

ACS HFSS Consultation and Energy Drinks Call For Evidence Submission: Proposals to Make the Food Environment in Wales Healthier

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the consultation on the draft regulations for the implementation of high fat, salt and sugar (HFSS) restrictions. ACS is a trade association, representing over 49,388 convenience retailers across the UK and 3,076 convenience stores in Wales.¹ Members include the Co-Op, One Stop, Costcutter, Spar UK and thousands of independent retailers.

Convenience retailers provide a range of grocery products and services to their local communities. There is a significant variety of products offered in-store, with chilled foods being one of the most popular categories in the convenience sector, representing 12.4% of total sales². Fruit and vegetables represent 3.5% of sales in the convenience sector and canned and packaged grocery represents 7% of sales.² The range and diversity of the products sold in convenience stores is essential to the resilience of these businesses.

Convenience retailers continue to adapt the range of products sold in store to keep up with consumer demand. Polling of 1,210 convenience retailers found that one in four retailers have increased healthy product sales and stocked more healthy products in their stores over the past three years.³ Convenience retailers have an important role to play in promoting healthy eating and ensuring that healthy products are available for customers in stores, and we support the Welsh Government's ambitions to reduce obesity.

ACS appreciates the opportunity to be part of the Government editorial panel to help ensure the delivery of the guidance is effective and practical for retailers. The implementation of HFSS restrictions will have a significant impact on convenience retail businesses, customers and store colleagues. It is therefore important that the regulations are implemented responsibly so retailers and the colleagues they employ understand their obligations to prepare for when the policy comes in effect.

DRAFT REGULATIONS

Question 1:

Do the draft Regulations describe the promotion and placement restrictions accurately and clearly for both business and enforcement agencies to implement and enforce?

Yes

No

Don't know.

Please explain your answer. If you disagree with the proposed descriptions, please outline how you would describe the restrictions instead.

ACS supports the Welsh Government's decision to align the promotional and location restrictions with those in England; a consistent regulatory approach will make it much easier for businesses to prepare for the regulations and comply because they will already be familiar with the regulations in England.

While ACS agrees that the promotion and placement restrictions regulations are clear for both businesses and enforcement agencies to implement and enforce, we have set out in

¹ Welsh Local Shop Report 2024.

² ACS Local Shop Report 2023.

³ ACS Voice of Local Shops Survey, May 2022

the guidance section key areas which will need further information to ensure retailers understand their practical application and how to comply.

Question 2:

Do the draft Regulations describe the free refill restrictions accurately and clearly for both business and enforcement agencies to implement and enforce?

Yes

No

Don't know.

Please explain your answer. If you disagree with the proposed description, please outline how you would describe the restrictions instead.

ACS notes that the regulations align with England on the description of free refill restrictions. During the lead up to the restrictions coming into effect in England, ACS did not receive any indication of confusion over the free refill restrictions therefore we believe the description is sufficient for business understanding. Free refills are not widely offered in the convenience sector.

Question 3:

“Aisle end restrictions

One minor difference between the proposed Regulations for Wales and the existing equivalent regulations in England is how aisle end restrictions will apply within a qualifying business' physical (in store) retail environment:

Regulation 7(1)(c)(i) of the Food (Promotion and Placement) (England) Regulations 2021 provides that a qualifying business must not place HFSS foods inside a store in a display 'at the end of (but not in) an aisle, where the aisle end is adjacent to a main customer route through the store', or 'on a separate structure (such as an island bin, free-standing unit, side stack or clip strip) connected or adjacent to, or within 50cm of, such an aisle end'.

It is proposed that, for aisle end restrictions in Wales under the Food (Promotion and Placement) (Wales) Regulations 202X, a qualifying business must not place HFSS foods inside a store in a display 'at the end of (but not in) an aisle' or 'on a separate structure (such as an island bin, free-standing unit, side stack or clip strip) connected or adjacent to, or within 50cm of, such an aisle end'.

This means that the aisle end restrictions in Wales will apply regardless of whether an aisle end is adjacent to a main customer route through the store. Feedback we have so far gathered from industry bodies and enforcement officers has indicated that it is difficult to determine what constitutes a 'main customer route' within individual retail settings. Whilst we remain open to mirroring UK Government's description of this restriction for Wales, our view is that extending this restriction to cover all aisle ends would support qualifying businesses and enforcement officers to understand which aisle ends are in scope of restrictions and remove the need for them to determine the main routes used by customers in specific retail settings.”

Do you foresee the difference in the way that aisle end restrictions are set out in England and Wales' equivalent regulations causing any operational challenges for qualifying food businesses or enforcement officers?

Yes

No

Don't know

Please explain your answer.

ACS' communication of this restriction in England maintained that the aisle end restrictions in store would apply regardless of whether an aisle end is adjacent to a main customer route through the store. This was done to eliminate any potential for misinterpretation across the convenience retail sector by allowing for a simpler interpretation. We therefore do not foresee this causing any operational challenges for qualifying food businesses or enforcement officers; compliant businesses in England were already operating under this interpretation, and we will continue to communicate this interpretation in Wales.

Enforcement

Question 4:

Should local authorities issue improvement notices in cases of non-compliance with restrictions as the first formal action, as set out in paragraph 21 above?

Yes

No

Don't know.

Please explain your answer. If you disagree with the proposed approach, please outline what approach you would see instead.

ACS supports the proposal for improvement notices to be issued as the first formal action in the case where a business has been found to be non-compliant. These regulations are complex and pose a host of challenges for businesses, so the use of improvement notices is welcome as it offers businesses a chance to rectify issues before facing harsher penalties or legal actions. This initial step allows them to make necessary adjustments to meet compliance standards without incurring fines or other punitive measures, promoting a more cooperative and educative approach between businesses and enforcement authorities.

Question 5:

Are there circumstances where an improvement notice may not be appropriate?

Yes

No

Don't know.

Please explain your answer.

Question 6:

Where a business fails to meet the terms of an improvement notice, is a fixed monetary penalty of £2,500 appropriate, as set out in paragraph 22 above?

Yes

No

Don't know.

Please explain your answer. If you disagree with the proposed approach, please outline what approach you would see instead.

If a business is found to not meet the compliance requirements set out in the improvement notice, we would support the imposition of a fixed penalty notice of £2,500. It is important that there is a level playing field among businesses, so they adhere to the same compliance standards. This is a high enough amount to serve as a deterrent for businesses for considering engaging in this behaviour. It also provides them with an opportunity to improve their practices without immediately escalating to legal action.

Question 7:

Are there circumstances where a different approach might be more appropriate?

Yes

No

Don't know.

Please explain your answer. If answered yes, please explain the specific circumstance and preferred enforcement approach.

Question 8:

Is 28 days an appropriate period to make representations and objections or to discharge liability for a Notice of Intent, as set out in paragraph 23 above?

The RESA specifies that 28 days is the longest period that can be permitted therefore any alternative suggestions must be less than 28 days.

Yes

No

Don't know.

Please explain your answer.

As the questions acknowledges, 28 days is the longest period that can be permitted which should give businesses enough time to gather the necessary evidence they require to either make representations, objections, or to discharge liability for a Notice of Intent.

Question 9:

Where a fixed monetary penalty has been issued, for example, for failure to comply with an improvement notice, should a person be able to discharge liability upon being issued with a fixed monetary penalty at a rate of 50% of the penalty issued, as set out in paragraph 23 above?

Yes

No

Don't know.

Please explain your answer.

ACS would support this measure on the basis that allowing a reduced payment option could encourage quick compliance and settlement, which would be beneficial for the business and enforcement community. For businesses, this will incentivise efforts to comply with the regulations and mean less time is spent by Trading Standards in managing the process which can be spent more effectively on undertaking enforcement activity elsewhere.

Question 10:

Is 28 days an appropriate length of time to pay or appeal a final notice, as set out in paragraph 25 above?

The RESA specifies that 28 days is the longest period that can be permitted therefore any alternative suggestions must be less than 28 days.

Yes

No

Don't know.

Please explain your answer.

ACS supports the proposal for a 28-day period to pay or appeal a final notice. This should give businesses a wide enough timeframe to prepare for an appeal or gather the resources to pay the notice.

Question 11:

Should failure to pay or appeal a penalty within 28 days result in the penalty being increased by 50%, as set out in paragraph 25 above?

Yes

No

Don't know

Please explain your answer.

ACS supports this in the regulations as this help work as a deterrent for businesses failing to comply with enforcement action and incentivise a speedier enforcement process.

SUPPORTING GUIDANCE

Question 12:

Are there any areas that need to be specified in guidance to allow businesses to implement the policy successfully?

Yes

No

Don't know.
Please explain your answer.

ACS appreciates the opportunity to help inform the development of the Welsh guidance for the implementation of the HFSS restrictions as part of the Government's editorial panel group. As we have stated to officials, we recommend that the England implementation guidance is used as the groundwork for the basis of the Welsh Guidance to ensure a consistent approach, and that it is strengthened with the following additional information:

Store Entrance Restrictions

As stated to officials, it would be helpful to provide illustration examples of the store entrance restrictions that capture the fact that when an aisle is in range of store entrance restrictions, the restrictions also apply to the side of the aisle not facing the store entrance. (See Annex A)

Aisle vs Islands

One of the main issues retailers faced preparing for the England regulations was confusion over the characteristic differences between aisles and islands. As provided in our comments to the editorial group, helpful feedback from Trading Standards indicated that for example, if a store had a single freezer, 2 freezers back-to-back (square formation), or 4 freezers (square formation) back to back it could be seen to be an island under the regulations since it has no prominent end. However, when you add another freezer on the end, perpendicular, to make a unit of either 3 or 5 freezers it would in effect turn it into an 'aisle'. This is because you have then created an 'aisle end', and there is prominence to that aisle end. Using this an example as proxy, it would be useful for the guidance to bring to life examples where displays are considered aisle vs islands and to explain why they are different.

Clear Differences Between Advertising Restrictions and Placement/Promotional Restrictions

With the UK-wide advertising restrictions coming into effect October 2025 and there being a indication that the Welsh Government may implement these regulations at a similar timeframe, there is a risk that businesses conflate the two regulations and become confused on their differences and respective requirements. ACS along with the BRC and FDF has called for the guidance to clearly separate these two policies and provide examples of products included in advertising restrictions but not included in retail restrictions. In the development of the guidance, it would be useful to have a page showing differences and similarities between the two pieces of legislation and how their application differs.

Nutrient Profiling Model Guidance

ACS would urge the Welsh Government to engage with the UK Government to implement a UK wide government-own national calculator system or database as this would provide a universal scoring system according to the NPM of a product. Mistakes are typically made in the cases where the food or drink product has been wrongly inputted or the complex equation has been incorrectly applied. Creating a national calculator will help provide a universal baseline for companies to use which will help especially small businesses who typically have a disproportionately limited technology, administrative and labour capabilities. This will help reduce the number of mistakes and make the process easier for smaller businesses.

Defense of Due Diligence

ACS urges the Welsh Government to include in their guidance a section which contains information for retailers on how a business could prove, in the event of an enforcement visit

or inspection, it took 'all reasonable steps' and exercised 'all due diligence' to avoid committing an offence. Key examples we would suggest mentioning include retaining and providing evidence of a retailer's store planogram to highlight compliance adherence to prohibited distances and spaces set out in the regulations.

Frequently Asked Questions (FAQ) Section

ACS would like to see a FAQ section that is placed on the Welsh Government's guidance webpage as a separate resource. ACS is already engaging with Welsh Government officials on the development of this section and what type of questions we would like to see addressed based on our members' experiences of preparing for the restrictions in England. The inclusion a FAQ section would a useful referral tool for retailers on niche questions that aren't covered in great detail in the overall guidance.

Q & A Resource Video

ACS has recommended in the Government editorial panel that the Welsh Government provide a Q and A style webinar where Welsh Government officials can directly address questions on the regulations that they have been receiving after the policy has come in effect. This would be a useful resource for Welsh Government officials to provide answers on specific questions it has been receiving post-implementation that are local to issues facing Welsh retailers.

Clear examples of Products In or Out of Scope of Restrictions

We support the BRC's work to bring more clarity to the 13 categories, so retailers and consumers have clarity on the products impacted by these regulations. We recommend that the Welsh Government endorse the BRC HFSS category guidance to promote a consistent interpretation in approach across retailers; this will provide reassurance for businesses by reducing the potential for confusion and overall reduce streamline their compliance checks to make it easier to prepare for the policy.

Question 13:

Are there any areas that need to be specified in guidance to allow enforcement agencies to implement the policy successfully?

Yes

No

Don't know.

Please explain your answer.

Impact Assessments

We have published a number of draft impact assessments alongside this consultation and would welcome your views on these.

For Trading Standards to be able to do their job effectively, there must be clear means for retailers to provide evidence of compliance in a way in which means Trading Standards officers can easily verify information relating to prohibited distances and impacted displays. As stated in question 12, providing in the guidance the suggestion that retailers retain records of their planograms in the case of an enforcement visit would be a useful way to help businesses demonstrate compliance and for Trading Standards to verify information.

Question 14:

What, if any, challenges resulting from the proposed Regulations do you feel should be further recognised within the draft Regulatory Impact Assessment, particular to your field of interest?

ACS has no comment on this.

Question 15:

What, if any, positive effects resulting from the proposed Regulations do you feel should be further recognised within the draft Regulatory Impact Assessment, particular to your field of interest?

ACS has no comment on this.

Question 16:

Do you have any comments on the emerging conclusions in the draft impact assessments for Welsh Language, Children's Rights, or Equality and Human Rights, and if so what evidence do you feel should be further considered particular to your field of interest to support your comments? The Equality Act 2010 prescribes protected characteristics that include age; religion or belief; race; sexual orientation; sex; gender reassignment; marriage and civil partnership; pregnancy and maternity; and disability.

Yes

No

Don't know.

Please explain your answer.

Question 17:

What, in your opinion, would be the likely effects of the Regulations on the Welsh language? We are particularly interested in any likely effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English. Do you think that there are opportunities to promote any positive effects? Do you think that there are opportunities to mitigate any adverse effects?

ACS has no comment on this.

Question 18:

In your opinion, could the Regulations be formulated or changed so as to: have positive effects or more positive effects on using the Welsh language and on not treating the Welsh language less favourably than English; or mitigate any negative effects on using the Welsh language and on not treating the Welsh language less favourably than English?

ACS has no comment on this.

Question 19:

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Implementation Timescales

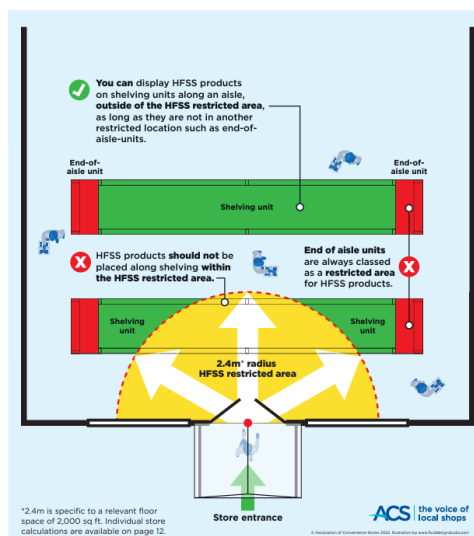
ACS welcomes the Welsh Government's commitment to publishing guidance 12 months before the regulations come into force. It is important businesses are to fully familiarize themselves with the requirements and make the necessary changes to prepare for the policy to come in effect, guidance will play a big role in shaping this process.

Careful consideration should be given to the timing of implementing any such restrictions. Retailers have expressed concern that the laying of regulations in October would mean extensive rearrangement of stores during the run up to Christmas. This would be challenging for some convenience businesses as the run up to Christmas often sees businesses implementing a raft of temporary display changes to their stores, such as new merchandising displays, decorating theming, point of sale display changes, and much more. We would welcome a more pragmatic implementation date early in 2026 to give time extra time for businesses to make necessary changes smoothly.

Liability: Online Application of Regulations

ACS would like to highlight concern raised by retailers who experienced the English regulations over the application of liability in the regulations which is set out so it currently falls strictly under the retailer. This has caused issues in the online application of the regulations whereby retailers that operate online platforms that use third-party companies for delivery services have experienced cases where these third-party vendors might unknowingly or intentionally breach the promotional and placement regulations, but the liability for these violations still falls on the retailer. We would recommend the Welsh Government re-visit the application of liability to recognise that liability online should not always fall on the retailer, because it is difficult for a retailer to control or change the third party's content.

ANNEX A



PART 2: CALL FOR EVIDENCE IN RELATION TO THE CONSUMPTION OF ENERGY DRINKS BY CHILDREN

ACS Position

Energy drinks are an important part of retailers' soft drinks offer but can attract concern from local communities, especially from parents and schools, around the consumption of energy drinks by young people. ACS acknowledges the public health concerns surrounding the sale of energy drinks to children and if the Welsh government decides, after careful consideration of the call for evidence and the commissioning of new research, that energy drinks do require an age restriction, we will work with retailers to ensure that this is implemented effectively across the sector.

Operability: Voluntary Age Restrictions

Convenience retailers have been responding to concerns from their communities about energy drinks for a long time, even before many of the large supermarket chains introduced voluntary age restrictions in response to Jamie Oliver's #notforchildren campaign launched in 2018. Many convenience retailers already operate voluntary policies, often in consultation with local schools and parents, to restrict access to energy drinks for young people.

Our polling of independent retailers shows a significant increase in the number of stores operating voluntary age restriction sales policy for the sale of energy drinks, rising from 56% in 2018 to 80% of stores in 2022.⁴ While it varies from store to store, the main options used by independent retailers range from restricting the sale to a certain age, restricting the quantity of drinks sold, or not selling energy drinks to young people in uniform.

Table: Which of the following policies do you adopt in your business?⁵

	Feb-18	Nov-22
I do not sell energy drinks to under 16's	56%	80%
I do not sell energy drinks to children in school uniform	42%	6%

⁴ Voice of Local Shops Report 2018 and 2022.

⁵ Voice of Local Shops Report 2018 data sample size count is 1213 and 2022 sample size count is 1100.

I work with local schools and parents to determine who I do not sell energy drinks to	3%	3%
I have another policy on selling energy drinks to under 16's (e.g., a purchase limit)	0%	2%
I do not use any of the above policies in my store	*	13%

**Not asked in this wave of questions.*

Note: this data refers to independent convenience retailers who sell energy drinks in their store(s). Those who stated that they do not sell energy drinks were excluded from this table.

Operability: Practical Considerations

The convenience sector has an excellent track record for implementing age restrictions on a wide range of regulated products. If the Welsh Government decide to introduce restrictions on the sale of energy drinks, we have set out below key practical areas the Welsh Government need to consider for the policy to be effectively delivered.

- Proper funding for Trading Standards:** It is important that additional resources are given to trading standards departments who are already overstretched dealing with their current commitments. Independent research commissioned by ACS indicates the need for a three-fold increase alone in Trading Standards teams' budget to tackle the illicit vape market alone. Under the current regulatory landscape, rogue businesses continue to operate unchecked, flouting regulations and gaining an unfair advantage over responsible retailers who adhere to the law. Trading Standards need matched funding to deliver enforcement of the policy for it be effectively implemented.
- Clear guidance on products impacted:** The Welsh Government would need to issue clear guidance on the scope of products impacted to eliminate any confusion on what products are considered energy drinks. The widely accepted definition for energy drinks is caffeine beverages containing 150mg of caffeine per litre, excluding tea and coffee drinks. This will help ensure retailers are able to effectively train their staff on what products can be sold to different age groups. Retailers already have a strong record of compliance on the sale of age restricted products, and it is important this can continue with the sale of energy drinks by the government issuing clear and concise guidance to help retailers update their compliance processes.
- Well-planned communication and a 12-month Implementation Period:** The Welsh Government would need to clearly communicate the policy change to both retailers, young people and all customers. There are wide range of age restrictions in operation in shops, but retailers will not be used to operating an age restricted sales policy set at 16 years of age and this will present new challenges, for example, in identifying proxy purchases of younger persons and reduced access to acceptable forms of identification. We urge the government to introduce a 12-month lead time between the passing of new regulations and the implementation of the policy. This will give enough lead-in time to ensure consumers understand the changes coming and for retailers to feel prepared in operating a new age restricted sales policy in their store.
- Age Restriction:** If the Welsh Government introduce a policy to introduce restrictions on the sale of energy drinks, we believe the age limit for the sale of energy should be set at 16 which would be consistent with the voluntary age restriction many convenience retailers have already introduced. We do not believe energy drinks

should be placed in the same classification of alcohol, tobacco products, or knives where the age limit 18 because of the marked difference between the potential for harm between the product types.

Purchasing and consumption

A recent evidence review in Scotland on caffeinated energy drinks, undertaken by the Scottish Government, concluded that “we do not think that the evidence base is sufficiently developed to pursue mandatory measures at this time”.⁶ The health impacts of these drinks are for public health experts to determine, but we would welcome a clear analysis of any evidence supporting new public health interventions.

ACS Advice to Retailers

ACS [developed guidance](#) for retailers to help them consider how they might respond to requests from their community or parents to restrict the sale of energy drinks. We have encouraged retailers to listen to requests from parents and the community constructively and accommodate them if they can.

The guidance lists various options including: introducing voluntary age restriction, not selling energy drinks to children in school uniform or not selling energy drinks to children at agreed times.

ACS would look to re-issue new updated guidance if the Welsh Government were to implement a policy restricting the age of sale for energy drinks and would offer support in working with the Welsh Government to communicate the policy change to the convenience retail sector.

**For further information on this submission, please contact ACS Public Affairs
Executive Daniel Askew (Daniel.askew@Acs.org.uk)**

⁶ [The Minister for Public Health and Women’s Health Scotland: Ministerial Statement, Energy drinks: evidence brief](#)