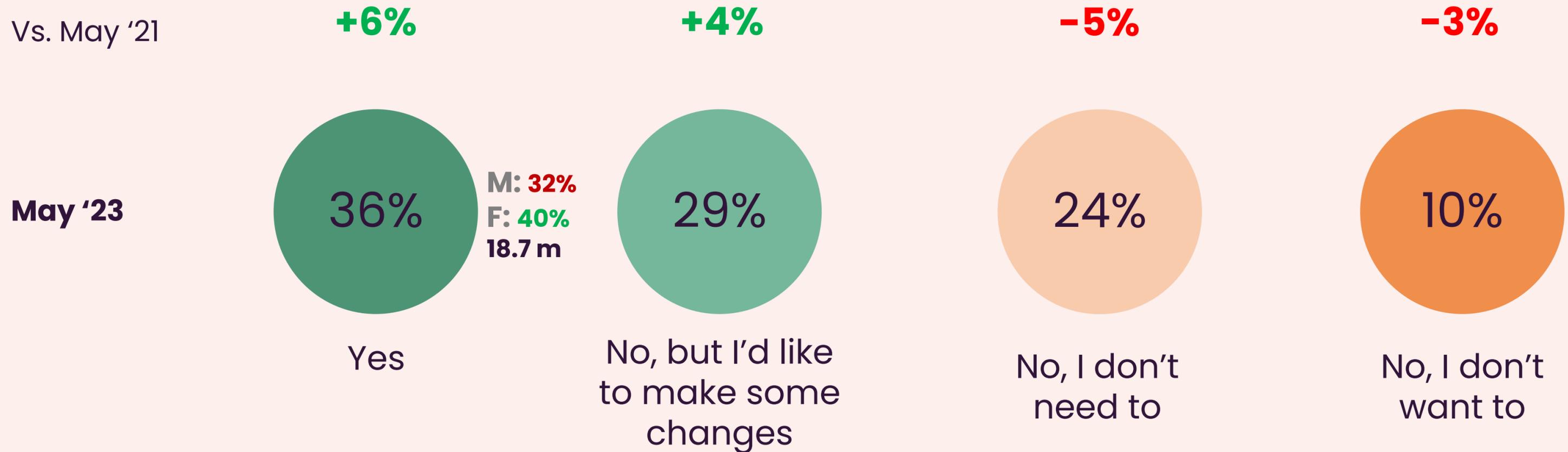


Made changes to my diet based on the cost of specific food or ingredients

9% (4.5m adults)

Over a third of UK adults have made changes over the last 3 months for health reasons... nearly half of the people who haven't made changes would like to

Made any changes to lifestyle in last 3 months for health reasons?



Nutritional priorities shift across lifestages but the top five priorities have remained largely unchanged over the last two years



Healthy Eating Priorities by Age

18-34

Not consuming too much sugar	32%
Eating enough protein	29%
Eating my 5 a day	26%
Not consuming too many calories	26%
Choosing foods and drinks that improve energy	23%

35-54

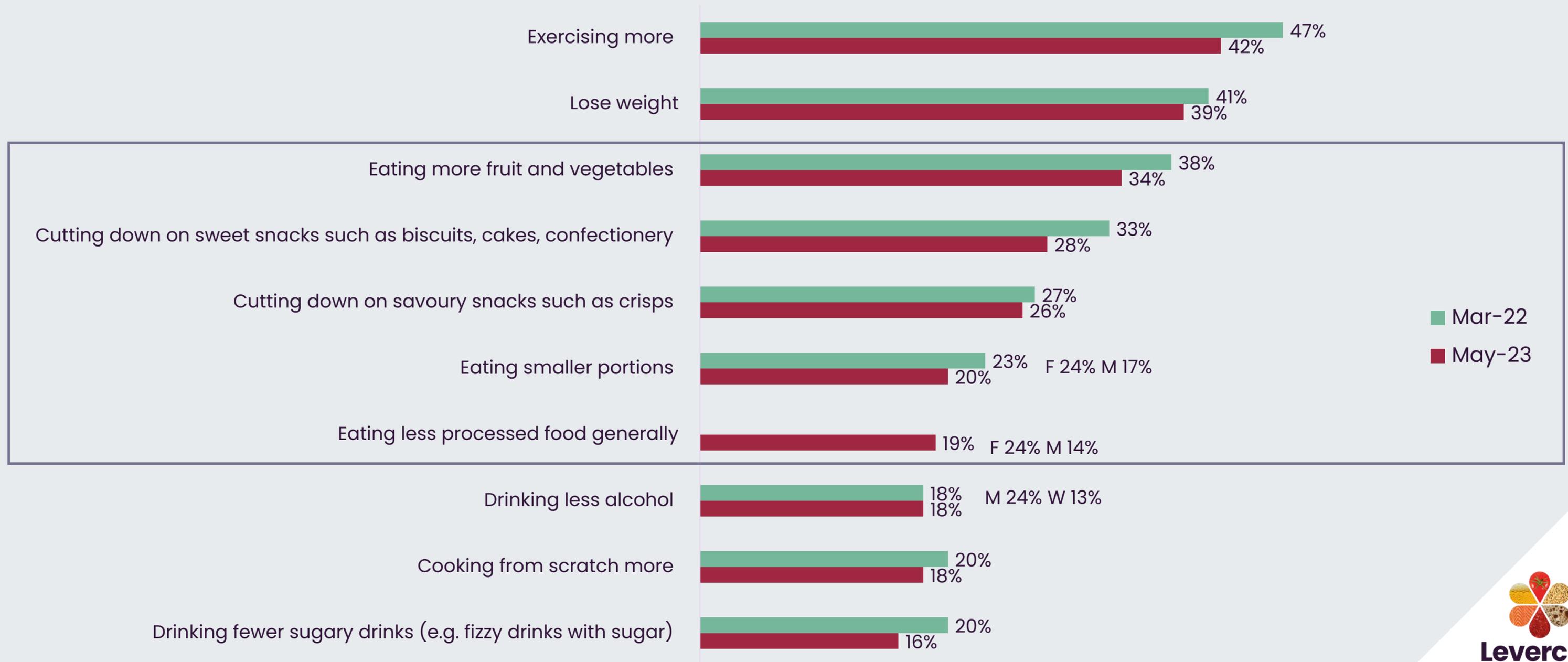
Eating my 5 a day	46%
Not consuming too much sugar	36%
Eating natural, unprocessed foods	36%
Not consuming too many calories	30%
Eating enough protein	26%

55+

Not consuming too much sugar	54%
Eating my 5 a day	52%
Eating natural, unprocessed foods	34%
Not consuming too many calories	33%
Gut health (e.g., digestive health)	26%

Over 1 in 3 would like to lose weight, exercise more or eat more fruit and veg to benefit their health.

Changes people would like to make for health reasons, top 10



But eating healthy is far from straightforward

Perceived price premiums, lack of willpower and simply liking the taste of less healthy foods are the main obstacles preventing people from eating more healthily.

37% I have minor/major financial difficulties

27%

Eating healthily is more expensive

23%

**Lack of willpower/
being tempted**

22%

I like the taste of less healthy foods

17%

Mood (e.g., feeling stressed, anxious, down)

14%

Lack of time

Another dietary area receiving increased bad press is ultra processed foods

'Ultra processed foods are manufactured foods that usually contain ingredients that you wouldn't add when cooking homemade food'



23%

Have no issue in eating UPFs

30%

Rarely/Never eat UPFs

To get in touch just email
kai.virtanen@levercliff.co.uk

For a copy of the report go to:
bit.ly/LevercliffFDF



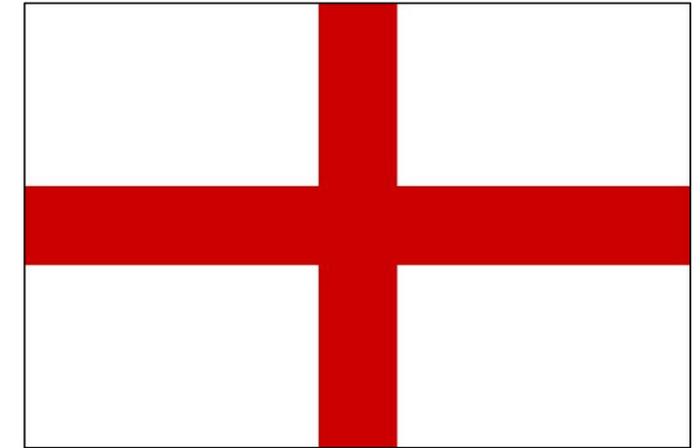
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OR
Scan me



Promotional Restrictions in England



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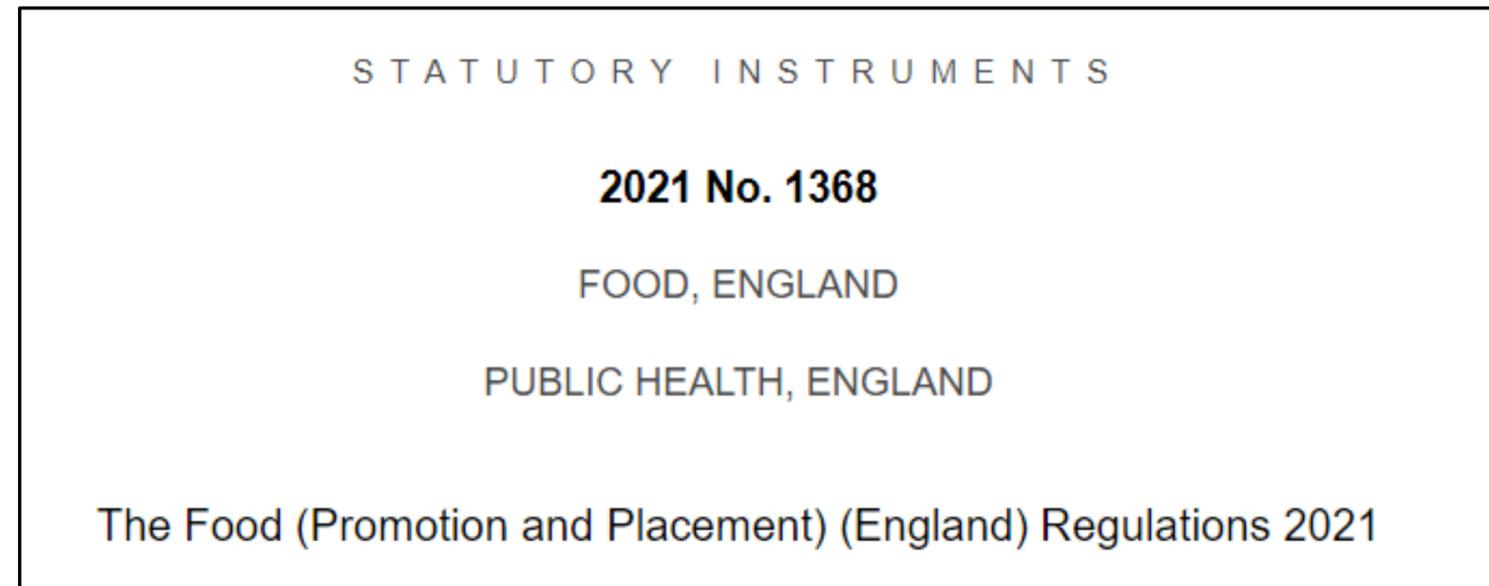
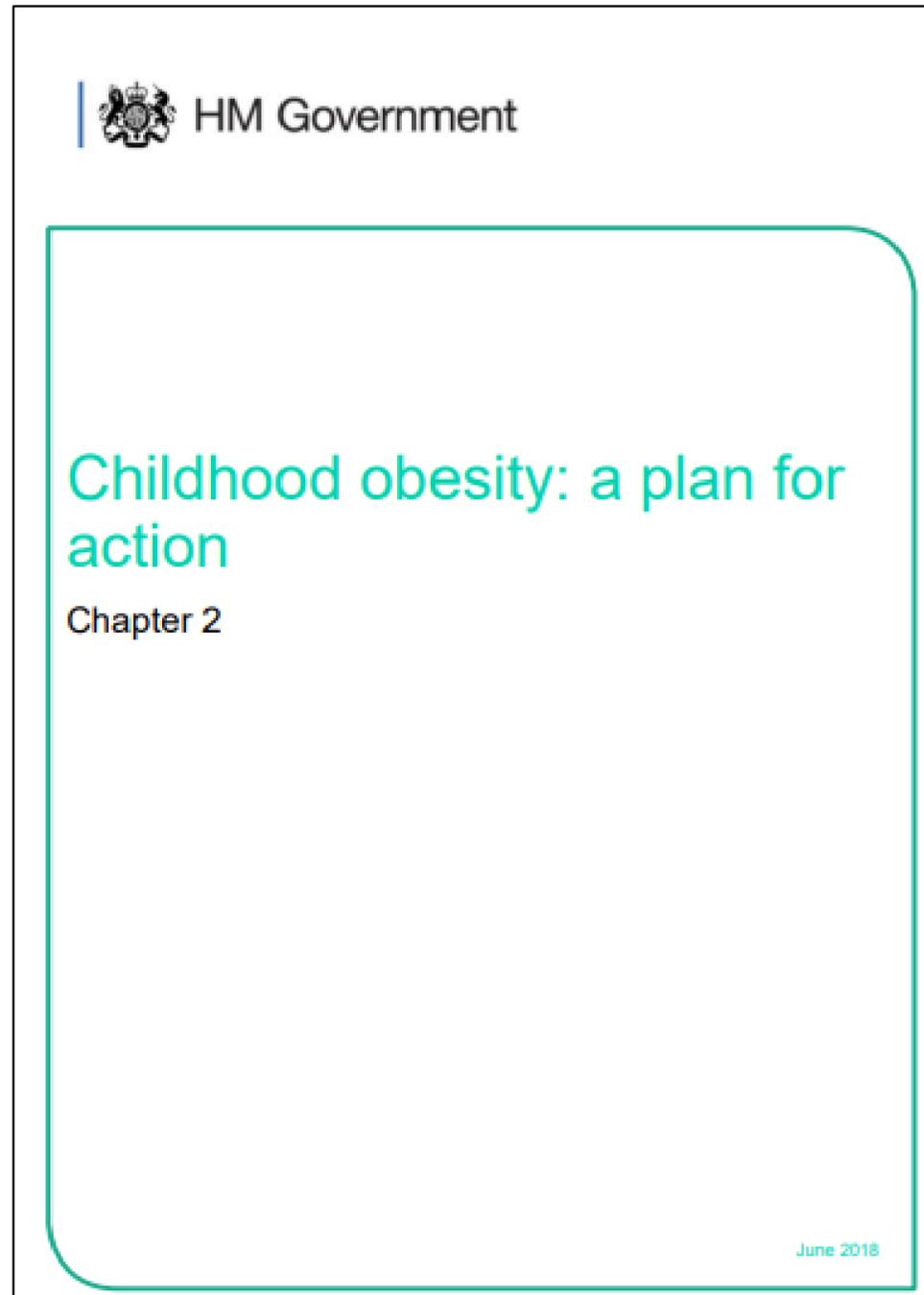


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Amy Glass, UK Diet and Health Policy Manager
The Food and Drink Federation

Promotion and Placement Regulations 2021



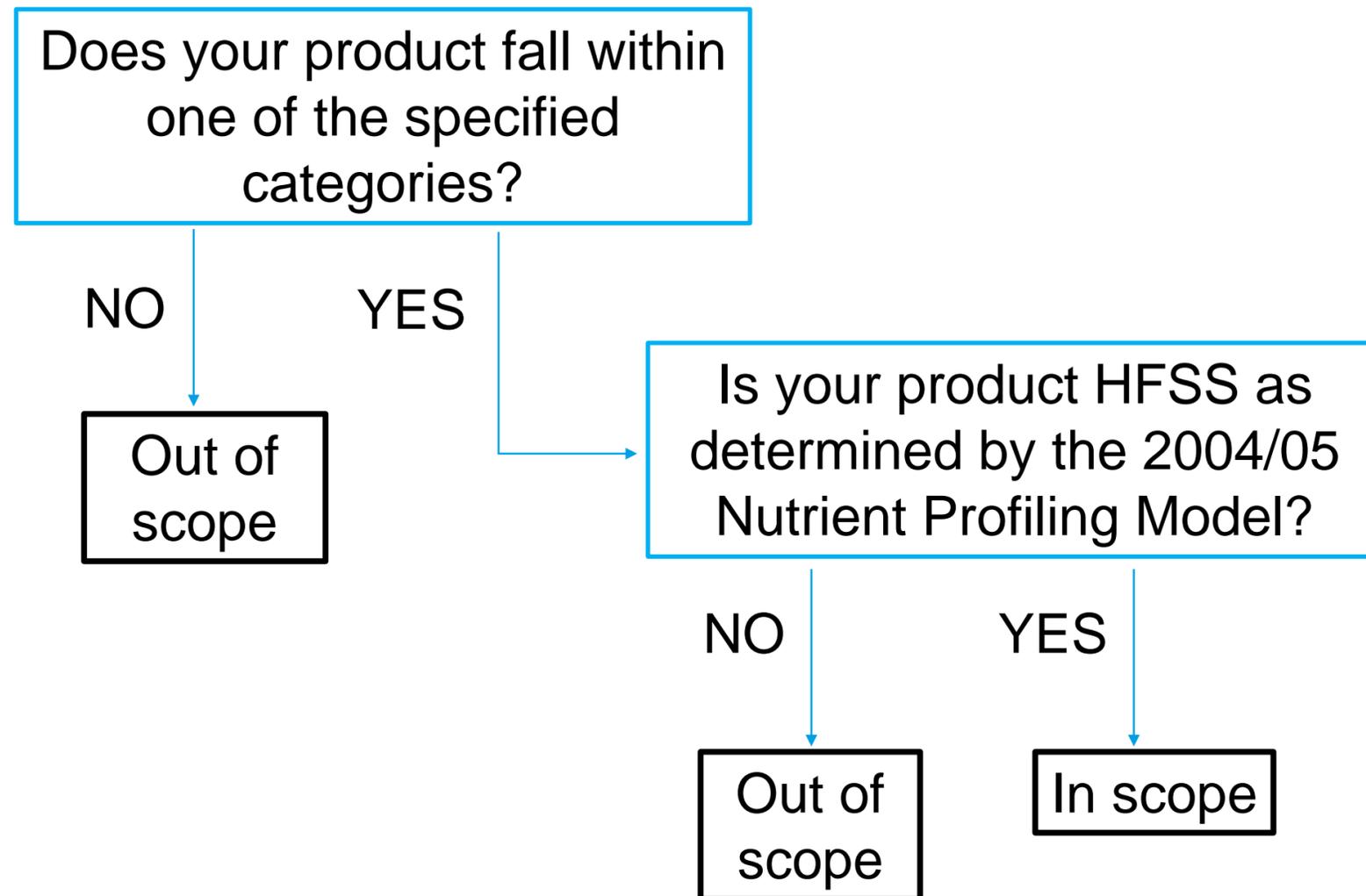
Restriction on placement

1 October 2022

Restriction on price promotion

1 October 2025

Is your product in scope?



Categories in scope

1. Soft drinks, including milk based drinks and juice based drinks with added sugar
2. Crisps and savoury snacks
3. Breakfast cereals
4. Confectionery including chocolate and sweets
5. Ice cream, including ice lollies, frozen yoghurt, water ices and similar frozen products
6. Cakes and cupcakes
7. Sweet biscuits
8. Morning goods
9. Desserts and puddings
10. Sweetened yoghurts
11. Pizzas
12. Chips and potato products
13. Ready meals
14. Meal centres
15. Breaded and battered products

Placement Restrictions

In Store

Store entrance and covered external areas

End of aisles and separate structures within 50cm

Within 2m of checkout and designated queuing areas

Online

Home / entry pages

When searching / browsing other categories, pop ups, 'favourite' / 'recommended for you' pages (*some exemptions*)

Shopping basket / payment pages

Exempt:

- Micro and small businesses (< 50 employees)
- Stores smaller than 2000ft²
- Specialist retailers
- In aisle promotions (unless in store entrance)
- Island displays (unless in restricted areas)

Volume Price Promotions

Multibuy promotions e.g. '3 for the price of 2', '3 for £10', 'buy 6 and save 25%'

Promotions that indicate all / part of an item is free e.g. '50% extra free' or 'BOGOF', 'buy 300g and save 10%'

Volume promotions with loyalty points or discounts e.g. 'buy 3 get 1000 loyalty points'

Out of home sector

Free refills of sugar-sweetened beverages

Transition period for on pack promotions
There is a 12-month transition period for products with price promotions on packaging

Exempt:

- Micro and small businesses (< 50 employees)
- Relevant special offers (e.g. meal deals, 'dine in for 2' deals)
- Multipacks
- Price reductions / discounts
- Free samples / vouchers

Relevant Special Offers

- Meal deals and 'dine in for 2' deals are out of scope
- This includes:
 - where there is a 'main' included in the deal – e.g. sandwich (main) + crisps + drink
 - ready meal, meal centre, or breaded or battered dish (main) + side + dessert
 - sandwich + side salad + drink
 - sandwich + cocktail sausages + drink



NPD and Reformulation



FDF member products provide...

- 13% fewer calories
- 15% fewer sugars
- 24% less salt

...into the average shopping basket than 8 years ago

Kantar Worldpanel data for FDF members 2015 vs 2022

The average shopping basket in the UK has become healthier, with a **9% reduction in the Nutrient Profile Model score** since 2018

Kantar Worldpanel Take Home data for Total Food and Drink market, Nutrient Profile Model Score 2022 vs 2018



How impactful has this been?

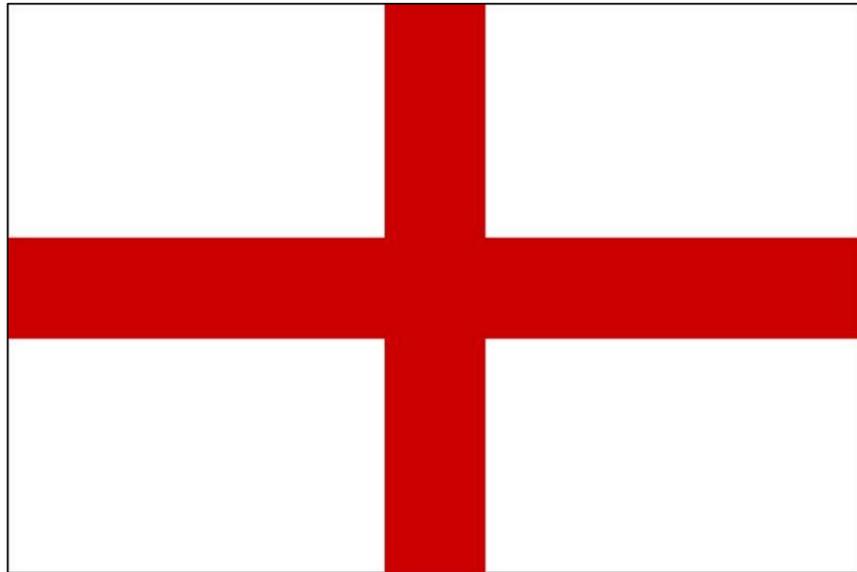
- We've seen fantastic innovation by companies, but...
 - Technical feasibility of non-HFSS reformulation / innovation differs between products / categories
 - Gradual reformulation and smaller portions not recognised
 - Small companies need more support
- The impact of restrictions on volume price promotions still to be determined...
 - This type of promotion is already in decline in the specified categories (10.1% to 4.6% since Jan 2019*)
 - The Government has recognised that these measures may impact food prices
- A full evaluation is due to be undertaken 5 years post implementation



*Kantar Worldpanel <https://www.kantar.com/uki/inspiration/health/2023-wp-promotion-commotion-unravelling-the-hfss-legislation-delays>

What's next...

fdf



Support for FDF Members

The Food and Drink Federation (FDF) represents and protects the interests of food and drink companies of all sizes, across all sectors of the industry. We are working hard to help our members understand these new rules and FDF members can access a range of resources to help them prepare including:

- ✓ Q&A resources
- ✓ HFSS / Nutrient Profiling Model calculator
- ✓ Webinars and podcasts
- ✓ Access to our FDF experts



BRC HFSS GUIDANCE – PRODUCTS IN AND OUT OF SCOPE – JANUARY 2023



This guidance document contains Assured Advice under the ACS Primary Authority Scheme. For more details visit www.acs.org.uk/assured-advice

ACS | advice

HFSS PRODUCTS: PROMOTION AND LOCATION REGULATIONS

The intention of The Food (Promotion and Placement) (England) Regulations 2021 is to a) reduce the availability of products high in fat, salt and sugar (HFSS) bought through "volume promotions" like 'buy one get one free' offers, and b) to restrict the placement of HFSS product categories in high footfall areas of an affected store, like checkouts, end-of-aisle units, store entrances, and designated queueing areas.

An ACS advice guide for retailers
www.acs.org.uk

ACS | the voice of local shops

HFSS Retailer Insights & Lessons Learned

Daniel Askew, ACS Public Affairs
Executive

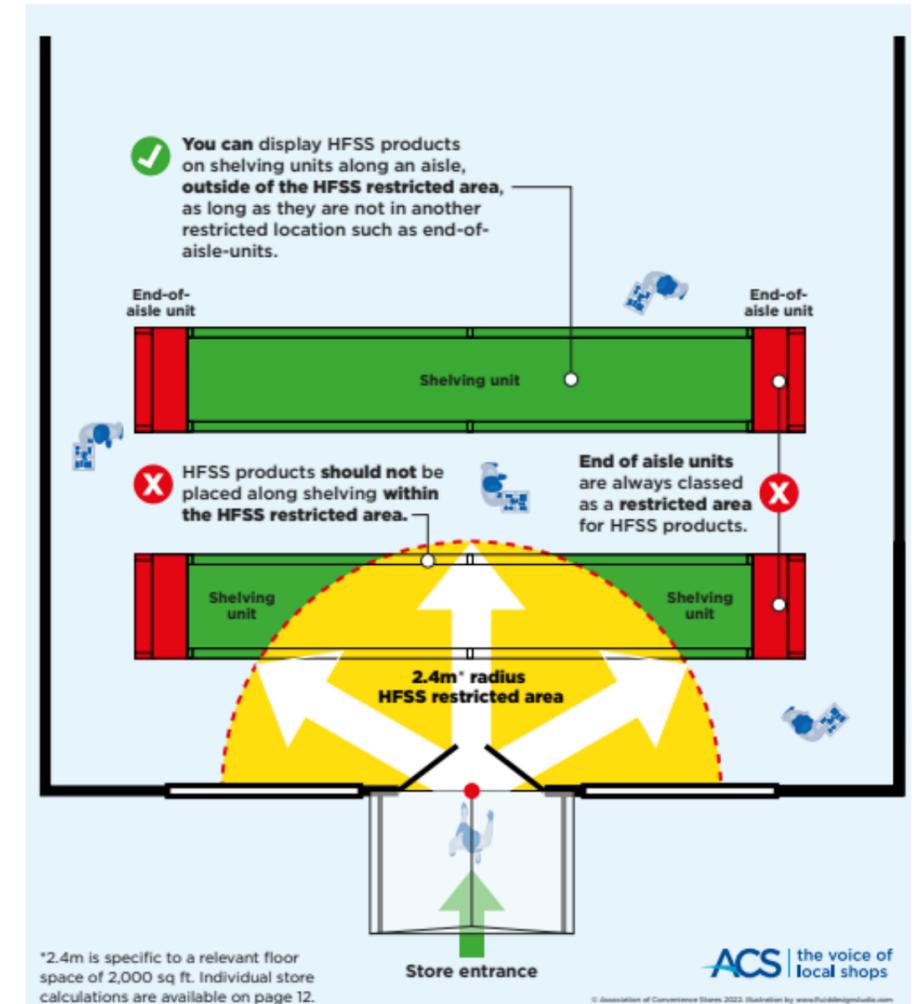
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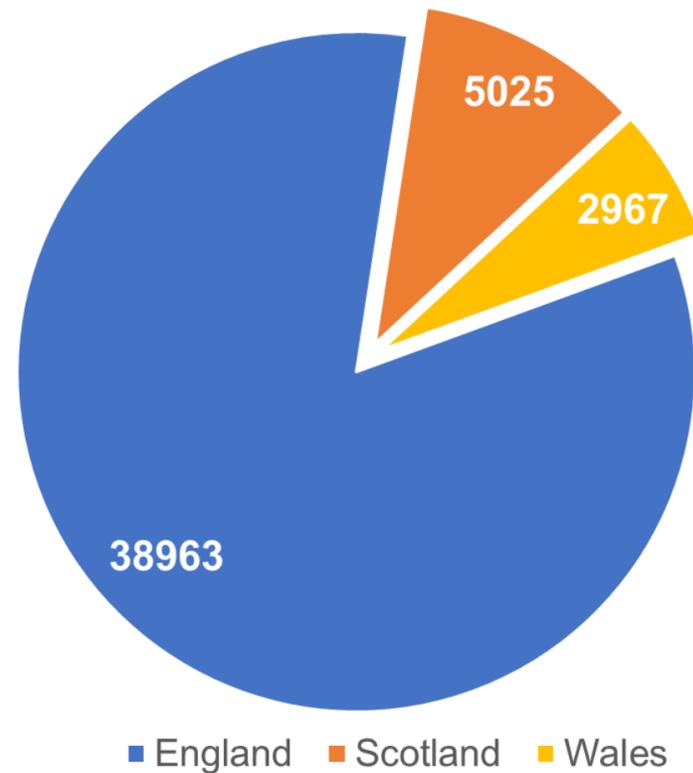
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What are the HFSS location restrictions?



Stores Affected by HFSS regulations

Convenience stores in the UK
(46,955)

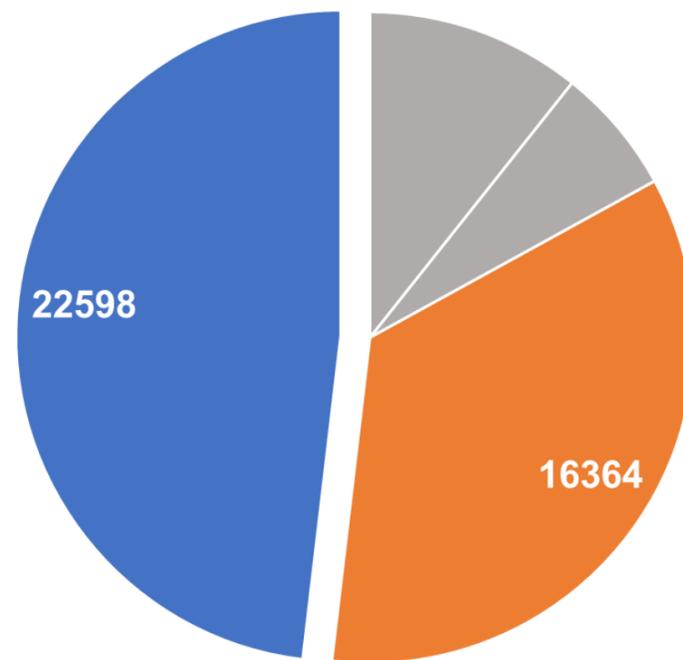


■ England ■ Scotland ■ Wales



Regulations apply to England only

Symbols, Multiples & Co-ops in England
(22,598)

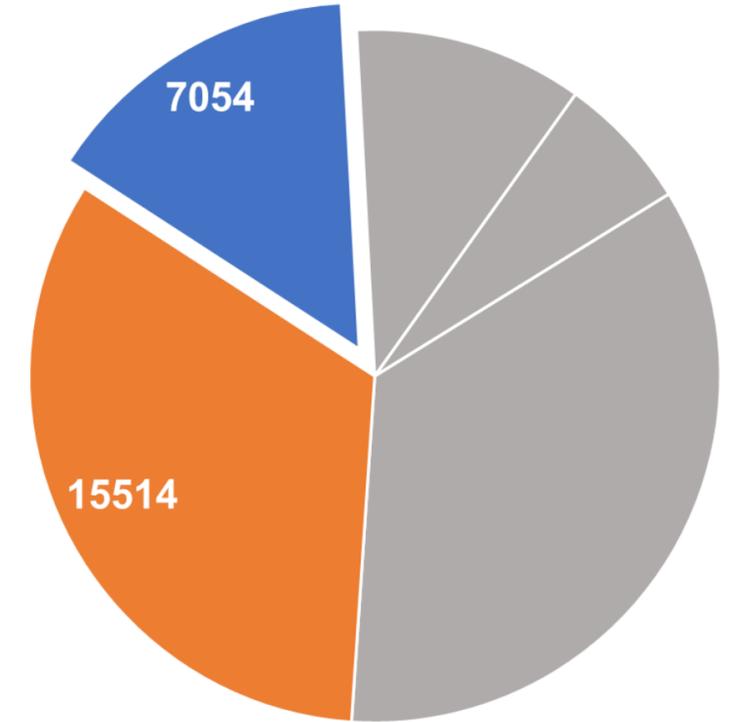


■ Unaffiliated indies ■ Symbols, Multiples & Co-ops



Symbol groups currently included in the regulations, along with multiples and co-ops

Symbols, Multiples & Co-ops over 2,000sq ft
(7,054)



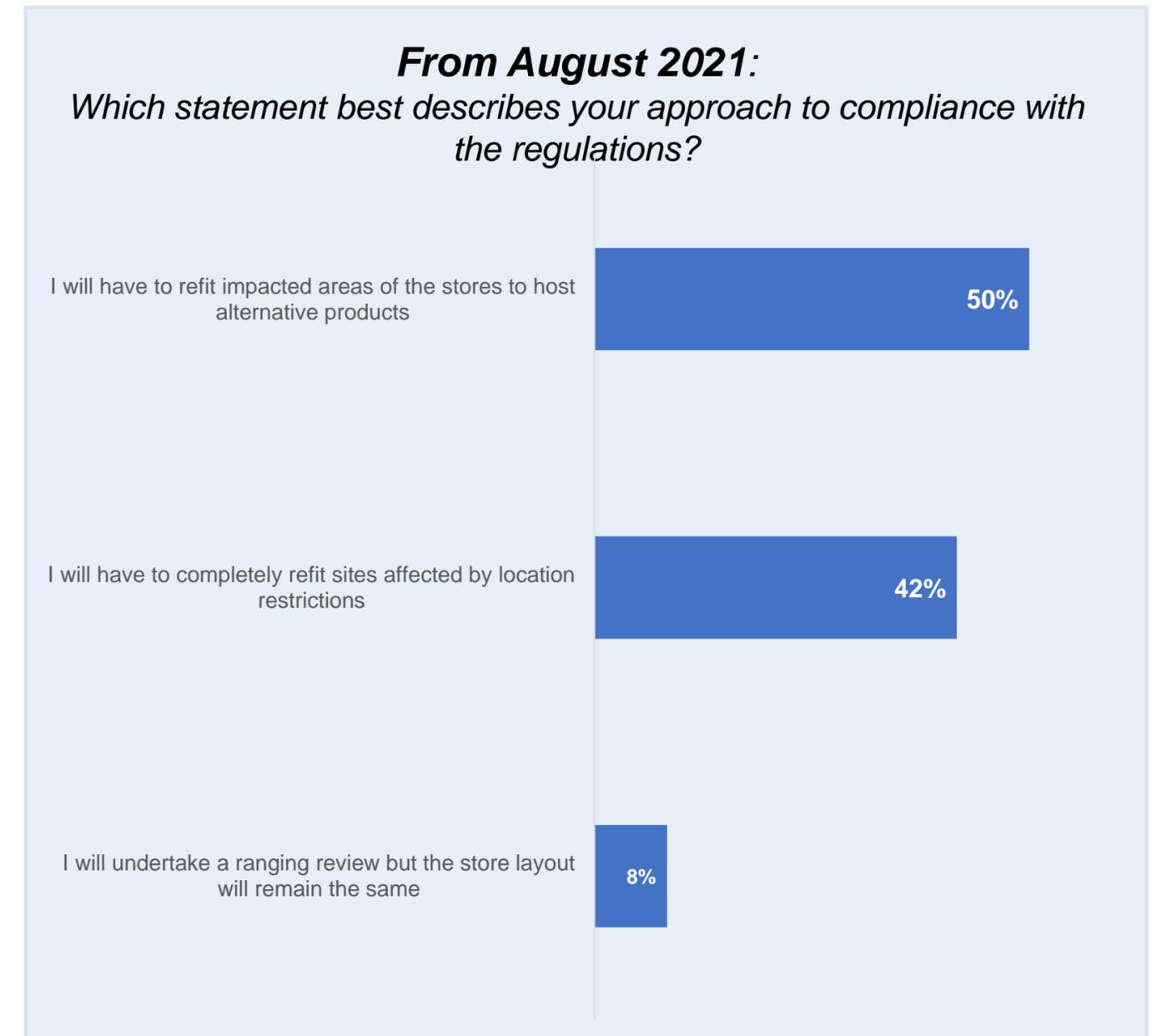
■ Under 2,000 sq feet ■ Over 2,000 sq ft



Siting regulations will affect 7,000+ stores over 2,000sq ft

Implementation

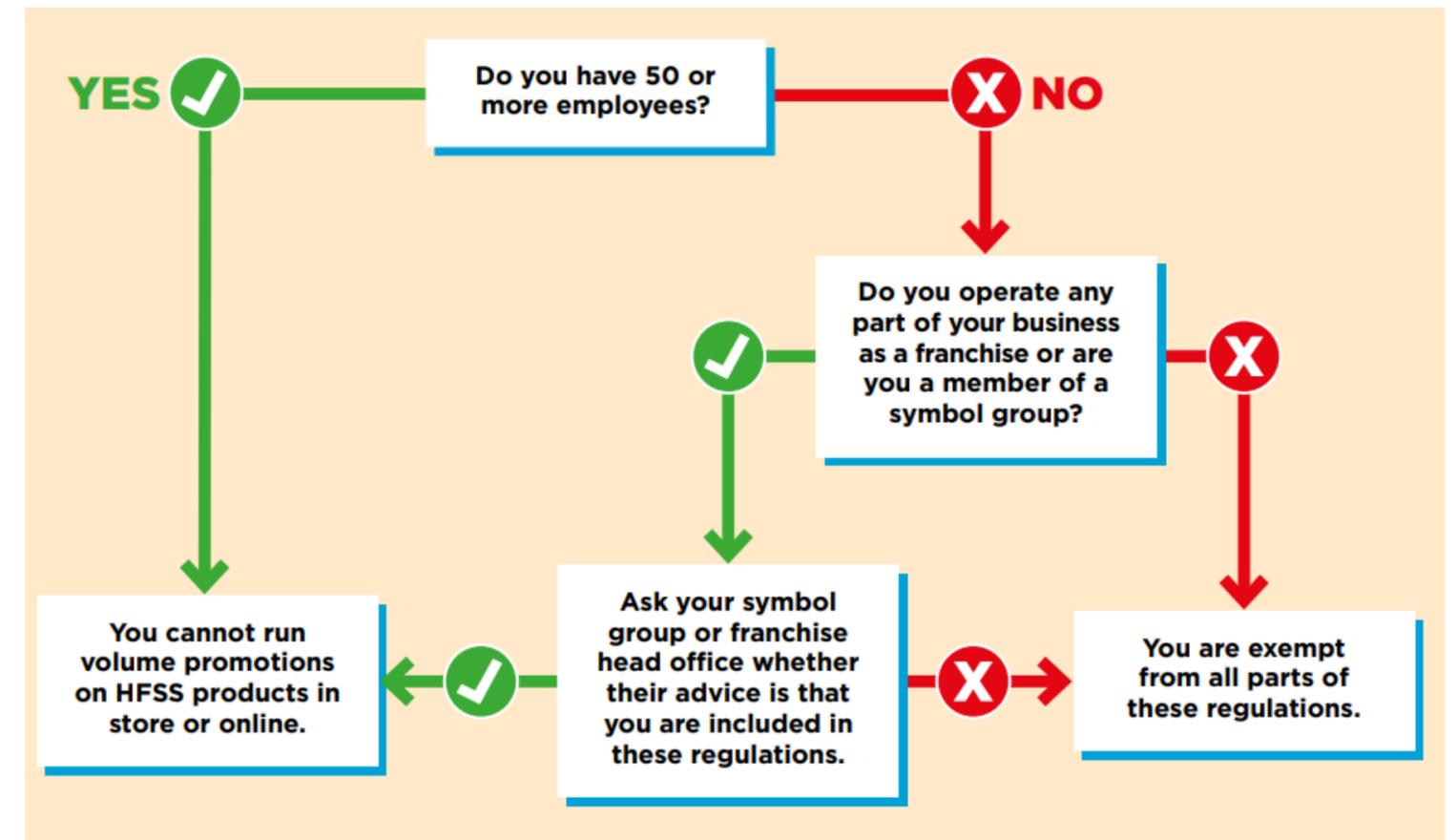
- In 2021, ACS estimated it would cost £13,000 per site for implementation
- For many it was much higher because of late implementation
- Retailers report costs to range from **£6,000 - £16,000 per store**
- Variations for **store size, layout, and equipment** – smaller stores tended to require more refitting



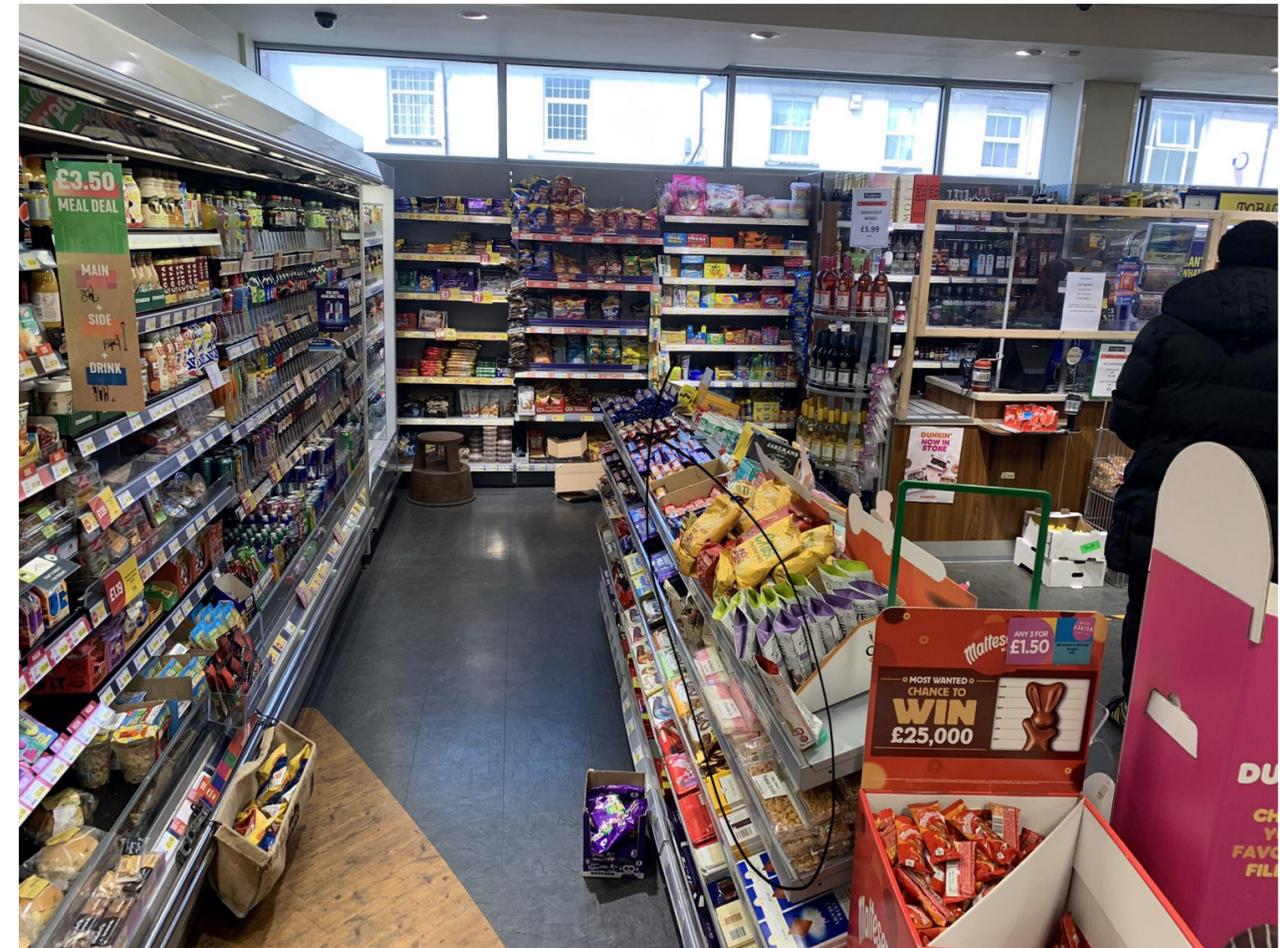
Source: ACS Retailer Survey

Symbol Group Businesses Impacted

- The inclusion of symbol group businesses in the government's definition of franchise agreement meant **thousands of small businesses** were impacted because they trade under a symbol banner.
- Independent retailers trading under symbol brands are **not franchises**.
- Employee count of 50 should apply to all businesses and be **based on the individual number of employees** working in the business



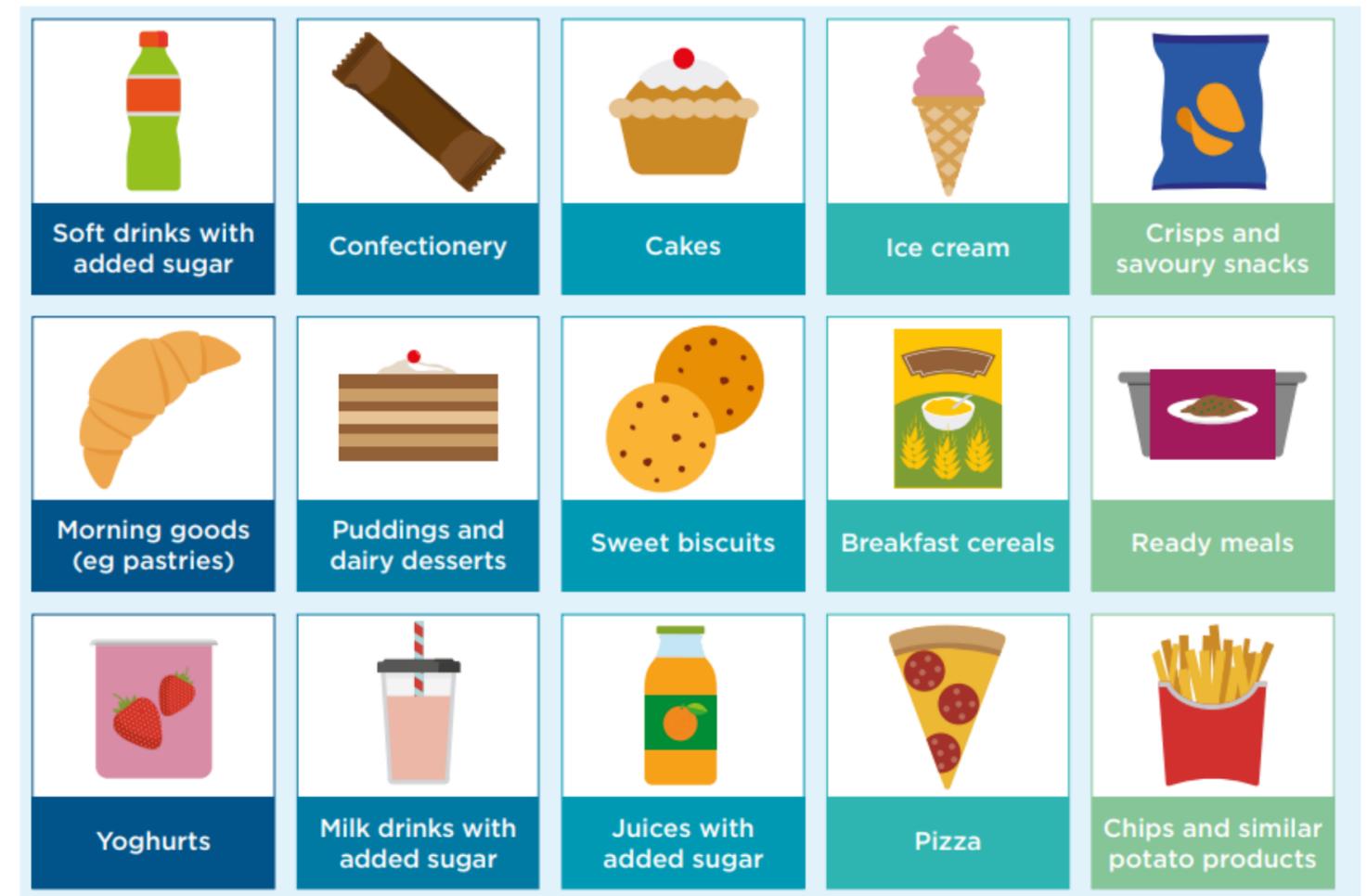
Confusion over Display Restrictions: Island or Aisle?



Both these displays are **considered aisles**

Products in Scope: Areas of Confusion

- The regulations apply to the categories of prepacked goods set out in in the right however **not every product within each category is impacted.**
- Consistent items of confusion were **pre-packed for direct sale products, "health" snacks, and gluten free food and drink items.**



Government Communication of Regulations

- The HFSS location regulations are **broad, complex, and can be easily misinterpreted.**
- Industry needed clear lead from the government, but **guidance was delivered with less than 12 months** to go and is still being updated now
- Adding to this, media reports created industry speculation that the **PM was going to scrap the regulations**
- These cumulative factors created **uncertainty and a condition of unpreparedness** for retailers

Home / News / Industry News

Add to Bookmarks

Government may be about to ditch some HFSS regulations

By David Shrimpton in Industry News 11th May 2022

Print

Widespread reports that the government is about to scrap some of its long-planned restrictions on foods high in fat, salt and sugar (HFSS) have been welcomed by many in the convenience sector.

Is Truss planning to scrap HFSS restrictions? UK accused of 'huge setback' in obesity strategy

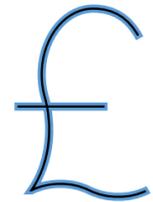
By Katy Askew

14-Sep-2022 - Last updated on 14-Sep-2022 at 15:32 GMT

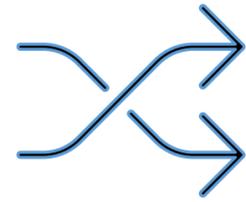


Methodology

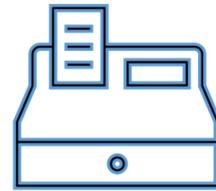
Phone interviews with retailers December 2022 – February 2023



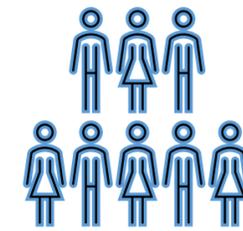
Costs



Relocation



Sales



Customers

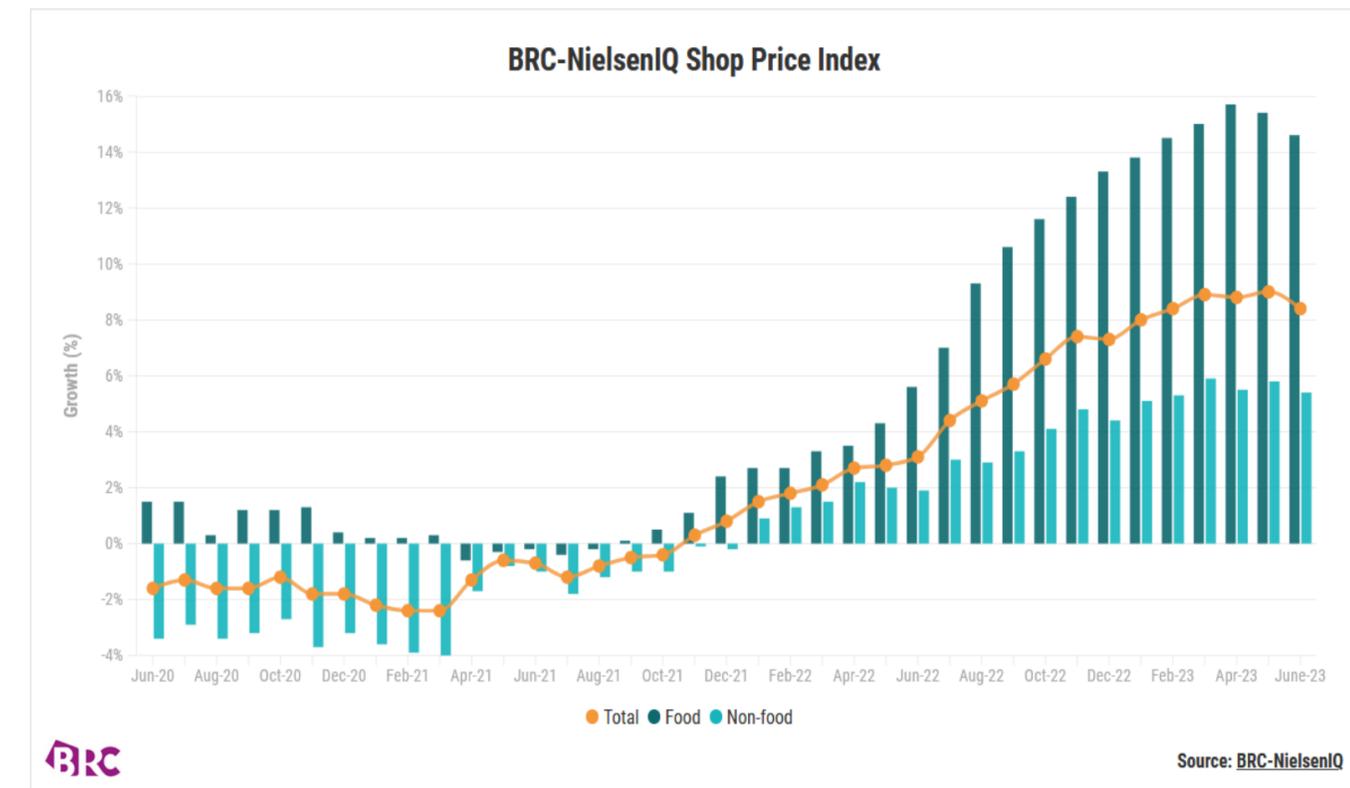


Enforcement

All retailers said **it is difficult to be accurate** on the impact of HFSS due to **other confounding factors**: the cost of living crisis, inflation, Christmas, Easter, and the December World Cup.

Sales & footfall

- Real impact of HFSS is hard to measure due to **external issues** (cost of living crisis, inflation, Christmas, World Cup, Easter)
- Retailers also feel it is **too soon to tell**, or are yet to do a thorough review
- One thing for certain: **sales and footfall haven't significantly dropped**
- In a few cases, sales actually improved following relocation



Category changes

Most popular category replacements:

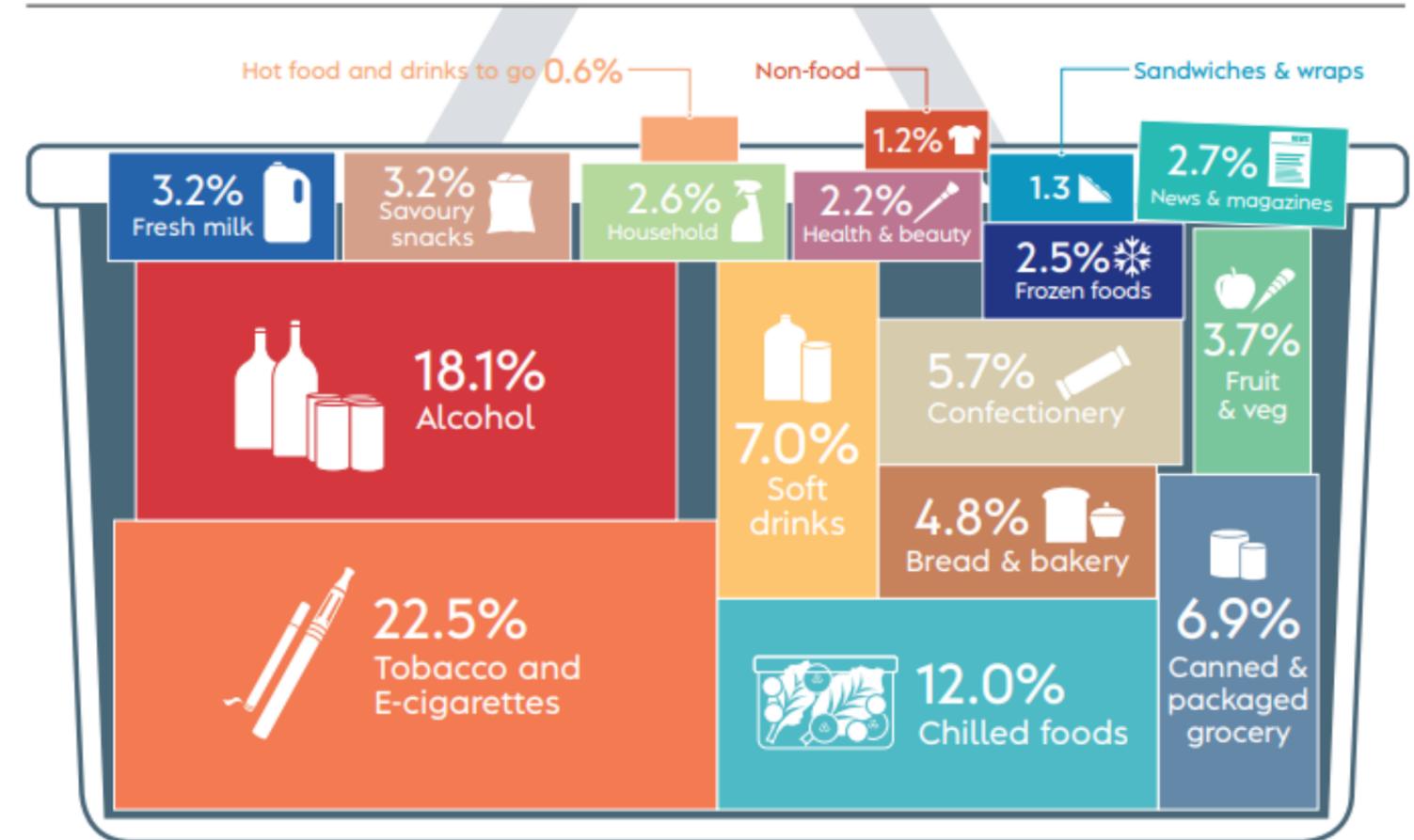


HFSS-compliant snacks



BWS

Category sales: Overall market (2021)



Source: ACS Local Shop Report 2022

Enforcement

- **No enforcement visits** since the restrictions became a legal requirement
- Convenience Store FOI: just two local councils in England have identified stores that are in break of HFSS guidance
- General perception: Trading Standards have other priorities

Slow start to HFSS enforcement by local authorities

By Aidan Fortune | 16 January 2023 | 3 min read



1 Comment



Source: Convenience Store

Lessons For Scotland & Wales



Cost: Smaller stores were greater impacted by the restrictions and some stores paid more due to late implementation

Recommendation: Provide a meaningful small business exemption by excluding stores under 3,000 sq. ft from the location restrictions



Display Restrictions ambiguity: unclear interpretation of display types created confusion

Recommendation: Implement restrictions based on distance rather than display type



Businesses impacted: Inclusion of symbol groups damaged small businesses and created confusion

Recommendation: Employee count of 50 should apply to all businesses and be based on the individual number of employees working in the business



Poor communication: Lack of clear communication by government damaged business preparedness

Recommendation: Deliver clear government guidance earlier and commit to timelines

HFSS policy in Wales

Ed Wilson

Deputy Director Public Health
Improvement, Prevention and
Promotion, Welsh Government

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Healthy **Weight:**
Healthy Wales



Llywodraeth Cymru
Welsh Government

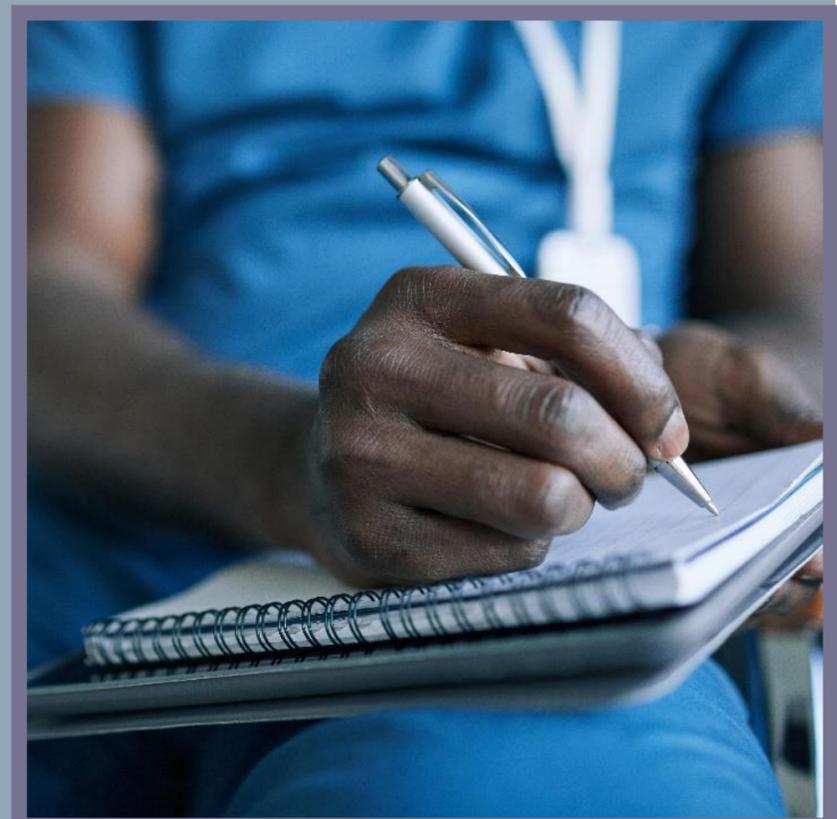


Healthy Food Environment Legislation

Briefing on proposed promotion and placement regulations



July 2023





Healthier Shopping Baskets

Rebalancing marketing and promotions towards healthier options, by:

- 1.** Restricting temporary price reductions on unhealthy foods;
- 2.** Restricting multi-buy offers on unhealthy foods;
- 3.** Restricting volume promotions of unhealthy foods;
- 4.** Restricting the promotion of unhealthy foods through positioning them in prominent locations.



Healthier Out of Home Eating

Improving the information available to us when eating out of the home (OOH), by:

- 1.** Introducing calorie labels in the OOH sector;
- 2.** Prohibiting free refills of sugary soft drinks in the OOH sector;
- 3.** Restricting larger portion sizes of sugary soft drinks in the OOH sector.



Healthier Local Food Environments

Ensuring that our daily journeys through the places we live can promote healthy choices, by:

- 1.** Restricting the number of unhealthy Hot Food Takeaways in the proximity of schools and colleges.

Consultation period ran:
9 June to 1 September 2022

Summary of 267 respondents to the
consultation:

- 178 Individuals
- 43 Organisations
- 36 Businesses
- 10 Other or unknown

Consultation period ran:
9 June to 1 September 2022

Summary of 143 respondents to the
consultation:

- 121 Individuals
- 21 Organisations and Businesses

Restrict Value based promotion
of HFSS products

49% respondents said **yes**

37% respondents said **no**

Mandatory calorie labelling at
the point of choice

31% respondents said **yes**

52% respondents said **no**

Restrict Value based promotion
of HFSS products

49% respondents said **yes**

44% respondents said **no**

Mandatory calorie labelling at
the point of choice

41% respondents said **yes**

52% respondents said **no**

Restrict the placement of HFSS
products at locations that encourage
purchasing

55% respondents said **yes**

30% respondents said **no**

Limiting Hot Food
Takeaways

44% respondents said **yes**

25% respondents said **no**

Restrict the placement of HFSS
products at locations that encourage
purchasing

66% respondents said **yes**

26% respondents said **no**

Limiting Hot Food
Takeaways

57% respondents said **yes**

23% respondents said **no**

Restrictions on free refills of
sugary soft drinks

51% respondents said **yes**

28% respondents said **no**

Limits on the larger portion sizes
of sugary soft drinks

46% respondents said **yes**

33% respondents said **no**

Restrictions on free refills of
sugary soft drinks

60% respondents said **yes**

Limits on the larger portion sizes
of sugary soft drinks

50% respondents said **yes**



Why new regulation?

- Global burden of obesity constitutes a major public health challenge that undermines social and economic development.
- “Tackling obesity is recognised first as a societal rather than an individual responsibility” (WHO, 2023)
- Reduce the public health harms associated with the excess consumption of calories, fat, sugar and salt, including the risks of developing type 2 diabetes, various types of cancer and other conditions such as cardiovascular disease.
- Reduce diet-related health inequalities, including in relation to socioeconomic disadvantage.
- Making healthier food options more accessible and affordable for consumers, by encouraging manufacturers/retailers to reformulate HFSS brands they actively market.
- If current trends continue, overweight and obesity will cost the NHS in Wales over £465 million by 2050.
- Part of a multi-component approach as part of Healthy Weight: Healthy Wales to focus on the role of the environment, part of the jigsaw to focus on prevention.

Overview of businesses in scope and restrictions

Our Proposals – Key Features

Location Restrictions

key locations (store entrances, aisle ends and checkouts) when retail stores are over 185.8 square metres (m²) (or 2,000 square feet (sq ft)) and the equivalent key locations online.

Volume Price Promotions

Which includes multi buy offers (i.e. buy one get one free (BOGOF) or '3 for 2') but also promotions that indicate an item or any part of an item is free.

Further Consideration

Temporary Price Reductions

When a product's price is reduced by a certain amount for a defined period.

Meal Deals

Lunchtime and evening meals in scope and subject to a nutritional/compositional model.

Key Features

Details to be developed with stakeholders as part of the development of technical guidance.

Alignment with definitions set out in England on HFSS categories.

Retailers with less than < 50 employees and micro businesses exempt from ALL restrictions under the regulations.

Exemption of certain businesses, such as social care settings, military/educational establishments, charities.

To avoid food waste products within 48 hours of use by date can be reduced in price.

Apply to on-line environments.

Next Steps

- **Consult on enforcement provision**
- **Consult on guidance with industry**
- **Evaluation and Data**
- **Introduce legislation - 2024**
- **Introduce regulations – 2025 (subject to 12/ 18 month implementation period, following discussion with industry)**

HFSS policy in Scotland

Cheryl McNulty

Restricting Promotions Team

Leader, Diet and Healthy

Weight, Scottish Government



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IMPROVING
SCOTLAND'S
HEALTH



HFSS Promotion Restrictions Update & Next Steps

Cheryl McNulty

Diet and Healthy Weight Unit

Scottish Government



Scottish Government
Riaghaltas na h-Alba
gov.scot



Policy Aims

- The primary aim of the policy is to reduce the public health harms associated with the excess consumption of calories, fat, sugar and salt, including the risks of developing type 2 diabetes, various types of cancer and other conditions such as cardiovascular disease.
- [A Healthier Future – Scotland's Diet & Healthy Weight Delivery Plan](#) identified the need for change including measures to transform the food environment:

“the food environment supports healthier choices”





Policy Update

- On 30 May the Minister for Public Health & Women's Health delivered a statement to Parliament.
- The statement outlined:
 - our plan to consult on the detail of proposed regulations this autumn
 - proposals to restrict HFSS promotions in prominent in store locations
 - proposals to target certain price promotions such as multibuy and unlimited refills
 - our commitment to the principles of the new deal for business





Next Steps

- Continued programme of stakeholder engagement
- Further research to inform the policy
- Continued work to develop a suite of impact assessments
- Continued monitoring of developments elsewhere in UK
- Consultation in autumn 2023





Contact Details

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cheryl.mcnulty@gov.scot



Q&A

Tag us with **#FDFFEvents**

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 @Foodanddrinkfed

 @The Food and Drink Federation

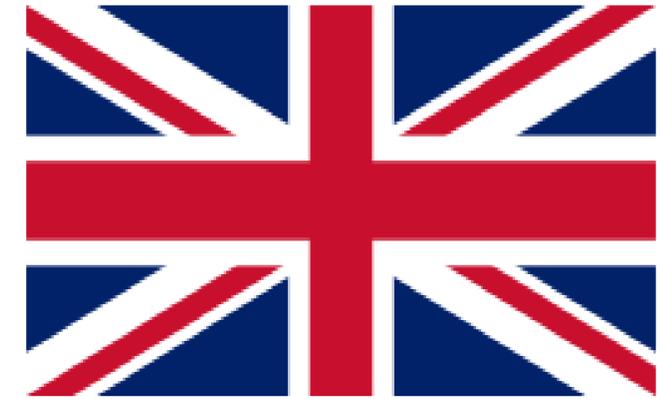
 www.fdf.org.uk

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Current Advertising Restrictions and What's Next



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Louise Allen, Senior Executive of Diet and Health
The Food and Drink Federation

Nutrient Profiling Model - How to use



Points	Energy (kJ)	Sat Fat (g)	Total Sugar (g)	Sodium (mg)
0	≤ 335	≤ 1	≤ 4.5	≤ 90
1	>335	>1	>4.5	>90
2	>670	>2	>9	>180
3	>1005	>3	>13.5	>270
4	>1340	>4	>18	>360
5	>1675	>5	>22.5	>450
6	>2010	>6	>27	>540
7	>2345	>7	>31	>630
8	>2680	>8	>36	>720
9	>3015	>9	>40	>810
10	>3350	>10	>45	>900

Points	Fruit, Veg & Nuts (%)	NSP Fibre ' (g)	Or AOAC Fibre ' (g)	Protein (g)
0	≤ 40	≤ 0.7	≤ 0.9	≤ 1.6
1	>40	>0.7	>0.9	>1.6
2	>60	>1.4	>1.9	>3.2
3	-	>2.1	>2.8	>4.8
4	-	>2.8	>3.7	>6.4
5*	>80	>3.5	>4.7	>8.0

Use the table to work out the score for each nutrient per 100g of product

Total 'A' points
(energy + sat fat + sugars + sodium)
MINUS
Total 'C' points
(Fruit, veg and nuts + fibre + protein)

- If a food scores 4 or more = HFSS
- If a drink scores 1 or more = HFSS

Protein Cap

If a product scores 11 or more 'A' points you cannot take away the protein score (unless you score 5 points for F/V/N)

Fruit, Veg and Nuts – What Counts?

The amount of fruit and veg in a product can be calculated **before or after cooking**. However, all the ingredients should be in the same state.

What counts

- Only intact fruit and veg (incl. cooked and dried) and those that are minimally processed (peeled, sliced, tinned, frozen, juices, purees)
- Nuts and pulses
- For coconut, different rules apply depending on component used
- The weight of dried fruit and veg used (incl. concentrated tomato puree) should be multiplied by 2 – There is an equation to use.

Not included

- Fruit and veg that have been subject to further processing (e.g., concentrated fruit juice sugars, powders or leathers)
- Potatoes and other starchy vegetables such as yams or casava
- Seeds



Guidance on how to calculate FVN score

Sold vs Consumed

Use nutrient information as sold

- Almost all NPM scores should be based on nutrition information as sold (even frozen products)
- EXCEPT products that need reconstituting before consumption - e.g. custard powder, cake mixes, drinks powders.
- Nutrient information for reconstituted products should be based on manufacturers reconstitution instructions.



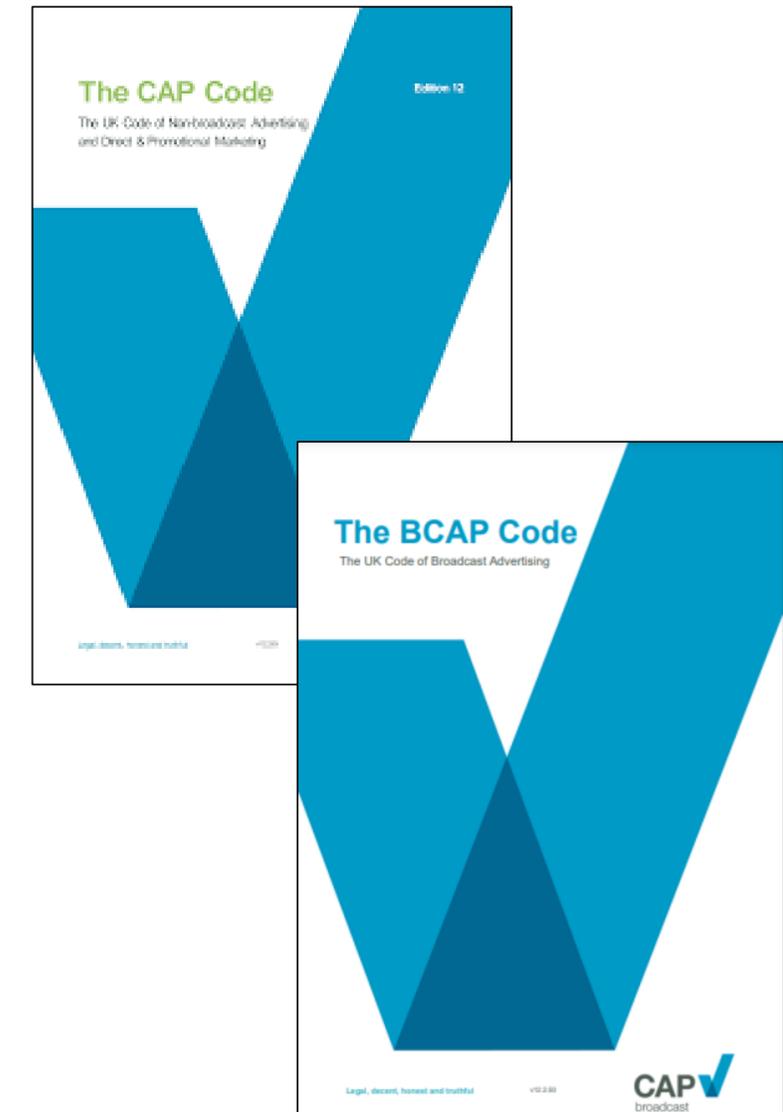
Current Restrictions: General Rules

Overview

- Advertising is a UK competence
- Must be legal, decent, honest and truthful
- Rules cover advertising outdoors, online, cinema / DVD / Blu-ray, print media, email and text, TV and video on demand
- Current rules apply to all advertisers regardless of business size

Advertisements should not

- Encourage excessive consumption or poor nutritional habits
- Condone unhealthy lifestyles or irresponsible behavior
- Include a direct exhortation to buy / persuade an adult to buy
- Use unapproved health or nutrition claims.



Scheduling and placement of HFSS advertisements

HFSS product **or brand ads** are not permitted to appear:

- In media commissioned for / aimed at children
- Where children make up a significant proportion of the audience.

Content Rules for HFSS advertisements (regardless of where its placed)

HFSS product **or brand ads** should not:

- Include a promotion (if includes content of appeal to under 12s)
- Contain licensed characters / celebrities of appeal to under 12s



New Advertising Restrictions



Advertising in scope:

- A 9pm watershed on TV and video on demand advertisements for 'less healthy products'.
- A total ban on paid for less healthy advertisements online
- Restrictions apply to specific categories of food and drink.

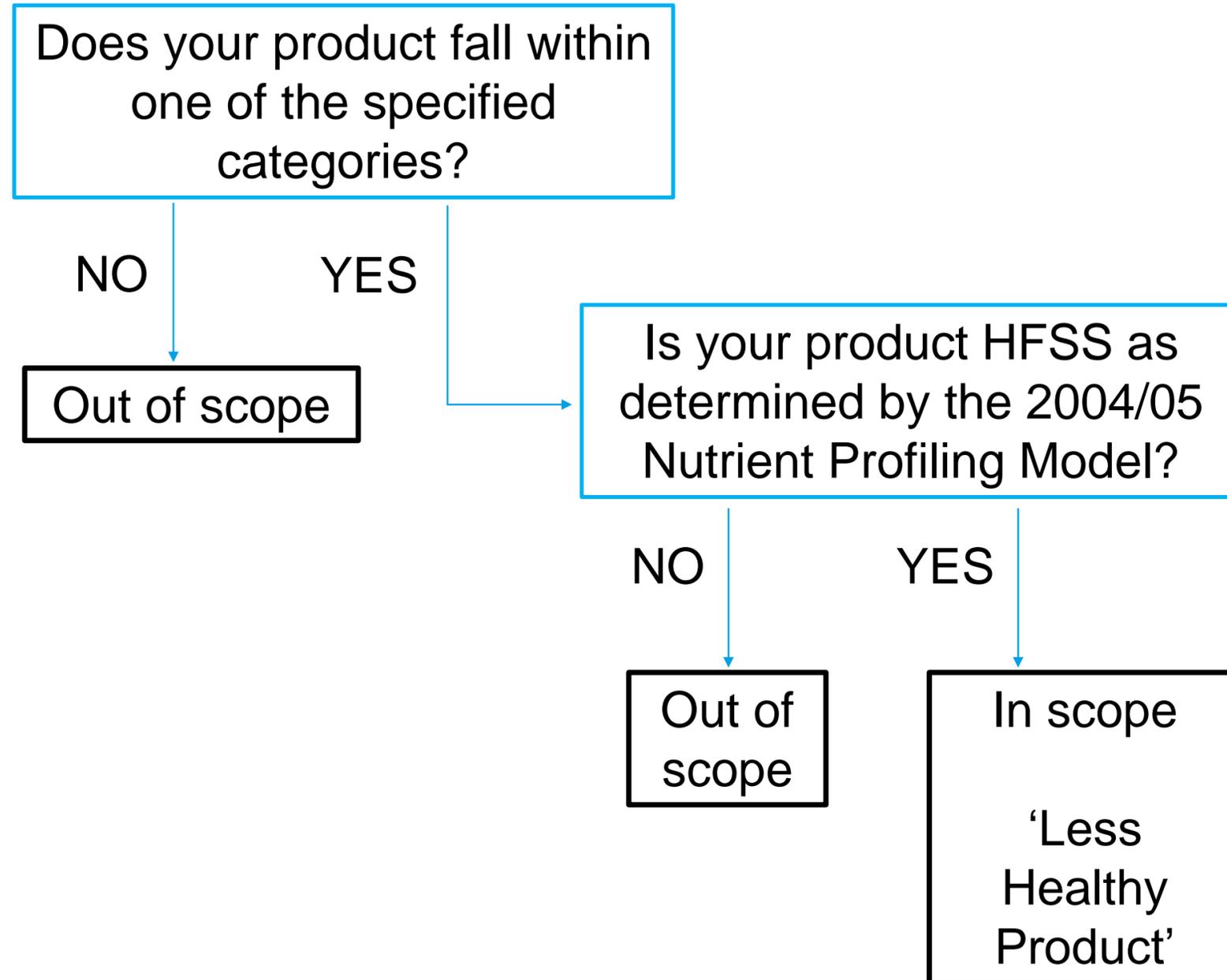
Businesses in scope:

- Large businesses (>250 employees)

To Note:

- All businesses, will continue to be subject to the existing rules on HFSS advertising
- Rules apply to 'identifiable' products only (unlike current rules)

Is your product in scope?



Categories in scope

1. Soft drinks, including milk based drinks and juice based drinks with added sugar
2. Crisps and savoury snacks
3. Breakfast cereals
4. Confectionery including chocolate and sweets
5. Ice cream, including ice lollies, frozen yoghurt, water ices and similar frozen products
6. Cakes and cupcakes
7. Sweet biscuits
8. Morning goods
9. Desserts and puddings
10. Sweetened Yoghurts
11. Pizzas
12. Chips and potato products
13. Ready meals
14. Meal centres
15. Breaded and battered products
16. Sandwiches



FDF HFSS Toolkit

- Current HFSS advertising rules
- Forthcoming HFSS advertising
- Nutrient profiling model guidance
- Nutrient profiling model calculator
- Extra content for FDF Members



‘Less Healthy’ Product Advertising Restrictions

Andy Taylor

Regulatory Policy Executive,
Committee on Advertising Practice

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Less healthy product advertising restrictions

– Update for the FDF



Outline

1. Policy overview
2. Process
3. Implementation

Policy overview: scope

Media covered

- Ofcom licensed TV
- Ofcom regulated ODPS
- Online media where ads are paid-for

“Less healthy” products

- Secondary legislation categories
- HFSS under DHSC NPM

Exemptions

- SMEs (<250 employees)
- Online regulated and non-regulated audio-only

Policy overview: impact on ads

Ad for an “identifiable” less healthy product:

- Product depiction (image/representation)
- Product reference (text/audio)
- Inextricably product-related branding (product-specific logo)

New rules will mean in-scope ads are:

- **Restricted in TV/ODPS pre-9pm and paid online**
- Not restricted in TV/ODPS post-9pm
- Not restricted in online audio-only media
- Not restricted if by an SME
- Not restricted in all other media (own website)

No identifiable less healthy product – outside scope

Policy overview: “Identifiable” less healthy product ads

- Referring to a specific product by name in text or audio
- Depicting a specific product
- Specific product pack shots
- Distinctive product shapes or designs that relate to a specific product
- Using branding inextricably related to a specific product (e.g. the specific product’s logo)



Policy overview: approaches outside scope

- Generic packaging shot
- Generic depictions of products
- Supermarket shelves in background
- Creatives with suggestions of a product that isn't shown
- Brand advertising is outside scope provided a specific product not identifiable



Process: where we are

- Ofcom has now fully designated the ASA as frontline regulator for the three media covered
- Our intermediate aim – consultation covering off various implementation issues
- Key strand of activity – development of guidance to support implementation and flesh out practical interpretation of the legislation
- Pre-consultation carried out in April checking evolving thinking on aspects of the “identifiable” test

Process: going forward

- Issue ASA/CAP consultation in Autumn – likely to be in three parts seeking feedback on:
 - a) Guidance
 - b) New rules
 - c) Consequential amendments
- Aiming to publish guidance in Q1 2024
- Scope for further practical advice and training resources to help industry comply
- Rules finally come into force in October 2025

Implementation: interaction with existing policy

Existing HFSS restrictions still apply where the new restrictions do not.

Key examples:

- Identifiable less healthy product ads by in-scope advertisers post-9pm on TV/ODPS
- Identifiable less healthy product ads by SMEs pre-9pm
- Audio only media online not covered by Ofcom broadcast radio licensing which has no HFSS restrictions
- Ads for HFSS products that aren't less healthy
- Ads using branding likely to promote an HFSS product but don't identify a less healthy product

Implementation: approach to use of branding

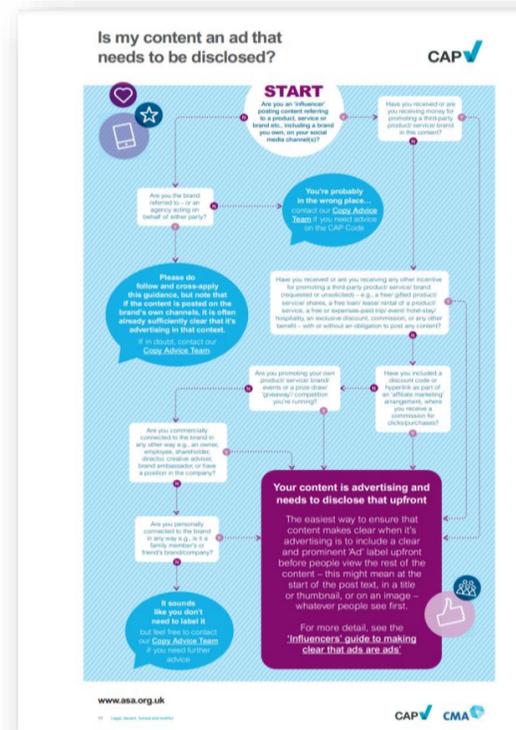
- Existing B/CAP branding guidance (the “synonymous” test) does not apply to the less healthy product advertising policy
- HMG clear that the new rules apply more narrowly – brand advertising is out-of-scope
- ASA/CAP consultation and guidance will make clear the two policies are separate
- Advertisers will have to be on their toes – apply the right approach in the right scenarios

Implementation: approaching compliance

- Pro-forma for every ad – ready-made response to any ASA challenge
- Based on tests set out in guidance:
 - Media – Clearcast and broadcasters responsible for administering in TV; online contracts relating to media buying are useful evidence
 - Products – Advertiser declaration in line with secondary regs criteria categories and NPM
 - “Identifiable” test – points of guidance as a ‘tick box’ exercise
- Importance of precedent rulings and resources like consultation outcome policy statement as basis for compliance case

Implementation: further advice resources

- Constraints of statutory duty – can't provide comprehensive overview of self- and co-reg frameworks
- Committed to providing further advice resources
- These will go live from publication of guidance
- CAP has huge number of practitioner resources from bespoke advice to e-learning



Q&A

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