

# Reducing Health Harms of Foods High in Fat, Sugar or Salt

Submission from FSB Scotland

January 2019

# Reducing the Harm of HFSS Foods

## Submission from FSB Scotland

### Introduction

FSB is Scotland's leading business organisation. As experts in business, we offer our members a wide range of vital business services including advice, financial expertise, support and a powerful voice in government. Our mission is to help smaller businesses achieve their ambitions. These micro and small businesses comprise the majority of all enterprises in Scotland (98%), employ around one million people and contribute £68bn to the economy.

We welcome the opportunity to comment on the Scottish Government's consultation, 'Reducing Health Harms of Foods High in Fat, Sugar or Salt'. Whilst we understand the need to tackle over consumption of foods high in fat, sugar or salt, a key challenge for government will be to ensure new regulations are suitable for the many different types of food-related businesses operating in Scotland and do not unfairly, or disproportionately, disadvantage smaller businesses. It is worth considering that discussion about regulatory change takes place in an exceptionally uncertain economic climate, when small business confidence is at an all-time low. In such difficult trading conditions, a cautious approach should be taken to any proposed changes to the legitimate pricing and promotion strategies of smaller businesses.

Furthermore, a growing number of potential new regulatory changes, particularly those related to

environmental and health related outcomes (e.g. tackling obesity and reducing certain types of packaging) are likely to affect the same group of businesses; small retailers, cafes, restaurants, bars and takeaways. FSB strongly urges the Scottish Government to consider this broader context when developing regulations to tackle obesity, rather than developing these measures in isolation.

### Discretionary foods & definitions

FSB agrees with the proposal to tightly define the scope of the regulations and only target 'discretionary' foods. However more thought will need to be given to clearly defining what is included within each of the discretionary categories. We are pleased to see that expert technical advice will be sought to do so, as businesses will be looking for clarity on the scope of promotion restrictions. However, exemptions, such as the example of sugar-free sweets, must be easy to understand and consistently applied, particularly for businesses selling discretionary home-baked/produced foods.

Ice cream and dairy desserts should not be treated as discretionary foods. Including these products could become onerous for business owners as many dairy based products have nutritional value, and therefore would likely be excluded from the regulations, unlike the other discretionary categories listed. For instance there would be

# Reducing the Harm of HFSS Foods

## Submission from FSB Scotland

substantial variance in yoghurts as to which would be included in the restrictions and which would not. This could be burdensome for small retailers when creating shelf-edge displays or other in-store promotions and potentially lead to unintended non-compliance. This would not be the same for a category such as cakes where there would likely be fewer exemptions.

### Restrictions on marketing and promotion

FSB accepts that 'buy one, get one free' deals should be targeted by the HFSS foods policy, to restrict the over-consumption of certain products. However the economic impact of restricting the inclusion of discretionary items in meals deals will need to be carefully considered in the Business Regulatory Impact Assessment (BRIA).

Further, a stronger definition of 'y for £x' multi-buys and how this relates to multi-packs in smaller bespoke shops needs to be established. For instance, a chocolatier may sell individual chocolates for £1 per chocolate but a box of 25 chocolates for £23.

Consumers who were going to purchase one or two chocolates are unlikely to instead purchase a box of 25. This may be the same for a bakery which has individual cakes and pastries on sale for £2 but offers a standard box of 6 for £10.

In both these examples the larger item should be considered a multi-pack, which are not being considered for

restrictions. However clarity is needed on the definition of a multi-pack and whether this relates solely to pre-packaged items. This definition might disadvantage small bespoke businesses, such as the examples above, whose products include an element of choice (e.g. choice in products included in multi-pack item), compared with their larger competitors, which are more likely to sell mass produced, pre-packaged items. Small businesses should be able to maintain sensible pricing structures where these are not marketed as promotional deals.

Restrictions on sales of unlimited amounts of discretionary items for a fixed charge, such as unlimited refills of sugary soft drinks, will no doubt be key in achieving the objectives of the policy. Whilst this will be fairly easy for businesses to implement, the economic consequences of these restrictions should be carefully considered.

Proposed restrictions on promoting the price, size or volume of a discretionary item are reasonable, however clear guidelines should be set out for businesses and support for compliance, including financial help for any changes to be made to packaging, provided. Price-marking/price information on packs is standard practice and should not be considered price promotion.

The economic impact of removing branded chillers and floor displays must be a key consideration within a BRIA before a decision is made about including such a restriction within the policy. In particular, revenue streams

# Reducing the Harm of HFSS Foods

## Submission from FSB Scotland

for smaller businesses arising from such displays need to be understood, as do costs of replacing chillers and displays where these are currently offered at no cost to the business. Financial support to offset such costs may need to be considered.

### Exemptions

Exemptions should apply where businesses are too small to practically comply with the regulations. The smallest cafes or retail spaces will often not have enough space to meet requirements such as placement at checkouts or shelf-edge displays and signage. Whilst this may fall into the 'no reasonable alternative' suggestion for exemptions, a broader exemption on some of the most onerous restrictions for the smallest businesses would be preferable. For example, a de-minimis floor-space exclusion, such as exempting all businesses under 200sq ft. from complying with end of aisle checkout display restrictions, would be possible. Such an approach would be in-keeping with environmental and waste regulations where the smallest businesses are exempt from certain measures.

Similarly, particular consideration around exemptions needs to be given to speciality businesses, such as chocolate shops, bakeries or sweet shops, where all products are discretionary items. A large number of restrictions would therefore not be practical in such businesses, especially regulations on in-store product placement.

It will also be important to ensure an exemption, from both positioning and promotion of value restrictions, for food marked as discounted because it is close to expiry. This will help to prevent food waste and help business owners manage stock.

Appropriate consideration needs to be given to regulatory alignment for online operators. While some of the proposed restrictions, such as display bins, etc., will obviously not be applicable in an online context multi-buys, price promotion, and others will be relevant and should therefore be applied online as well as in store.

### Enforcement & implementation

The proposals for local authorities to enforce the suggested regulations are sensible. However, effective enforcement is key to good regulatory practice and needs considered at this stage in the process. We have frequently highlighted concerns about the significant decline in resources available to regulatory teams in local authorities. Effective compliance is best supported by a supportive, advisory approach to enforcement but this needs to be adequately resourced. This cannot be done by passing new enforcement costs on to the businesses which will already be expected to adapt to new circumstances. Similarly, the Scottish Government should consider how best to implement these changes, including timescales for raising awareness and providing advice to consumers and businesses.

## Further Information

For further information please contact Laura McKelvie at [laura.mckelvie@fsb.org.uk](mailto:laura.mckelvie@fsb.org.uk)

The FSB campaigns for a better social, political and economic environment in which to work and do business. With a strong grassroots structure and dedicated Scottish staff to deal with Scottish institutions, media and politicians, the FSB makes its members' voices heard at the heart of the decision-making process. It is therefore recognised as one of Scotland's most influential business organisations. The FSB also provides a suite of services to help our members reduce the cost and risk of doing good business – from legal and tax protection to business banking.

74 Berkeley St, Glasgow, G3 7DS

**t:** 0141 221 0775

**e:** [Scotland.policy@fsb.org.uk](mailto:Scotland.policy@fsb.org.uk)

**w:** [www.fsb.org.uk/scotland](http://www.fsb.org.uk/scotland)

**Twitter:** @FSB\_Scotland

**fsb**<sup>03</sup>  
Experts in Business