



ACS Submission – Reducing Health Harms of Foods High in Fat, Sugar or Salt

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the Scottish Government's consultation on reducing health harms of foods high in fat, sugar and salt. ACS is a trade association, representing over 33,500 convenience retailers across the UK. Members include the Co-Op, One Stop, Costcutter, Spar UK and thousands of independent retailers. In Scotland, there are 4,962 stores, employing over 40,000 people¹. ACS also works with the Scottish Grocers' Federation on issues that affect retailers in Scotland. For more information about ACS and the convenience sector, please see Annex A.

Convenience retailers provide range of grocery products and services to their local communities. There is a significant variety of products offered in-store, with chilled foods one of the most popular categories in the convenience sector, representing 13.6% of total sales². Fruit and vegetables represent 4.3% of sales in the convenience sector and canned and packaged grocery represents 7.2% of sales³. Convenience stores also sell a range of products that could be affected by the proposed restrictions in the consultation including confectionery, savoury snacks, bakery products and soft drinks. Consumer polling from 2016 suggests that 19% of consumers regularly purchase treats and snacks in convenience stores, while 46% of consumers regularly purchase treats in snacks in a supermarket⁴.

We acknowledge that convenience retailers have a role to play in tackling obesity and the industry wants to align with the Scottish Government's ambitions to reduce childhood obesity. However, we do not believe that the proposed restrictions on promotions or the location of products in-store would be effective in reducing obesity, particularly as there is limited evidence to suggest that these measures will improve public health⁵. We have concerns that the proposed restrictions, particularly the restrictions on multi-buys, promotion of value, and location of products, will only place onerous operational burdens on smaller retailers.

The restrictions on location of products in-store presents practical issues for convenience retailers in particular. Convenience stores are typically small format stores, often smaller than 280 sqm/3,000 sq.ft⁶. Over half (52%) of convenience stores in Scotland are smaller than 1,000 sq.ft⁷. This means that moving products in-store to other locations will present additional operational challenges, particularly if it means that the store is required to

¹ ACS/SGF Scottish Local Shop Report 2018

² ACS/SGF Scottish Local Shop Report 2018 (refers to sales value not volume of sales)

³ ACS/SGF Scottish Local Shop Report 2018 (refers to sales value not volume of sales)

⁴ Jericho Chambers Consumer Attitudes Consumer Polling 2016

⁵ [University of Stirling - Identifying and Understanding the Factors that can Transform the Retail Environment to Enable Healthier Purchasing by Consumers](#)

⁶ The submission refers to both sqm and sq.ft. For reference, 280 sqm = 3,000 sq.ft., 1,000 sq.ft.= 93 sqm, 2,000 sq.ft = 186 sqm.

⁷ ACS/SGF Scottish Local Shop Report 2018

overhaul their whole store layout to comply with the regulations. We also have concerns that without specific definitions about restricted locations, e.g. checkout area, that will be confusion around what locations products can and cannot be placed in. Therefore, we recommend that the Scottish Government exempt stores smaller than 280 sqm from being required to comply with the restrictions on location of products to ensure that smaller retailers are not disproportionately affected by the regulations.

For independent convenience retailers, promotions are a way of differentiating themselves, responding to competition, responding to changing consumer demand and tailoring their offer to their customer base. As a consequence of the restrictions on multibuys and promotion of value, larger food retailers will resort to other promotional strategies, such as everyday low prices. Smaller retailers do not have the same purchasing power which means they will not be able to compete to the same degree and therefore be competitively disadvantaged by the regulations. The Scottish Government should not only consider how the proposed restrictions affect smaller format stores but also how they will affect smaller retail businesses.

We would welcome further engagement with the Scottish Government as they consider measures to reduce obesity in Scotland. For more information about this submission, please contact Julie Byers, ACS Public Affairs Manager by emailing Julie.Byers@acs.org.uk or calling 01252 515001.

We have set out our concerns in more detail and responded the consultation questions relevant to convenience retailers below.

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 disagree

We do not believe that the Scottish Government should introduce restrictions on the promotion and marketing of foods high in fat, sugar or salt to reduce harms associated with their excessive consumption without evidence to suggest that they will be effective in promoting public health. University of Stirling's report, 'Identifying and Understanding the Factors that can Transform the Retail Environment to Enable Healthier Purchasing by Consumers' suggests that while studies have been published on measures in the retail environment to reduce obesity, these have focused on individual elements in short time periods such as "better information provision around healthy products alone and on the price of such products"⁸ and therefore "there is limited published academic research on the direct alterations to the food retail environment aimed at changing consumer decision-making."

We believe retailers' experience of the Healthcare Retail Standard is not comparable to how the restrictions proposed in the consultation would impact small retailers as the proposals are far more extensive. The evaluation of the Healthcare Retail Standard concluded that small retailers found complying with the Healthcare Retail Standard challenging but with support to understand the criteria, to find suppliers with products that met the criteria, and to

⁸ [University of Stirling - Identifying and Understanding the Factors that can Transform the Retail Environment to Enable Healthier Purchasing by Consumers](#)

try out different business models, all small retailers were able to comply⁹. The report also concluded that sales fell after retailers introduced the Healthcare Retail Standard and have yet to reach pre-Healthcare Retail Standard levels¹⁰.

We have concerns that larger retailers may have more flexibility to adapt to the regulations than smaller retailers, for example, using alternative promotional activity such as 'everyday low prices'. Smaller retailers do not have the purchasing power to use this type of promotional activity and therefore smaller retailers may be disproportionately impacted by the proposed restrictions in the consultation. The Scottish Government must consider to what extent they can support small retailers if the restrictions are introduced, whether this is through comprehensive guidance or exemptions from more onerous restrictions.

Question 2 - Should this policy only target discretionary foods? [confectionery, sweet biscuits, crisps, savoury snacks, cakes, pastries, puddings and soft drinks with added sugar]

Other – please specify

As the consultation document itself recognises, it is important that the types of food in scope of the regulations are clearly defined and we welcome that the Scottish Government will seek expert, technical advice on defining the full category definitions and exclusions of particular foods/products from these definitions. We have previously called on the Scottish Government to take an evidence led approach on defining 'discretionary foods' and we welcome that this has been recognised in the consultation.

Any definition would have to consider what products or foods can contribute to a healthy diet. The definition must also be clear for retailers to understand and be well communicated as it could present challenges for retailers to implement any restrictions. For example, would a retailer be required to check every ingredient label to understand if it is captured by the restrictions? Or would there be new labelling which retailers must know to recognise? As identified in the Evaluation of the Healthcare Retail Standard "Before the HRS [Healthcare Retail Standard] they were not routinely working with nutritional information, at least not to the level needed to work to the HRS."¹¹ Therefore, the Scottish Government must provide clear guidance to retailers on how they can identify products which are within the scope of the regulations

In a wider context, there is ongoing debate regarding which definitions should be used to determine which foods should be targeted for restrictions on promotions and locations of products, and whether foods high in fat, salt and sugar (HFSS) is useful as guide. Public Health England have used both the FSA Nutritional Profiling Model and National Diet and Nutrition Survey (NDNS) to estimate the contributions that different food groups make to sugar intakes for children for PHE's sugar reduction programme. While the Committee of Advertising Practices has used the FSA Nutritional Profiling Model and the NHS determines HFSS products based on their nutritional labels (high fat – more than 17.5g per 100g; high sugar – more than 22.5g of total sugars per 100g; high salt – more than 1.5g of salt per 100g).

⁹ [NHS Health Scotland – Evaluation of the Healthcare Retail Standard Summary Report](#)

¹⁰ [NHS Health Scotland – Evaluation of the Healthcare Retail Standard Summary Report](#)

¹¹ [NHS Health Scotland - Evaluation of the Healthcare Retail Standard](#)

We would welcome clarification on how the proposed restrictions on 'discretionary foods' will interact with existing policies to tackle obesity elsewhere in the UK, including the Public Health England voluntary sugar and calorie reduction reformulation programs which aim to cut sugar by 20% by 2020 and 20% of calories by 2024. The foods targeted¹² by the reformulation programmes may also fall into the Scottish Government's definition of 'discretionary foods'. However, given that these products are being targeted separately, would the Scottish Government consider that these products would still be included within the definition of 'discretionary foods'?

The UK Government are expected to consult on similar restrictions for promotions and location of certain products shortly. Therefore, we would encourage the Scottish Government to work with the UK Government to develop which products should be targeted in order to ensure consistency across the UK if the regulations are introduced to reduce pressures on retailers which trade across the UK.

Question 3 - Should this policy treat ice-cream and dairy desserts as discretionary foods?

Don't Know

The Scottish Government should determine whether ice-cream and dairy desserts are classified as 'discretionary foods' by undertaking research into their nutritional value. The Scottish Government should take into consideration that Public Health England did include ice cream within the scope of their voluntary sugar reduction targets, however, this does not necessarily suggest that they should be identified as a 'discretionary food' as milk-based drinks were not included within the scope of the Soft Drinks Industry Levy due to their nutritional value.

Question 4 - Please comment on our approach to defining categories and exclusions of particular foods/products from those definitions (paragraphs 9-11)?

No single definition captures the specific products (without capturing all the product category) that the restrictions aim to target and as recognised in the consultation document, the Scottish Government will seek expert, technical advice on defining the full category definitions and exclusions of particular foods/products from these definitions.

The Scottish Government should take into account that exclusions will make the system more complex but are necessary to ensure the appropriate products are being targeted and that products with nutritional value are not caught within the scope of the categories being classified as 'discretionary foods'. For example, while the confectionery category may be straightforward to classify as a discretionary food, which bakery goods are caught within the scope of the definition? The Scottish Government must provide very clear guidance to ensure that there is no retailer confusion when they come to comply with the regulations. In particular, additional complexities of the regulations will mean that convenience retailers will require extensive staff training in their stores.

Question 5 - In relation to the foods being targeted, should this policy seek to

¹² These include: biscuits, breakfast cereals, chocolate confectionery, ice cream, lollies and sorbets, puddings, sweet spreads and sauces, sweet confectionery and yoghurts and fromage frais

- Restrict multi-buys – no
- NOT restrict temporary reductions – yes
- NOT restrict multi-packs – yes

Please explain your answers

Convenience retailers, like all retailers, use promotions to encourage sales across a range of product categories. The competitive nature of the retail grocery market means that they are an important tool for retailers to show they are delivering value to customers.

For independent convenience retailers, promotions are a way of differentiating themselves, responding to competition, responding to changing customer demand and tailoring their offer to their customer base. Typically, convenience stores have a low-margin high volume business model and promotions assist in creating sales volumes. The promotions that retailers use in-store vary greatly, as they may be used for different reasons, and we believe it would be challenging to regulate and enforce against promotions in stores. The delivery of these restrictions would place significant costs and administrative burdens not only on retailers but also on enforcement bodies.

The Scottish Government's proposal to restrict multi-buy promotions would have a considerable impact on retailers pricing strategies and as a consequence could mean that larger retailers can adapt to use alternative pricing or promotional strategies, such as 'everyday low prices' in order to still comply with the regulations while using their greater purchasing power with suppliers to maintain their profit margin. However, smaller retailers do not have the same advantage of having purchasing power to price products at an 'everyday low price' and as a result of the regulations they could be competitively disadvantaged. It is important that the Scottish Government understands the role and context that convenience stores play in relation to people's daily lives and shopping habits and whether the proposed restrictions would disproportionately impact smaller retailers.

Convenience retailers provide range of grocery products and services to their local communities. There is a significant variety of products offered in-store, with chilled foods one of the most valuable categories in the convenience sector, representing 13.6% of total sales¹³. Fruit and vegetables represent 4.3% of sales in the convenience sector and canned and packaged grocery represents 7.2% of sales¹⁴. Convenience stores also sell a range of products that could be affected by the proposed restrictions in the consultation including confectionery, savoury snacks, bakery products and soft drinks. Depending on the definition of 'discretionary foods' this could affect 16.2% to 29.9% of retailers' sales, equivalent to over £6.3bn or over £11.6bn respectively¹⁵. While convenience stores do sell high impulse products, some of which are high in fat, salt and sugar and could be classed as 'discretionary foods', they are not consumers' main location to purchase these products.

The Scottish Government should also note that convenience retailers are already following established consumer trends, by increasing and promoting healthier ranges in-store. ACS'

¹³ ACS/SGF Scottish Local Shop Report 2018 (refers to sales value not volume of sales)

¹⁴ ACS/SGF Scottish Local Shop Report 2018 (refers to sales value not volume of sales)

¹⁵ ACS Local Shop Report (% of affected sales categories against the total sales value of convenience stores in the UK. Minimum includes confectionery, savoury snacks and soft drinks product categories while maximum includes confectionery, canned and packaged grocery, crisps, bakery products, soft drinks and frozen product categories)

Voice of Local Shops survey in 2015 shows that 52% of independent convenience retailers in Scotland sell more healthy food than they did five years ago (higher than the UK average of 41%)¹⁶. In fact, 20% of independent convenience retailers in Scotland responded in 2018 that they had increased promotions on a single product category – fruit and vegetables (higher than the UK average of 16.5%). Of the local shops that sell fruit and vegetables, all of them responded that they run promotions on these products. 23% of independent retailers in Scotland saw their sales of fruit and vegetables increased compared to the previous year (higher than the UK average of 17.4%), 24% had increased their range of fruit and vegetables in the last year (higher than the UK average of 17.9%)¹⁷.

Only 3% of Scottish consumers use their local convenience store to purchase their main food shop¹⁸. Consumers in Scotland use convenience stores instead to top up their weekly shop (18%), for a one-off meal solution (7%), or when they run out of something (54%). Therefore, the product mix and business focus are different in the convenience sector to supermarkets, which still dominate the majority of planned food purchases with 94% of consumers in Scotland using them for their main food shop.

Consumer polling suggests that 19% of consumers in Scotland regularly purchase treats and snacks in convenience stores, which would be caught within the definition of ‘discretionary foods’, while 46% of consumers regularly purchase treats and snacks in a supermarket¹⁹. The table below provides an overview of how this breaks down into individual product categories of where consumers in Scotland regularly purchase these products²⁰.

	Chocolate and sweets	Crisps and salty snacks	Sugary soft drinks
Supermarket	62%	67%	43%
Convenience Store	21%	15%	11%

Instead, of introducing measures on retailers in order to restrict promotions on ‘discretionary foods’ which have limited evidence to suggest that they will be effective, we believe that the Scottish Government should make a business case to retailers to provide healthier foods in-store. While convenience retailers are already following established consumer trends, by increasing and promoting healthier ranges in-store, retailers need reassurances in the growth of the market. This funding could encourage retailers to run more promotions, particularly as discounts on healthier foods often have to have a larger discount to incentivise consumers to purchase these products²¹. The Scottish Government should also consider how its reforms to Healthy Start and the upcoming launch of its Best Start Scheme will promote its healthy eating agenda and how these plans interact with their proposals to restrict promotions in store.

Question 6 - Please comment on the approach we are proposing to take to restricting forms of promotion and marketing outlined in section 5.

Siting

¹⁶ ACS Voice of Local Shops Survey November 2015

¹⁷ ACS Voice of Local Shops Survey August 2018

¹⁸ Jericho Chambers Consumer Attitudes Consumer Polling 2016

¹⁹ Jericho Chambers Consumer Attitudes Consumer Polling 2016

²⁰ Jericho Chambers Consumer Attitudes Consumer Polling 2016

²¹ [NHS Health Scotland - The impact of promotions on high fat, sugar and salt \(HFSS\) food and drink on consumer purchasing and consumption behaviour and the effectiveness of retail environment interventions](#)

Space is always at a premium in convenience stores. Convenience stores by their very nature are small format businesses, they are generally defined as being under 280 square metres. Of the 4,962 convenience stores across Scotland, 52% are smaller than 1,000 sq.ft., 32% are between 1,000 – 2,000 sq.ft. and 16% are between 2,000 and 3,000 sq.ft.²². Independent convenience stores are even smaller with 59% smaller than 1,000 sq.ft.²³. As such, the proposals to restrict the location of 'discretionary foods' in convenience stores would present practical challenges for retailers to implement, particularly as the restrictions would affect a whole range of areas, including check out, end of aisle, front of store, and island/bin displays. The majority of retailers have expressed specific concerns about the restrictions on the placement of products at the checkout, stating that it would be disruptive to their business if they were required to move products to another location in-store²⁴. By moving products from one location to another in-store this presents operational challenges for retailers, but for smaller format retailers, this could mean that they have to overhaul the whole store layout in order to comply – the impact of which would be exacerbated if all four areas are targeted in store.

Moreover, retailers in Scotland already face restrictions on the location where alcohol can be located in-store, presenting additional operational challenges. Not only would a convenience retailer be required that they are compliant with the restrictions on location of 'discretionary foods' but they will also need to ensure that the changes they make in store does not make them in breach of the Alcohol Etc. (Scotland) Act 2010. If convenience retailers need to move where there alcohol is located in-store in order to comply, they will also need to agree the new "alcohol display area" with their Licensing Board.

The University of Stirling report, 'Identifying and Understanding the Factors that can Transform the Retail Environment to Enable Healthier Purchasing by Consumers' also suggests that such restrictions could be challenging for smaller format stores to implement suggesting that: "The problem is that some interventions might work at the level of a superstore but could not work at the level of the smallest shop or convenience store. It thus becomes problematic to think about some interventions being implemented without impacting competition and potentially the sustainability of individual outlets and businesses. Some shops are of such a small size that concepts and constructs such as checkout areas, aisle-ends, power aisles, merchandise ready units etc are essentially meaningless²⁵." Therefore, the Scottish Government should consider whether a small store exemption should be introduced to reduce these operational challenges and that the regulations do not disproportionate affect small shops from their larger counterparts. More information is provided in response to Question 9.

Restrictions on siting would also have implications for larger convenience stores²⁶. Convenience retailers in Scotland not only provide a range of grocery products but also a large number of services in-store, including Post Offices (25%), bill payment services (63%), and free to use cash machines (50%)²⁷. They continue to incorporate new services, particularly if banks or Post Offices close in their local area – wanting to maintain the service

²² ACS/SGF Local Shop Report 2018

²³ ACS/SGF Local Shop Report 2018

²⁴ ACS Voice of Local Shops Survey August 2018

²⁵ [University of Stirling - Identifying and Understanding the Factors that can Transform the Retail Environment to Enable Healthier Purchasing by Consumers](#)

²⁶ Between 1,000 and 3,000 sq.ft.

²⁷ ACS/SGF Local Shop Report 2018

for their local community. We have concerns that the range of products and services that convenience retailers offer could be implicated if the Scottish Government introduce restrictions in siting. To comply with the restrictions on location, convenience retailers will need to move 'discretionary foods' from restricted areas. While this could be a simple adjustment, for example, switching non-discretionary foods from an aisle to the check out, retailers could face operational challenges, where the only compliant space in the store is occupied by a service, for example a free to use cash machine or a Post Office. In these cases, convenience retailers may need to make tough decisions about their product range or services that they offer and consider whether to remove the service or adapt their product range in order to be compliant with the regulations. This is particularly important as 42% of convenience stores in Scotland are isolated, with no other retail or service businesses close by and 31% are located on a small parade with up to five retail/service businesses close by²⁸. This demonstrates how important the offer that a convenience store has to its local community. The Scottish Government should also be aware that the introduction of a deposit return scheme could mean that convenience stores are return points for plastic bottles and cans which will also impact on the space that they have in-store, either through a reverse vending machine (typically between 1m² and 5m²) or at the till. This should be taken into consideration when they consider the impact that the restrictions of location of products will have on small shops.

We also have concerns that without specific definitions for restricted locations that there will be confusion around what locations products can and cannot be placed in. It will be difficult for retailers to implement the restrictions in their stores unless the definitions of restricted locations are prescriptive, for example, specifying what distance away from a check out area is allowed to display 'discretionary foods'. Unlike larger food retailers, convenience stores do not have a set store layout and instead each convenience store's format is different which means that there is no set definition of each location in-store, e.g. store entrance or check out area. Therefore, the restrictions on siting of products in store could range from minimal to significant disruption depending on the store layout. We will share layouts of convenience stores with Scottish Government officials separately to demonstrate the different formats that convenience stores operate in.

We believe that it will be difficult for local authorities to enforce the restriction without prescriptive definitions of the restricted locations which could mean that enforcement is entirely subjective (more information on enforcement is available in our response to Question 12). However, the Scottish Government should also consider that if the definitions are prescriptive then the restrictions will also present challenges for small format retailers as they may not have the space in-store to move their location – this could be mitigated through a small shop exemption.

Promotion of Value

It is unclear from the consultation document how the promotion of value would apply and how it would be enforced. We are concerned that restricting promotion of value will impact consumers' ability to make an informed decision about whether to purchase a specific product and therefore would welcome clarity from the Scottish Government around the intention of the restriction on promotion of value.

Shelf-edge displays and signage

²⁸ ACS/SGF Local Shop Report 2018

The Scottish Government should consider that if there are restrictions on shelf-edge displays and signage there will be associated costs with retailers either removing or altering shelf-edge displays and signage to comply with the new regulations. Shelf-edge displays and signage are used by consumers to differentiate between value. If the signage is removed, this may cause customer confusion on which product is the best value.

In-store advertising

Restrictions on non-broadcast advertising for products high in fat, salt and sugar were introduced in July 2017. Time should be given for these new restrictions to embed and the impact to be assessed before any further restrictions are introduced.

We have concerns that exploring whether CAP restrictions at or near locations commonly used by children is entering ambiguous territory. The current CAP Guidelines suggests a 25% audience threshold to determine if advertising is aimed at children. This is extremely hard to apply to retail environments whether they are near schools or not. For example, out-of-store advertisements and advertisements displayed in store windows will be viewed by the public. In 2017, it was estimated that 17% of the Scottish population were aged 0-15 years old²⁹.

Upselling

ACS does not hold any data on the extent of upselling in the convenience sector.

We believe that restrictions on upselling will be challenging to enforce. Going by the only example of upselling specified in the consultation document - "being asked if you want an additional product at the till or to increase the size of it", enforcement officers may be required to carry out test purchasing to determine whether staff are breaching the regulations. Each trading standards services will have different views on how they decide to carry out such testing, with some who may wish to carry out test purchasing through the police. Test purchasing activity is increasing becoming intelligence based and therefore routine test purchasing is becoming less common. As such, we would encourage the Scottish Government to determine how upselling restrictions would be enforced.

Coupons on products/ Purchase rewards

Restrictions on the use of coupons or purchase rewards to purchase 'discretionary foods' would require retailers to update their software for their electronic point of sale (EPOS) equipment. For retailers who do not have EPOS in Scotland (32% of stores), retailers would need to hold additional staff training to ensure that they are aware of the restrictions. Any complexities to coupons or purchase rewards may cause customer confusion in-store.

The Scottish Government should be aware that customer confusion about vouchers may be a trigger for violence and verbal abuse in-store. ACS' Crime Report 2018 found that the top triggers for violence and verbal abuse are when staff and their staff are going about their typical working day, enforcing the law, for example, retailers when enforcing age-restricted sales through age-verification schemes such as 'Challenge 25'³⁰. Therefore, customer clarity

²⁹ [National Records of Scotland: Mid-2017 Population Estimates Scotland](#)

³⁰ ACS Crime Report 2018

is key to ensure to minimise the triggers for violence and verbal abuse to retailers and their staff enforcing restrictions on coupons on products and purchase rewards for 'discretionary foods'.

Free samples

ACS does not hold any data on the use of sampling in the convenience sector. We believe that the Scottish Government should define 'free sampling' as no definition has been provided in the consultation document. Would free sampling allow retailers to take part in activities such as bake sales or charity events where they donate products? Or would free sampling restrictions only apply if it takes part in the course of their business, for example, sampling products in-store accompanied by a voucher to purchase? We would welcome this clarity as many convenience retailers donate goods to charities or hold bake sales for charity in their stores.

Branded chillers and floor display units

Convenience retailers often rely on partnerships with manufacturers and suppliers to provide permanent and temporary branded chillers and floor display units. Branded chillers and floor display units allow retailers to invest in their store as the brand owner may outlay the initial capital and installation of equipment. Refrigeration units in particular allow retailers to offer a larger choice and range of foods to customers. Over the last year, convenience stores in Scotland have invested £76m in their business. The number one area of investment was in refrigeration (36% of those that invested in their business)³¹. Limiting the use of branded chillers and floor display units could lead to retailers having to limit the range they offer and in turn reduce their profit margins. Under the restrictions, if they were wanting to increase their product range by investing in refrigeration units for instance, they would incur the capital costs from investing in non-branded refrigeration units.

The Scottish Government should also consider that if they introduce restrictions on branded chillers and floor display units, how exactly it will impact existing units in-store. The Scottish Government would need to look at the legal contracts between the retailer and the brand owner as retailers may have agreed to host the branded refrigeration unit for a specified number of years. We would welcome clarity on how the proposed restrictions would apply to existing contracts of branded chillers and floor display units.

Prohibiting outlets from being able to sell or lease display spaces for discretionary food

We do not hold data on the extent of outlets selling or leasing display spaces for 'discretionary foods' in the convenience sector. As stated above, the Scottish Government would need to consider how the restrictions would apply to retailers who have existing contracts with suppliers on the sale or leasing of their display spaces for 'discretionary food'.

Manufacturers and distributors from providing promotional or marketing material and from making arrangements for the display of foods subject to restrictions.

Symbol groups are groups of independent retailers trading under a common customer facing brand such as Spar, Costcutter, Nisa, Premier, and Keystore. Symbol groups provide independent retailers access to collective buying power which means they can also provide

³¹ ACS/SGF Local Shop Report 2018

competitive promotions, which they may not have otherwise had access to. As well as receiving support through promotions, promotional material, they will also receive planograms for their stores. The intention of all this support, particularly planograms, is to ensure that a store is optimised to sell the items that they are offering. While a symbol group retailer has the authority to decide whether to use the promotions, promotional material and planograms in their store, they will often use them to ensure that they are maximising their profit so that they can continue to trade. In Scotland, 35% of the convenience sector is made up of symbol group retailers, equivalent to 1,241 stores³².

Proposals to restrict distributors, including symbol groups, from providing promotions, marketing material and making arrangements for the display of foods (planograms) to independent retailers will disproportionately affect smaller retailers. Smaller retailers will only have access to these competitive promotions, the marketing materials and planograms through their symbol group and therefore the proposed restrictions would mean that they would no longer have access to materials that could help them maximise their sales. However, larger retailers would be unaffected as their head office would still share the promotions, the promotional marketing materials and the design of the planogram to individual stores which would not be banned under the regulations.

As stated above, the Scottish Government must also consider how the restrictions will interact with existing legal contracts between independent retailers and their symbol group.

Question 7 - Should the restrictions apply to any place where targeted foods are sold to the public, except where they are not sold in the course of business (e.g. charity bake sales)?

No

We believe that if the restrictions are introduced that they should not apply to outlets smaller than 280 sqm as set out in our response to Question 9. Proposals to restrict the location of 'discretionary foods' in small shops would present practical challenges for retailers to implement, particularly as the restrictions would affect a whole range of areas, including check out, end of aisle, front of store, and island/bin displays.

Question 8 - Please comment on whether, and if so to what extent, restrictions should be applied online. Please explain your answer.

Yes

If the Scottish Government are to introduce restrictions on price promotion, location and promotion of value of specific products, they must consider the role of online retailers within the regulations. If online retailers are not obligated to comply with the regulations, this will result in traditional bricks and mortar retailers being disproportionately impacted, resulting in another competitive advantage for online retailers.

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?

³² ACS/SGF Local Shop Report 2018

Yes

Space is always at a premium in convenience stores, therefore, we believe that the Scottish Government should consider an exemption for small shops in relation to the proposed restrictions on the location of 'discretionary foods in-store. Convenience stores by their very nature are small format businesses, they are generally defined as being under 280 square metres. Of the 4,962 convenience stores across Scotland, 52% are smaller than 1,000 sq.ft., 32% are between 1,000 – 2,000 sq.ft. and 16% are between 2,000 and 3,000 sq.ft.³³. Independent convenience stores are even smaller with 59% smaller than 1,000 sq.ft.³⁴. As such, the proposals to restrict the location of 'discretionary foods' in convenience stores would present practical challenges for retailers to implement, particularly as the restrictions would affect a whole range of areas, including check out, end of aisle, front of store, and island/bin displays. The majority of retailers have expressed specific concerns about the restrictions on the placement of products at the checkout, stating that it would be disruptive to their business if they were required to move products to another location in-store³⁵. By moving products from one location to another in-store this presents operational challenges for retailers, but for smaller format retailers, this could mean that they have to overhaul the whole store layout in order to comply – the impact of which would be exacerbated if all four areas are targeted in store.

The University of Stirling report, 'Identifying and Understanding the Factors that can Transform the Retail Environment to Enable Healthier Purchasing by Consumers' also suggests that such restrictions could be challenging for smaller format stores to implement suggesting that: "The problem is that some interventions might work at the level of a superstore but could not work at the level of the smallest shop or convenience store. It thus becomes problematic to think about some interventions being implemented without impacting competition and potentially the sustainability of individual outlets and businesses. Some shops are of such a small size that concepts and constructs such as checkout areas, aisle-ends, power aisles, merchandise ready units etc are essentially meaningless³⁶."

Restrictions on siting would also have implications for larger convenience stores³⁷. Convenience retailers in Scotland not only provide a range of grocery products but also a large number of services in-store, including Post Offices (25%), bill payment services (63%), and free to use cash machines (50%)³⁸. They continue to incorporate new services, particularly if, for instance, banks or Post Offices close in their local area – wanting to maintain the service for their local community. 42% of convenience stores in Scotland are isolated, with no other retail or service businesses close by and 31% are located on a small parade with up to five retail/service businesses close by³⁹. This demonstrates how important the offer that a convenience store has to its local community. We have concerns that the range of products and services that convenience retailers have could be implicated if the Scottish Government introduce restrictions in siting. It may lead to convenience retailers needing to make tough decisions about their product range or services that they offer as they too will have to rearrange their store layout which could mean the difference between

³³ ACS/SGF Local Shop Report 2018

³⁴ ACS/SGF Local Shop Report 2018

³⁵ ACS Voice of Local Shops Survey August 2018

³⁶ [University of Stirling - Identifying and Understanding the Factors that can Transform the Retail Environment to Enable Healthier Purchasing by Consumers](#)

³⁷ Between 1,000 and 3,000 sq.ft.

³⁸ ACS/SGF Local Shop Report 2018

³⁹ ACS/SGF Local Shop Report 2018

having the space to host offer services or not. It may also impact convenience retailers' decisions to invest in new services if they cannot physically accommodate them in store due to the restrictions on optimising the space in the store. The Scottish Government should also be aware that the introduction of a deposit return scheme could mean that convenience stores are return points for plastic bottles and cans which will also impact on the space that they have in-store, either through a reverse vending machine (typically between 1m² and 5m²) or at the till. This should be taken into consideration when they consider the impact that the restrictions of location of products will have on small shops.

We also have concerns that without specific definitions for restricted locations that there will be confusion around what locations products can and cannot be placed in. It will be difficult for retailers to implement the restrictions in their stores unless the definitions of restricted locations are prescriptive, for example, specifying what distance away from a check out area is allowed to display 'discretionary foods'. Convenience stores do not have a set store layout and instead each convenience store's format is different which means that there is no set definition of each location in-store, e.g. store entrance or check out area. Therefore, the restrictions on siting of products in store could range from minimal to significant disruption depending on the store layout.

Therefore, the Scottish Government should exempt small shops from complying with the restrictions on location of 'discretionary foods' in-store. As stated in the consultation question itself, the regulations should not apply where there is no reasonable alternative to displaying them elsewhere. We believe if small shops are required to comply with the regulations, that this will present additional disproportionate operational burdens. Therefore, the exemption should apply to shops smaller than 280 sqm which is the typical size of a convenience store. Not only would this mitigate the impact that the proposed restrictions would have on smaller convenience stores where they may overhaul their whole store layout to comply with the regulations, but it will also allow larger convenience stores to continue to offer the large range of services that they provide to their local community. 42% of convenience stores in Scotland are located in isolated areas, therefore, their local community relies on their local shop⁴⁰. Restrictions on 'discretionary foods' will lead to convenience retailers determining whether they can comply with the regulations with minimal disruption or if they have to cut ranges or services to comply with the regulations which could have a detrimental impact on the communities they serve.

Question 10 - Should food marked as discounted because it is close to expiry be exempt from

- Positioning restrictions (end of aisle, checkouts etc.) – yes
- Promotion of value' restrictions – yes

The Scottish Government must consider how the regulations will interact with food waste regulations to determine whether providing exemptions to reduce food waste would be proportionate.

Question 12 - Please comment on our proposals for enforcement and implementation outlined in section 8.

⁴⁰ ACS/SGF Local Shop Report 2018

We would welcome clarification on the Scottish Government's plans for enforcement of the regulations. Currently, non-compliance will result in retailers receiving Fixed Penalty Notices. We have some concerns that given that local authorities can retain the money raised from Fixed Penalty Notices, that there may be a financial incentive for local authorities to issue Fixed Penalty Notices rather than taking an education led approach.

Given the complexities of the regulations, we welcome that the Scottish Government plan to work with local authorities and industry in developing guidance on the regulations. The guidance must provide clarity to industry on exactly how they can comply with the regulations and ensure that there is no confusion on what is compliant and non-compliant – particularly for the proposed placement restrictions and we would welcome further engagement with the Scottish Government on the development of this guidance. As stated in response to question six, we believe that it will be difficult for local authorities to enforce the restriction without prescriptive definitions of the restricted locations which could mean that enforcement is entirely subjective, therefore, guidance is welcomed as it will provide local authorities with clarity on how to enforce the regulations.

As the proposed restrictions on the promotion and marketing of 'discretionary foods' could be open to interpretation by different local authorities due to their complexity, we believe that Primary Authority would be a useful tool to ensure consistency of enforcement across Scotland. ACS launched its own Primary Authority scheme in 2014 in partnership with Surrey and Buckinghamshire County Council that is accessible to the smallest convenience retail businesses⁴¹. The ACS Assured Advice scheme provides tailored advice on regulatory compliance issues that specifically affect convenience store retailers. Through ACS' Assured Advice, small retailers have access to the same expertise, previously only available to the biggest companies with expensive in-house compliance departments. Currently the Scottish Government allow Primary Authority partnerships but only direct partnerships between the business and the local authority. We believe that the Scottish Government should consider extending Primary Authority to allow co-ordinated partnerships⁴² in Scotland. We believe that the benefits of the Primary Authority scheme should not be limited to large businesses but should be extended to smaller operators through their trade association.

Question 13 - Please comment on the proposed flexible approach outlined in section 9.

We would welcome further clarity from the Scottish Government on the intention of allow sufficient flexibility in the legislation to future-proof the policy. Any changes to initial legislation should required further consultation.

Question 15 - What support do sellers, distributors and manufacturers need to implement the restrictions effectively? Please explain your answer.

If the Scottish Government decide to introduce the proposed restrictions set out in the consultation document, they should continue engagement with retailers to ensure that the impact on their business is fully understood and provide support and exemptions where appropriate. We believe that the Scottish Government should consider the proportionality of the proposed restrictions on smaller businesses and smaller format retailers and whether

⁴¹ More information about ACS' Assured Advice scheme is available here:

<https://www.acs.org.uk/advice>

⁴² Trade associations to form partnerships

exemptions should be provided to remove pressures from these retailers. In particular, we encourage the Scottish Government to exempt shops smaller than 280 sqm from being required to comply with the restrictions on location of 'discretionary foods' due to the operational burdens that these restrictions would present.

In addition, the Scottish Government should ensure that they engage with industry, including retailers on the development of guidance on how to comply with the regulations to ensure that they are fit for purpose. They should also consider having a long lead in time in place to ensure that retailers have enough time to prepare their business for the regulations to come into effect.

For more information about this submission, please contact Julie Byers, ACS Public Affairs Manager by emailing Julie.Byers@acs.org.uk or calling 01252 533008.

ABOUT ACS

The Association of Convenience Stores lobbies on behalf of over 46,000 convenience stores across mainland UK on public policy issues that affect their businesses. ACS' membership is comprised of a diverse group of retailers, from small independent family businesses running a single store to large multiple convenience retailers running thousands of stores.

Convenience stores trade in a wide variety of locations, meeting the needs of customers from all backgrounds. These locations range from city centres and high streets, suburban areas such as estates and secondary parades, rural villages and isolated areas, as well as on petrol forecourts and at travel points such as airports and train stations.



WHO WE REPRESENT

INDEPENDENT RETAILERS



ACS represents over 19,000 independent retailers, polling them quarterly to hear their views and experiences which are used to feed in to Government policy discussions.

These stores are not affiliated to any group, and are often family businesses with low staff and property costs. Independent forecourt operators are included in this category.

SYMBOL GROUPS AND FRANCHISES



ACS represents over 14,000 retailers affiliated with symbol groups. Symbol groups like SPAR, Nisa, Costcutter, Londis, Premier and others provide independent retailers with stock agreements, wholesale deliveries, logistical support and marketing benefits.

Symbol group forecourt operators and franchise providers like One Stop are also included in this category.

MULTIPLE AND CO-OPERATIVE BUSINESSES



ACS represents over 12,000 stores that are owned by multiple and co-operative retailers. These businesses include the Co-Operative, regional co-operative societies, McColls and others.

Unlike symbol group stores, these stores are owned and run centrally by the business. Forecourt multiples and commission operated stores are included in this category.

THE CONVENIENCE SECTOR



In 2018, the total value of sales in the convenience sector was £39.1bn.

The average spend in a typical convenience store transaction is £6.50.



There are 46,262 convenience stores in mainland UK. 72% of stores are operated by independent retailers, either unaffiliated or as part of a symbol group.



The convenience sector provides flexible employment for around 365,000 people.

24% of independent/symbol stores employ family members only.



24% of shop owners work more than 70 hours per week, while 19% take no holiday throughout the year.

70% of business owners are first time investors in the sector.



Convenience stores and Post Offices poll as the two services that have the most positive impact on their local area according to consumers and local councillors.

81% of independent/symbol retailers have engaged in some form of community activity over the last year.



Between August 2017 and May 2018, the convenience sector invested over £814m in stores.

The most popular form of investment in stores is refrigeration.

OUR RESEARCH

ACS polls the views and experiences of the convenience sector regularly to provide up-to-date, robust information on the pressures being faced by retailers of all sizes and ownership types. Our research includes the following regular surveys:

ACS VOICE OF LOCAL SHOPS SURVEY

Regular quarterly survey of over 1,200 retailers, split evenly between independent retailers, symbol group retailers and forecourt retailers. The survey consists of tracker questions and a number of questions that differ each time to help inform ACS' policy work.

ACS INVESTMENT TRACKER

Regular quarterly survey of over 1,200 independent and symbol retailers which is combined with responses from multiple businesses representing over 3,000 stores.

ACS LOCAL SHOP REPORT

Annual survey of over 2,400 independent, symbol and forecourt retailers combined with responses from multiple businesses representing 7,669 stores. The Local Shop Report also draws on data from HIM, IGD, Nielsen and William Reed.

BESPOKE POLLING ON POLICY ISSUES

ACS conducts bespoke polling of its members on a range of policy issues, from crime and responsible retailing to low pay and taxation. This polling is conducted with retailers from all areas of the convenience sector.

For more information and data sources, visit www.acs.org.uk