



ACS Submission – Restricting Promotions of Products High in Fat, Sugar and Salt by Location and by Price

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the Department of Health and Social Care’s consultation on restricting promotions of products high in fat, salt and sugar by location and by price. 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. 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 sales¹. Fruit and vegetables represent 4.3% of sales in the convenience sector and canned and packaged grocery represents 7.2% of sales¹. Convenience retailers continue to adapt the range of products sold in store to keep up with consumer demand. Polling of 900 convenience retailers in England found that 17% had increased the amount of fruit and veg in stores compared to the previous year². ACS is also supportive of Healthy Start and has developed an animation to encourage more retailers to accept Healthy Start Vouchers³.

Convenience retailers have an important role to play in promoting healthy eating and ensuring that healthy products are available for customers and the industry wants to align with the Department of Health and Social Care’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 health⁴. We have concerns that the proposed restrictions will place onerous operational burdens on smaller retailers. Therefore, ACS response to the consultation sets out in detail the following points:

- The scope of products affected by the proposed restrictions should be narrowed.
- There should be an exemption for local shops smaller than 280 sqm from being required to comply with the restrictions on where products can be placed in-store.
- We do not support the government’s plan to ban volume-based promotions on certain high fat, salt or sugar products.
- The government’s impact assessment significantly underestimates the cost that the restrictions would have on the convenience sector.

For more information on this submission, please contact Julie Byers, ACS Public Affairs Manager by emailing Julie.Byers@acs.org.uk or calling 01252 515001.

¹ ACS Local Shop Report 2018 (refers to sales value not volume of sales)

² ACS Voice of Local Shops survey August 2018

³ [ACS Advice: Healthy Start](#)

⁴ [University of Stirling - Identifying and Understanding the Factors that can Transform the Retail Environment to Enable Healthier Purchasing by Consumers](#)

Executive Summary

Location Restrictions

- Restrictions on the location of products in-store presents practical issues for convenience retailers which are typically smaller than 280 square metres. There should be an exemption for local shops smaller than 280 square metres from being required to comply with the restrictions on location of unhealthy products
- Specific definitions for restricted locations will be required to avoid confusion for retailers and enforcement officers to determine which locations are restricted.
- Convenience stores do not have a set store layout and instead each convenience store's format is different, therefore the restrictions could range from minimal to significant disruption depending on the store layout.
- The cost for convenience stores to comply with the location restrictions ranges from over £61m to over £483m, significantly higher than the government's estimate of £30m to the retail sector.

Volume Promotions

- ACS does not support the government's plan to ban volume-based promotions on affected high fat, salt or sugar products.
- For independent convenience retailers, promotions are an important way of differentiating themselves, responding to competition, responding to changing consumer demand and tailoring their offer to their customer base.

Products in Scope

- The food categories in scope could impact almost half (47.8%) of all the product sales in the convenience sector.
- The government should narrow the scope of products affected by the proposed restrictions by considering the Scottish Government's definition of 'discretionary foods', which include high fat, salt or sugar foods not usually eaten as part of a meal.

Impact Assessment

- The government must update the impact assessment so that it can more accurately reflect the cost that the restrictions would have to the retail sector, to convenience retailers, to enforcement officers, and to the government.
- The government's impact assessment severely underestimates the cost that the restrictions would have on the convenience sector.
- It estimates that there are 13,522 convenience stores are in the UK when there are actually 46,262 convenience stores, 38,377 of which are located in England⁵.
- The impact assessment does not consider the costs that microbusinesses would face even though they are in scope of the proposed regulations.
- The cost of enforcement has also been significantly underestimated. The government estimates that it would cost £27,652 per year for trading standards officers to enforce the location restrictions in convenience stores when it would actually cost £86,377 per year.

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

⁵ ACS Local Shop Report 2018

Businesses and products affected

- 1. Do you think that the restrictions suggested in this consultation should apply to all retail businesses in England that sell food and drink products, including franchises?**

No.

We believe that the proposed restrictions on the location of products and on multi-buy promotions of high fat, salt and sugar products should not be introduced.

The government should not introduce restrictions on the promotions of products high in fat, sugar and salt by location and by price 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"⁶ and therefore "there is limited published academic research on the direct alterations to the food retail environment aimed at changing consumer decision-making."

Moreover, we also agree with the Regulatory Policy Committee's recommendation that "the Department must use stronger evidence to show a link between impulse buying and obesity" particularly since the "there appears to be no reference to studies which question the impacts of the proposed interventions, therefore the evidence seems unbalanced and could be over optimistic"⁷. Without evidence, state regulation of shop layouts would only be costly and damaging for businesses.

We also support the Regulatory Policy Committee's recommendation that given one of the main aims of the regulations is to specifically target childhood obesity⁸, there must be evidence to suggest how these restrictions would achieve this. Currently, especially given the scope of products that would be affected, the regulations are a blunt instrument to tackle childhood obesity and will affect all ages of the population in England.

- 2. Do you think there are any other retailers that the restrictions suggested in this consultation should apply to?**

No.

- 3. Do you think there are any retailers that the restrictions suggested in this consultation should not apply to?**

Yes.

⁶ [University of Stirling - Identifying and Understanding the Factors that can Transform the Retail Environment to Enable Healthier Purchasing by Consumers](#)

⁷ [RPC: Restricting checkout, end-of-aisle, and store entrance sales of food and drinks high in fat, salt, and sugar \(HFSS\)](#) and [Restricting volume promotions for high fat, sugar, and salt \(HFSS\) products](#)

⁸ [RPC: Restricting checkout, end-of-aisle, and store entrance sales of food and drinks high in fat, salt, and sugar \(HFSS\)](#) and [Restricting volume promotions for high fat, sugar, and salt \(HFSS\) products](#)

Shops smaller than 280 sqm should be exempt from the restrictions on where unhealthy products can be located in-store. Convenience stores by their very nature are small format businesses, generally defined as being under 280 square metres. As such, the proposals to restrict the location of certain unhealthy products 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, and store entrances.

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-store⁹. 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.

4. Do you think that the restrictions should also apply to retailers that do not primarily sell food and drink, for example, clothes retailers and newsagents?

No.

If the government decide to introduce restrictions on the location of unhealthy products, there must be an exemption for shops smaller than 280 sqm which would capture some of non-primary food shops, such as newsagents. The government must be clear how it could define different types of businesses for exemptions. For example, all convenience retailers will sell newspapers and magazines, representing 3.4% of convenience retailers' sales¹⁰, therefore would all convenience retailers qualify for an exemption? Convenience stores and newsagents have a similar product range in impulse products, the difference mainly being their relatively fresh food offer. Exempting newsagents while obligating convenience stores would in fact penalise the retailers with the stronger healthy food offer.

5. Do you think that the restrictions should also apply to imported products within the specified product categories in scope?

N/A

6. Do you think that the restrictions should also apply to online shopping?

Yes.

If the government are to introduce restrictions on multi-buy price promotions and location of unhealthy 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.

7. If the restrictions applied to online retailers, how could this work in practice?

⁹ ACS Voice of Local Shops Survey August 2018

¹⁰ ACS Local Shop Report 2018

The restrictions relating to multi-buy price promotions could be applied in the same way as bricks and mortar retailers. However, online retailers will not be required to comply with the restrictions of location of unhealthy products due to the format of their business and therefore could have a competitive advantage over bricks and mortar retailers. The government should consider whether the restrictions on siting could work so that they can be applied to online retailers as well, for example, restricting where unhealthy products can be advertised on a website.

8. Who should be responsible for making sure the price restrictions are followed: the retailer that sells the products or the manufacturer that makes them?

Both.

Manufacturers should be required to be compliant by ensuring that they do not run price promotions that can be passed on to distributors or retailers. Whereas, retailers will need to ensure that the promotions they run in their store are compliant. We would welcome further information and guidance to determine how a retailer can ensure that they are compliant and how enforcement of these regulations will work in practice.

9. Who should be responsible for making sure the location restrictions are followed: the retailer that sells the products or the manufacturer that makes them?

Both.

Retailers will need to ensure that they adapt their store to ensure that the affected products are not located in restricted areas. We would welcome further information and guidance to determine how a retailer can ensure that they are compliant and how enforcement of these regulations will work in practice. For instance, would a retailer face enforcement action if a customer picks up an unhealthy product from a compliant area in-store and put down in a non-compliant area?

Manufacturers should be required to be compliant by ensuring that they do not request space and pressure retailers to locate products in restricted areas. This dynamic is important especially for manufacturers who may visit retailers and assemble a temporary display unit and place in-store.

Price promotion restrictions

10. Which of the following options do you think is the most appropriate for achieving the aims of this policy:

Option 1 - Require retailers to ensure that all their volume based price promotions on food and drink are on healthier products.

Option 2 - We are open to alternative suggestions from stakeholders as to how this policy could be implemented in order to reduce overconsumption of HFSS products but also to encourage businesses to promote healthier products and to further incentivise reformulation. For example, we have explored the possible impact of requiring retailers to ensure that at least 80% of their sales

from volume based price promotions on all food and drink per year are on healthier products.

Neither

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. 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 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' or using temporary price promotions 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' or use extensive temporary price promotions and as a result of the regulations they could be competitively disadvantaged. It is important that the 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 sales¹¹. Fruit and vegetables represent 4.3% of sales in the convenience sector and canned and packaged grocery represents 7.2% of sales¹². 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. Nearly half (47.8%) of all the convenience sector's sales could be affected by the proposed restrictions, equivalent to over £18.6bn¹³. While convenience stores do sell impulse products, some of which are unhealthy, they are not consumers' main location to purchase these products.

The government should also note that convenience retailers are already following established consumer trends, by increasing and promoting healthier ranges in-store. ACS' Voice of Local Shops survey in 2015 shows that 41% of independent convenience retailers in England sell more healthy food that it did five years ago¹⁴. In fact, 15% of independent convenience retailers in England responded in 2018 that they had increased promotions on a single product category – fruit and vegetables. Of the local shops that sell fruit and

¹¹ ACS Local Shop Report 2018 (refers to sales value not volume of sales)

¹² ACS Local Shop Report 2018 (refers to sales value not volume of sales)

¹³ ACS Local Shop Report 2018 (% of affected sales categories against the total sales value of convenience stores in the UK. Affected sales categories include: Bread and bakery, canned and packaged grocery, chilled foods, confectionery, frozen foods, hot food-to-go, sandwiches, savoury snacks and soft drinks. We do not have information on the % of affected individual products)

¹⁴ ACS Voice of Local Shops Survey November 2015

vegetables, all of them responded that they run promotions on these products. 16% of independent retailers in England saw their sales of fruit and vegetables increased compared to the previous year, and 17% had increased their range of fruit and vegetables in the last year¹⁵.

The product mix and business focus are different in the convenience sector to supermarkets. Supermarkets still dominate food purchases across all main product categories, including purchases of high fat, salt or sugar products¹⁶. Only 3% of consumers in England use their local convenience store for their main food shop compared to 93% of consumers who visit supermarkets for their main food shop¹⁷. The majority of consumers in England (62%) instead use convenience stores when they have run out of something¹⁸.

Consumer polling suggests that 20% of consumers in England regularly purchase treats and snacks in convenience stores, which would be caught within scope of the proposed regulations, while 37% of consumers regularly purchase treats in snacks in a supermarket¹⁹. The table below provides an overview of how this breaks down into individual product categories of where consumers in England regularly purchase these products²⁰.

Where do you most regularly buy each of the following?

	Chocolate and sweets	Crisps and salty snacks	Sugary soft drinks
Supermarket	62%	67%	42%
Convenience Store	21%	15%	11%

11. If you are proposing an alternative option, please explain how your preferred option would better deliver the aims of this policy, how it would be delivered and whether there would be any practical and/or implementation issues that we should be aware of.

We believe that the government should consider making a business case to retailers to provide healthier foods. We support Food Foundation’s recommendation to government to incentivise the shift to healthy eating through reduced business rates²¹. This could accelerate convenience retailers’ ability to follow consumer trends by increasing and promoting healthier ranges in store. Polling of 900 convenience retailers found that 17% had increased the amount of fruit and veg in stores compared to the previous year²².

The government should also consider how its reforms to Healthy Start could promote its healthy eating agenda and how these plans interact with their proposals to restrict promotions in store. ACS has developed an animation to encourage more retailers to accept Healthy Start Vouchers²³.

¹⁵ ACS Voice of Local Shops Survey August 2018

¹⁶ Jericho Chambers Consumer Attitudes Consumer Polling 2016

¹⁷ Jericho Chambers Consumer Attitudes Consumer Polling 2016

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 [Food Foundation: The Broken Plate](#)

²² ACS Voice of Local Shops survey August 2018

²³ [ACS Advice: Healthy Start](#)

12. Do you think that the price restrictions should apply to ‘multibuy’ promotions and ‘extra free’ promotions of pre-packaged HFSS products (see Annex 5)?

No.

We do not believe that restrictions on price promotions should be introduced and therefore should not apply to ‘multibuy’ or ‘extra free’ promotions of pre-packaged unhealthy products.

13. Do you currently use or do you know about any official definitions of these types of price promotions?

No.

There are no set industry definitions of types of promotions, which means that the definitions that the government must carefully consider how they develop the definitions to ensure that they do not unintentionally capture other promotions within the scope of the regulations.

14. Do you think there are any other types of price promotion that should be restricted that we have not mentioned? Yes/No. If yes, please explain which types of promotion and why.

No.

15. Do you think that the price restrictions should apply to pre-packaged products which fall into the categories included in Public Health England’s (PHE) sugar and calorie reduction programmes and in the Soft Drinks Industry Levy (SDIL), and are classed as high in fat, sugar or salt (HFSS) (see Annex 3)?

No.

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. Nearly half (47.8%) of all the convenience sector’s sales could be affected by the proposed restrictions²⁴. This percentage is of affected sales categories against the total sales value of the convenience sector in the UK. In the table below, we have set out which unhealthy products captured by the PHE reformulation programmes and Soft Drinks Industry Levy would fall into the product categories that convenience retailers sell.

Affected sales categories include: Bread and bakery, canned and packaged grocery, chilled foods, confectionery, frozen foods, hot food-to-go, sandwiches, savoury snacks and soft drinks. This does not mean that the whole product category would be affected as they are not all unhealthy products in the product category but to demonstrate that the current scope of products is very broad. We have used the product category to demonstrate the extensive list of products captured by the restrictions in the convenience sector as we do not have

²⁴ ACS Local Shop Report 2018 (% of affected sales categories against the total sales value of convenience stores in the UK. Affected sales categories include: Bread and bakery, canned and packaged grocery, chilled foods, confectionery, frozen foods, hot food-to-go, sandwiches, savoury snacks and soft drinks. We do not have information on the % of affected individual products)

information of the percentage of the individual product lines that convenience retailers sell that would be affected.

Please see the table below for more information.

Convenience Sector Product Categories and % of Product Categories Sales	Products captured by the Public Health England Calorie Reduction and Sugar Reduction programmes and the Soft Drinks Industry Levy
Bread and bakery - 4.7%	Biscuits Bread with additions Cakes Food to go Morning goods
Canned & packaged grocery - 7.2%	Biscuits Breakfast cereals Cakes Cooking sauces and pastes Egg products/ dishes Pasta/ rice/ noodles with added ingredients and flavours Puddings Savoury biscuits, crackers and crispbreads Sweet spreads Table sauces and dressings
Chilled Foods - 13.6%	Egg products/ dishes Food to go Meal centres without carbohydrate accompaniment Meat, fish and vegetarian pastry pies and other pastry products Pasta/ rice/ noodles with added ingredients and flavours Pizza Potato products Ready meals with carbohydrate accompaniment Prepared dips and composite salads as meal accompaniments Puddings Sausages (raw and cooked) and sausage meat products Table sauces and dressings Yoghurt and fromage frais
Confectionery - 6.2%	Chocolate confectionery Sweet confectionery
Frozen Foods - 2%	Ice cream Meal centres without carbohydrate accompaniment Meat, fish and vegetarian pastry pies and other pastry products Pasta/ rice/ noodles with added ingredients and flavours Pizza Potato products Ready meals with carbohydrate accompaniment Puddings Sausages (raw and cooked) and sausage meat products
Hot food-to-go - 1.5%	Egg products/ dishes Meat, fish and vegetarian pastry pies and other pastry products

	Pizza Sausages (raw and cooked) and sausage meat products
Sandwiches - 2.8%	Food to go
Savoury Snacks - 3.1%	Crisps and savoury snacks Food to go Savoury biscuits, crackers and crispbreads
Soft drinks - 6.7%	Milk based drinks and fruit juices which are exempt from the Soft Drinks Industry Levy Soft drinks in scope of the Soft Drinks Industry Levy

We believe that any definition of the foods affected by the restrictions would have to consider what products or foods can contribute to a healthy diet. Some of the foods currently in scope of the regulations do have nutritional value and do contribute to a healthy diet. We believe that instead of providing an extensive list of products that retailers would need to ensure that they are compliant with, which would be incredibly time consuming and administratively burdensome, the government should narrow the scope of products that would be affected by the regulations. We believe that the government should follow the Scottish Government's proposals to only include 'discretionary foods' within scope of the restrictions. However, while this definition is more straightforward to implement as the foods caught within the 'discretionary foods' are typically unhealthy products and would be easier to identify, they still are problematic as the restrictions on where products can be located in-store is both problematic and challenging in itself regardless of which products are in scope.

The extensive list of products currently being proposed could also lead to more confusion as a lot of the products listed are not typically associated with being unhealthy. Customers may also be confused if retailers are forced to split the product categories and relocate them to different areas in the store to ensure that they are compliant with the regulations. However, we have heard from retailers anecdotally that they would want to avoid customer confusion and will ensure that they do not separate product categories in store when relocating these products. So effectively, the government would be restricting the location of the majority of food products sold in convenience stores rather than just products which are unhealthy. The government's current proposals could affect 47.8% of the products that retailers' sell, while the Scottish Government's proposals could affect 29.9% of retailers' sales. As such, narrowing the scope of products affected by the restrictions would be more manageable as there are fewer products affected.

The definition of foods within scope must 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? Would the scope of products change depending if the product categories captured by the Public Health England reformulation programmes changed? As identified in the Evaluation of the Healthcare Retail Standard in Scotland, "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."²⁵ Therefore, the government must provide clear guidance to retailers on how they can identify products which are within the scope of the regulations. The government's impact assessment for the restrictions in their current form estimates that retailers would need 2 minutes to identify each product caught by the

²⁵ [NHS Health Scotland - Evaluation of the Healthcare Retail Standard](#)

regulations, which would be extremely burdensome. Limiting the scope of products could mean that it may be easier for retailers to identify the products in scope.

16. Do you think any other product categories should be included in these restrictions?

No. The inclusion of other product categories will only increase the burdens on retailers and add to the complexities of the regulations.

17. Do you think any of these categories should not be included?

Yes, as stated in response to Question 15, we believe that the scope of the products affected by the regulations should be narrowed to ensure that it is workable for retailers. Instead, we believe that only 'discretionary foods' as proposed by the Scottish Government should be affected.

18. Do you think that the price restrictions should also apply to free refills of sugarsweetened beverages in the out-of-home sector, if they are in scope of the SDIL, including where they could be a part of a meal deal?

No.

19. For food and drink consumed outside of the home, are there other types of price promotion that should be restricted?

No.

Location restrictions

20. Which of the following options do you think is the most appropriate to achieve the aims of this policy:

Option 1 - We propose that the location restrictions should apply to the following locations: store entrances, ends of aisles and checkout areas (see Annex 2).

Option 2 - We are open to alternative suggestions from stakeholders as to how this policy could be implemented. If you are proposing an alternative option, please explain how your preferred option would better deliver the aims of this policy, how it would be delivered and whether there would be any practical and/or implementation issues that we should be aware of.

Neither

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. In England, 57% of convenience stores are smaller than 1,000 sq.ft., 33% are between 1,000 – 2,000 sq.ft. and 10% are between 2,000 and 3,000 sq.ft.²⁶. As such, the proposals to restrict the location of unhealthy foods in convenience stores would present practical challenges for retailers to implement, particularly as the restrictions would affect a

²⁶ ACS Local Shop Report 2018

whole range of areas, including check out, end of aisle, and store entrances. 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-store²⁷. 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 three areas are targeted in-store.

The government should also consider the implications to relocate seasonal products as this will also have a disproportionate impact on small shops. Convenience stores will not typically have dedicated locations for these products unlike supermarkets, which have dedicated seasonal aisles. Therefore, seasonal products in small stores can be found in the proposed restricted areas as these are the only places in-store that retailers can locate these products in. If the government decide to introduce the restrictions on location of unhealthy products in-store, this could provide a competitive advantage for supermarkets which would not be required to relocate seasonal aisles which are still in prominent areas 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 meaningless²⁸." Therefore, the government should consider whether an exemption for stores smaller than 280 sqm should be introduced to reduce these operational challenges and that the regulations do not disproportionate affect small shops from their larger counterparts.

Restrictions on siting would also have implications for larger convenience stores²⁹. Convenience retailers in England not only provide a range of grocery products but also a large number of services in-store, including Post Offices (23%), bill payment services (64%), and free to use cash machines (46%)³⁰. They continue to incorporate new services, particularly if banks or Post Offices close in their local area – wanting to maintain the service for their local community. We have concerns that the range of products and services that convenience retailers offer could be implicated if the government introduce restrictions in siting. To comply with the restrictions on location, convenience retailers will need to move unhealthy products within scope of PHE's reformulation programmes from restricted areas. While this could be a simple adjustment, for example, switching healthy products 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. Making these difficult decisions could also deter retailers from further investing in their store.

²⁷ ACS Voice of Local Shops Survey August 2018

²⁸ [University of Stirling - Identifying and Understanding the Factors that can Transform the Retail Environment to Enable Healthier Purchasing by Consumers](#)

²⁹ Between 1,000 and 3,000 sq.ft.

³⁰ ACS Local Shop Report 2018

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 38% of convenience stores in England are isolated, with no other retail or service businesses close by and 36% are located on a small parade with up to five retail/service businesses close by³¹. This demonstrates how important the offer that a convenience store has to its local community. The 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.

As set out above, the proposed restrictions on where products can be located in-store will present significant operational challenges for retailers, but it will also come at a financial cost to them as well. We do not believe these costs have been accurately reflected in the impact assessment. Please see our response to Question 35 for more information.

21. Do you think that the location restrictions should apply to all of the following locations: store entrances, ends of aisles and checkout areas?

No.

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 (see Annex B for examples of convenience store layouts to demonstrate the different formats that convenience stores operate in). It also means that the restrictions will affect every convenience store differently and the restrictions on siting of products in store could range from minimal to significant disruption depending on that store's layout.

Moreover, the location restrictions should not apply to store entrances, end of aisles and check out areas. The more restricted areas the more challenging it will be for convenience retailers to comply with the regulations and the more disruptive it will be to their business to comply. The government would need to provide clear legal definitions of restricted store locations giving retailers and enforcement officers certainty about what locations are in scope.

22. Do you currently use or do you know about any official definitions for these locations?

No.

There are no official definitions for the locations prescribed in the consultation, which means that the government must carefully consider how they develop their definitions as they must be clear and easy to understand, not just for retailers but also for enforcement officers. We believe that it will be difficult for retailers to implement and local authorities to enforce the restriction without prescriptive definitions of the restricted locations which could mean that enforcement is entirely subjective. However, the government should also consider that if the

³¹ ACS Local Shop Report 2018

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.

Please see the table below which includes calls for further clarity on aspects of the different definitions of restricted location in-store.

<i>Proposed Definition</i>	<i>Questions for Further Clarity</i>
Checkout area: the till point or a self-checkout area and the surrounding floor space area, as well as the queueing areas leading to the till point or self-checkout.	<ul style="list-style-type: none"> - What is the definition of a till point? Is this just the counter? Or does it extend to other areas? E.g. the whole of the counter and any shelving units integrated into it? - What is the definition of a self-checkout area? How does this work for stores which have digital payment and do not have a dedicated self-checkout area? - Surrounding floor space area is too vague. How much floor space would this capture around the check out area? How many metres? - Queueing areas is too vague. What is the definition of a queueing area? Convenience stores often do not have a dedicated queueing area, but customers may queue down a certain aisle. Would this also be captured? How would that be defined?
End of aisle display: the point of purchase advertising of products placed at the ends of shelf rows in stores, or on separate units adjacent to the ends of shelf rows.	<ul style="list-style-type: none"> - What is a point of purchase? Is the product being purchased at the end of an aisle? Or is it at point of choice? - If the products are not being 'promoted' or 'advertised' at the end of an aisle, then would they be compliant? For instance, if tinned products are kept at the end of aisle as their permanent locations, would this be included? - 'Placed at the ends of shelf rows in stores' – would this also capture aisles where products are located in the final shelving unit on each end? Does the definition need to specify that the end of aisle display is facing a different direction to the aisle itself? - Would the definition capture aisle ends which have wraparounds?
Store entrance display: the display of products on units/shelves placed at/in the vicinity of the store entrance(s), including in front of or surrounding the entrance(s).	<ul style="list-style-type: none"> - What is the definition of a unit? - Vicinity is too vague? Is there a set distance that shelving or units could be placed near the store entrance to be compliant? - What is the definition for front of entrance? Currently too vague, is there a set number of metres that unhealthy products can be displayed front of the entrance? - What is the definition of 'surrounding the entrance'? Currently too vague, is there a set number of metres that unhealthy products can be displayed surrounding the entrance?

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 affected unhealthy products. 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. Please see Annex B for examples of different convenience store layouts which demonstrate how complex the sector is and how the definitions would present challenges for small format retailers as they may not have the space in-store to move the location of products – this could be mitigated through a small shop exemption.

23. Do you think there are other locations inside stores where the restrictions should apply to?

No.

Additional restrictions on where products can be located in-store would only increase burdens on retailers and exacerbate the complexity of the regulations.

24. Do you think that the location restrictions should apply to all products (whether prepackaged or non-pre-packaged) which fall into the categories included in PHE's sugar and calorie reduction programmes and in the SDIL, and are classed as HFSS (see Annex 3)?

See response to Question 15. We believe that the current list of products affected by the restrictions should be narrowed and that the government should instead use the Scottish Government's 'discretionary foods' definition to determine the scope of foods that would be affected.

The scope of products affected by the restrictions on location should also be consistent with the scope of products affected by the restrictions on multi-buy promotions to prevent additional burdens and complexities to the regulations.

25. Do you think any other product categories should be included in these restrictions?

No.

26. Do you think any of these product categories should not be included?

See response to Question 17. We believe that the scope of the products affected by the regulations should be narrowed to ensure that it is workable for retailers. Instead, we believe that only 'discretionary foods' as proposed by the Scottish Government should be within scope of the regulations.

Definitions

27. Do you think that the 2004/5 Nutrient profiling model (NPM) provides an appropriate way of defining HFSS products within the food and drink categories proposed for inclusion in this policy (see Annex 4)?

We agree that the 2004/05 nutrient profiling model (NPM) is an appropriate way of defining unhealthy products. We would welcome more information on how the foods in scope could be affected by the current review of NPM. The NPM has also been used to determine which foods should be classified as 'discretionary foods' in Scotland. However, we do not agree

with the scope of products that will be targeted by the regulations. We believe the list of products affected by the restrictions is far too extensive and instead the government should limit the products in scope of the regulations to 'discretionary foods'. This will not only make it more workable for retailers to comply with the regulations, but it will also make it consistent with Scotland which will reduce burdens for retailers trading across the UK.

The definition of foods within scope must be clear for retailers to understand and be well communicated as it could present challenges for retailers to implement any restrictions. While the NPM is an established model to determine unhealthy foods, it will not be straightforward for smaller retailers to identify the products which are in scope of the products and we have concerns to how a retailer would find out whether a product would be affected. For example, would a retailer be required to check every ingredient label and use NPM to understand if it is captured by the restrictions? Or would there be new labelling which retailers must know to recognise? If smaller retailers are required to determine unhealthy products using the NPM model, the government must provide support and guidance to help them do so. Online calculators could be useful tools, however, it would still be difficult to calculate an NPM 'score' to determine whether the product is affected by the regulation. If the regulations are introduced, we would welcome further engagement with the Department of Health and Social Care on what support they could develop for smaller businesses to help them comply with the restrictions.

28. Do you think that micro, small, medium and large businesses should be defined by how many employees they have, as defined in the EU recommendation 2003/361 (see Annex 5)?

We believe that the most appropriate and effective exemption would be for shops smaller than 280 sqm from the restrictions on where unhealthy products can be located in store.

29. Do you think we should consider other ways to define businesses apart from the number of employees, such as floor space/size or turnover? Yes/No. If yes, please explain which methods you think we should consider and why.

Yes. We believe the most appropriate and effective exemption would be for shops smaller than 280 sqm from the restrictions on location of affected unhealthy products in-store. This exemption makes the most sense to reduce burdens on retailers as the restrictions on location of products in-store is intrinsically linked with where unhealthy products can be located. While restrictions on the location of products in-store presents operational challenges for all retailers, for smaller format retailers, this could mean that they have to overhaul the whole store layout in order to comply.

Businesses and products out of scope

30. Should the price restrictions apply to the businesses and products below (see Annex 5):

We do not think the restrictions on multi-buy promotions should not be introduced and therefore not apply to any business.

31. Should the location restrictions apply to the businesses and products below (see Annex 5):

Very small stores.

Space is always at a premium in convenience stores, therefore we believe that the location restrictions should not apply stores smaller than 280 sqm, the typical size of a convenience store. Schedule 1 of the Sunday Trading Act 1994 uses 280 sqm as the cut-off point for a small shop, which is widely understood amongst industry. This definition has also been used in other legislation in England such as the Employment Rights Act 1996, Tobacco Advertising and Promotion (Display) Regulations 2010 and the Tobacco Advertising and Promotion (Display of Prices) Regulations 2010. In England, 57% of convenience stores are smaller than 1,000 sq.ft., 33% are between 1,000 – 2,000 sq.ft. and 10% are between 2,000 and 3,000 sq.ft.³². We believe that using a widely accepted definition already set out in legislation would be the most objective and easily-understood way to define a small shop.

We believe if small shops are required to comply with the regulations, that this will present significant costs and 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. 38% of convenience stores in England are located in isolated areas, therefore, their local community relies on their local shop³³. Restrictions on unhealthy 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.

The nature of the convenience sector means that a store entrance, checkout area, and end of aisle will have different interpretations to different convenience stores. Unlike larger food retailers, convenience stores do not have a set store layout and instead each convenience store's format is different (please see Annex B for examples of different convenience store layouts). Therefore, the restrictions on siting of products in store could range from minimal to significant disruption depending on the store layout. While prescriptive definitions would offer clear guidance to retailers and enforcement about the regulations, they present challenges for smaller stores as they may not physically have the space in-store to move the location of the products. This could be mitigated through a small shop exemption so that the government can use prescriptive definitions of the restricted locations instore.

32. Are there any other businesses and/or products that should be out of scope of the price and location restrictions?

No. As stated throughout our submission, we believe that shops smaller than 280 sqm should be exempt from the restrictions on where unhealthy products can be located and that the scope of products caught should be narrowed to 'discretionary foods' as proposed by the Scottish Government.

Policy implementation

33. How much time would businesses need to prepare for implementation? Please explain your answer.

³² ACS Local Shop Report 2018

³³ ACS Local Shop Report 2018

ACS recommends that the government allow for a 24-month implementation period (at minimum) to allow for businesses to comply with the regulations. The implementation period must reflect and take into account the extensive changes that the 38,377 convenience stores in England will need to undertake to become compliant with the regulations, including: familiarising themselves with the regulations, identifying which products are in scope and not in scope of the regulations, planning new store layouts, purchasing new shelving equipment, contractor and staff time to carry out the changes to the store layout, and costs to train staff on the changes to store layouts and planograms to ensure ongoing compliance. The implementation period must also reflect the changes that retailers will need to undertake to become compliant with the restrictions on multibuy promotions. Retailers will also need to familiarise themselves with the restrictions on multibuy promotions, identify which promotions are in and out of scope, which products are affected and which upcoming promotions that may be affected, adapt future multi-buy promotions, train store colleagues, and sell through non-compliant stock such as unhealthy products with 'extra free' labelling.

The implementation period also needs to take into account the resources available to retailers so they can make changes in-store to comply with the restrictions on location of unhealthy products. Many retailers will outsource their store fitters and merchandisers which means if all 38,377 stores are required to make the changes at the same time in a short period that there may not be enough resource or the availability to make the changes in every store in England in time to comply with the regulations.

34. DHSC will provide guidance and methodology that will help businesses to know which products can or cannot be promoted. What other support is needed to put this policy into practice?

Guidance should be developed for enforcement officers to provide information on how the regulations should be enforced including clear definitions of restricted locations in-store and the types of promotions that are restricted.

The Department of Health and Social Care should also allow the regulations to be in scope of Primary Authority. As the proposed restrictions on the promotion and marketing of affected unhealthy 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 England. 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 businesses³⁴. 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.

35. Would these restrictions cause any implementation or other practical issues for particular businesses that we have not considered in this consultation?

The proposed restrictions on where products can be located in-store will present significant operational challenges for retailers, but it will also come at a financial cost to them as well. It

³⁴ More information about ACS' Assured Advice scheme is available here: <https://www.acs.org.uk/advice>

is not as straightforward as swapping affected unhealthy foods from a restricted area with healthy foods. From conversations with retailers, they estimate that they will face costs to adapt their store to be compliant with the restrictions on siting, including: relocating supply of refrigeration, freezer and hot food-to-go equipment; making temperature changes for refrigeration equipment to suit a new product layout; construction, design and management costs; health and safety surveys; changes to existing units; new units; and sales lost due store closure. These costs have not been accounted for in the government's impact assessment, which only estimates the costs of retailers' staff time to plan and implement the changes. As such, we have looked to fill this evidence gap by asking our members' store layout and product range teams their estimates for complying with the restrictions and the types of costs that they would incur from doing so.

From these conversations with members, they estimate that the cost to comply with the regulations could range from £1,600 per store to £12,600 per store. As mentioned in our response, the restrictions on the location of products in convenience stores could range from minimal to significant disruption depending on the store layout, which is made evident by the range of costs that retailers have estimated that the restrictions would have on their business. It may also be due to the lack of clarity around the definitions of location and therefore has been left open to interpretation which could be why the costs differ. However, if we apply the low and high estimated costs per store to the whole convenience sector in England to comply with the regulations on restriction on siting, this would range from £61,403,200 to £483,550,200.

These costs are far higher than the government impact assessment's costs to the retail sector which suggest that to comply with the restrictions on location of products, it would cost retailers just under £30m³⁵. We believe that the impact assessment underestimates this cost because 1) the impact assessment has significantly underestimated the number of convenience stores in the sector and 2) the impact assessment does not take into account transition changes such as adapting store layout.

36. We welcome views through the consultation on possible approaches to enforcement. Do you have any suggestions for how we can enforce the restrictions in a way that is fair to businesses?

We would welcome clarification on the government's plans for enforcement of the regulations. Currently, the consultation does not propose any sanctions for non-compliance with the regulations. We would urge the government to carefully consider what the sanctions would be for non-compliance. We would not support the government using Fixed Penalty Notices to ensure compliance as local authorities can retain the money raised from Fixed Penalty Notices, which could mean there is 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 believe that the government should 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 government on the development of this guidance. As stated earlier in our response, we believe that it will be difficult for local authorities to enforce the restriction

³⁵ Option 3 in the impact assessment (not taking into account the cost of retailers' lost profits)

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 affected unhealthy 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 England. 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 businesses³⁶. 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. We believe that the government should include the regulations within the scope of Primary Authority.

Impact Assessment questions

37. We have calculated illustrative transition costs in both impact assessments. Do these calculations reflect a fair assessment of the costs that would be faced by your organisation/business?

No.

The government's impact assessment severely underestimates the cost that the restrictions would have on the convenience sector. Currently it estimates that there are 13,522 convenience stores in the UK when there were 42,238 convenience stores in 2017 in the UK according to IGD. The government's impact assessment is incorrect because data used from IGD Data Centre has been misinterpreted; it is not meant to be used to create a national picture of the sector. ACS' Local Shop Report found that in 2018 there were 46,262 conveniences, 38,377 of which are located in England³⁷. We believe that the impact assessment should be updated to reflect the actual number of convenience stores and therefore reflect the true cost that the restrictions would have to retailers. We also believe that the impact assessment should be focused at calculating the impact that the restrictions would have on the grocery market in England, rather than the UK as a whole.

The impact assessment does not take into account the costs that microbusinesses would face. We do not agree with the Department's decision to not include microbusinesses within the scope of the impact assessment given that the consultation proposes that they would be in scope of the regulations, especially as 72% of the convenience sector is made up of independent retailers³⁸, 24% of which employ family only – 45% of employees in the sector also work less than 16 hours a week³⁹ - far more than 1,680 small food businesses that the impact assessment current suggests there are in England. We believe that the government must update the impact assessment so that it considers the impact that the regulations would have on microbusinesses given that they are not out of scope of the regulations and

³⁶ More information about ACS' Assured Advice scheme is available here:
<https://www.acs.org.uk/advice>

³⁷ ACS Local Shop Report 2018

³⁸ ACS Local Shop Report 2018

³⁹ ACS Local Shop Report 2018

as advised by the Regulatory Policy Committee that “evidence from the consultation must be sought to strengthen the SaMBA at final stage”⁴⁰.

We do not agree with the government’s use of the EHI Retail Institute study in the impact assessment to make assumptions about the use of promotions in the UK grocery market. This is because the study does not focus on the UK market, provide an insight into the whole grocery market. Instead the study looks at the German market, is limited to German supermarkets not smaller stores. The reference to the study is limited to data in the press release rather than the study itself which may not be a true reflection of the study as a whole.

38. Are you aware of any other data sources on sales in the out-of-home food market and the nutritional content of the products sold?

N/A

39. Are you aware of any other data sources available which would improve our estimates of the number of food retailers and out-of-home food outlets?

As set out in our response to Question 37, ACS’ Local Shop Report provides a comprehensive insight into the convenience sector. For more information about the sector and the make up of the sector, please contact Katie Cross, ACS Research Manager, by emailing Katie.Cross@acs.org.uk.

40. How will these proposals affect the relationships between manufacturers and retailers (e.g. sales agreements, sales targets, the future relationships and profitability)?

We do not hold data on the extent of outlets selling or leasing display spaces in the convenience sector.

We would welcome more information on who would be responsible to comply with the regulations specifically in circumstances where manufacturers visit retailers and assemble a temporary display unit and place in-store.

41. Is it reasonable to assume that retailers and out of home businesses are inspected by Trading Standards every 3.5 and 2 years, respectively?

No.

From conversations with ACS’ Primary Authority partners, Surrey and Buckinghamshire Trading Standards, it is not as straightforward to state that retailers are visited once every 3.5 years. It will vary geographically, depending on resources. For example, local authorities may only undertake intelligence led enforcement if they have one officer where another local authority may have more officers and therefore can undertake more proactive enforcement. But generally, enforcement will be intelligence led. Where there is proactive enforcement this will be on a project basis and product led, for example, illicit tobacco. Where these visits

⁴⁰ [RPC: Restricting checkout, end-of-aisle, and store entrance sales of food and drinks high in fat, salt, and sugar \(HFSS\)](#) and [Restricting volume promotions for high fat, sugar, and salt \(HFSS\) products](#)

occur, they will focus on this product compliance rather than looking at other areas. Proactive enforcement is dependent on funding for that particular project.

The risks of a particular product range will also determine the frequency of visits, for example, retailers who store and sell fireworks will have at least one visit per year, but this is generally focused on fireworks enforcement rather than ensuring compliance with other regulations. While out of home businesses will be visited more often by enforcement officers, but these will be Environment Health Officers rather than trading standards officers.

If there is funding from the Department of Health and Social Care to trading standards to carry out enforcement of the restrictions for promotions and siting, our understanding is that there will be a flurry of short term projects, including mailouts (which count as a visit to the business even if there is not a physical visit), but it will then fall back to intelligence led enforcement.

The assumption that trading standards visits a retailer every 3.5 years is also based on a reference to the Wales Heads of Trading Standards website which states that visits to retailers “can vary between two and five years depending on the size of your business and the type of food you are selling”. Using 3.5 years an average between two to five years is not representative of the experience of retailers. Moreover, trading standards in England is a separate entity to trading standards in Wales and therefore should not be used to estimate how often retailers are visited by their local trading standards officers.

42. Is there any additional evidence that would improve our understanding of the level of compensating behaviour which might occur?

N/A

43. Do you have any further evidence or data you wish to submit for us to consider for our final impact assessment or any specific comments on the methodology or assumptions made?

As stated in response to Question 37, the impact assessment suggests that there are 13,522 convenience stores in the UK, 68% less than the 42,238 that were actually in the sector in 2017⁴¹. The government’s impact assessment severely underestimates the costs that the restrictions would have on the convenience sector. The impact assessment must be updated so that it provides an accurate estimate of what the cost of the restrictions would have on convenience retailers.

This means that the costs associated with enforcement are also significantly underestimated. In the table below we have compared the government’s impact assessment enforcement costs for the convenience sector with the correct the number of convenience stores in UK and in England to demonstrate the actual cost of enforcing the restrictions on siting in-store.

Source	Number of Convenience Stores	Enforcement Cost (per year)	Opportunity Cost
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⁴¹ IGD 2017

Government Impact Assessment (visits every 3.5 years)	13,522 (in the UK in 2017)	£27,652	£110,608
ACS (visits every 3.5 years)	42,238 (in the UK in 2017)	£86,377	£345,508
ACS (visits every 2 years)	38,377 (in England in 2018)	£137,342	£549,368
ACS (visits every 5 years)	38,377 (in England in 2018)	£54,937	£219,748

The table demonstrates that the impact assessment has underestimated the costs of enforcement (only for the convenience sector) by 68%. Moreover, since the assumption of 3.5 years is an average of trading standards estimating that a retailer would be visited from 2 to 5 years (more information in Question 41), the table provides a low and high estimate for the costs of enforcing restrictions on location of unhealthy products for the convenience sector. The table suggests that enforcement could cost between £54,937 to £137,342 each year for the convenience sector.

As recognised by the Regulatory Policy Committee, the impact assessment should refer to the actual costs to the Department of Health and Social Care rather than using a multiplier to calculate opportunity costs⁴². We would welcome the final impact assessment to estimate the costs that the government would incur from enforcing these regulations.

Location restrictions IA

44. Is our assessment of the major supermarkets' approach to placing HFSS food and drinks at checkouts accurate?

N/A

45. Is there evidence to suggest that smaller retailers are voluntarily restricting the placement of HFSS food and drinks in stores?

72% of convenience stores in the UK are run by independent retailers, 36% of which are symbol group retailers, like Spar UK, Nisa Retail, Londis⁴³. Unlike franchises, symbol groups are usually only based on a wholesale purchase agreement and common branding - there are no formal requirements on stores to follow strict operating procedures. This makes it extremely challenging to introduce voluntary policies such as restricting unhealthy food and drinks at the checkout area in-store.

46. Is there any additional evidence that would improve our estimates of the use of location promotions within the domestic retail or out of home markets, the sales uplift they provide and proportion of sales they represent?

We do not hold any additional evidence.

Price restrictions IA

⁴² [RPC: Restricting checkout, end-of-aisle, and store entrance sales of food and drinks high in fat, salt, and sugar \(HFSS\)](#) and [Restricting volume promotions for high fat, sugar, and salt \(HFSS\) products](#)

⁴³ ACS Local Shop Report 2018

47. Is it reasonable to assume that businesses will switch to using price cuts instead of volume offers to promote HFSS products?

As a consequence of the restrictions on multibuy, larger food retailers may use other promotional strategies, such as temporary price promotions and 'everyday low prices'. Smaller retailers do not have the same purchasing power as larger retailers which means they may not be able to compete to the same degree with price reductions and therefore could be competitively disadvantaged by the regulations.

48. To what extent are price promotions offered in the out of home sector? Please provide evidence which could be used to improve our understanding.

N/A

49. Do consumers respond in a similar way to price promotions offered in the out of home sector and those offered in supermarkets?

N/A

50. Is the approach used in the impact assessment suitable for assessing the impact on consumers and specifically for assessing the impact on consumer surplus?

As part of the government's consideration of the impact that the regulations would have on consumers, the location where these purchases are taking place should be taken into account. Supermarkets dominate food purchases across all main product categories, including purchases of high fat, salt or sugar products⁴⁴. Only 3% of consumers in England use their local convenience store to purchase their main food shop compared to 93% of consumers who visit supermarkets to purchase their main food shop⁴⁵. The majority of consumers in England (62%) instead use convenience stores when they have run out of something⁴⁶. It is important that the 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 in-store which ultimately is to change consumer behaviour would disproportionately impact smaller retailers as they do not dominate consumer purchases.

51. How would retailers adjust their promotion strategies to meet the 80/20 target?

We do not support the 80/20 target. This proposal would mean further complexities to the regulations and would be administratively burdensome for retailers, particularly smaller retailers, to implement. This proposal is also dependent on the use of electronic point of sale (EPoS) infrastructure in store, which 31% of convenience retailers do not have.

Equalities Assessment questions

52. Do you think that the proposed policy to restrict promotions of HFSS products by location and by price is likely to have an impact on people on the basis of

⁴⁴ Jericho Chambers Consumer Attitudes Consumer Polling 2016

⁴⁵ Jericho Chambers Consumer Attitudes Consumer Polling 2016

⁴⁶ Jericho Chambers Consumer Attitudes Consumer Polling 2016

their age, sex, race, religion, sexual orientation, pregnancy and maternity, disability, gender reassignment and marriage/civil partnership?

If restrictions were imposed on bricks and mortar retailers but not on online operators those sectors of the population who rely on physical would be disproportionately disadvantaged.

53. Do you think that any of the proposals in this consultation would help achieve any of the following aims:

- **Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010**
- **Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?**
- **Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it?**

No

54. If you answered yes to the previous question, please explain which aims it would help achieve and how.

N/A

55. If you answered no to the previous question, could the proposals be changed so that they are more effective? If yes, please explain what changes would be needed.

N/A

56. Do you think that the proposed policy to restrict promotions of HFSS products by location and by price would be likely to have an impact on people from lower socioeconomic backgrounds?

In their current form, the regulations would apply to local shops. To comply with the restrictions on location, convenience retailers will need to move affected unhealthy products 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 38% of convenience stores in England are isolated, with no other retail or service businesses close by and 36% are located on a small parade with up to five retail/service businesses close by⁴⁷. This demonstrates how important the offer that a convenience store has to its local community and also how the restrictions could 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.

Further points

⁴⁷ ACS/SGF Local Shop Report 2018

57. Is there anything else that you would like to tell us or any more information that you would like to provide for this consultation?

We would welcome further engagement with the Department of Health and Social Care as they consider the responses to the consultation and finalise the impact assessments. We can provide more information about the convenience sector which can be used to fill evidence gaps in the impact assessment. For more information, please contact Julie Byers, ACS Public Affairs Manager by emailing Julie.Byers@acs.org.uk.

ANNEX A

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, McColl's 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

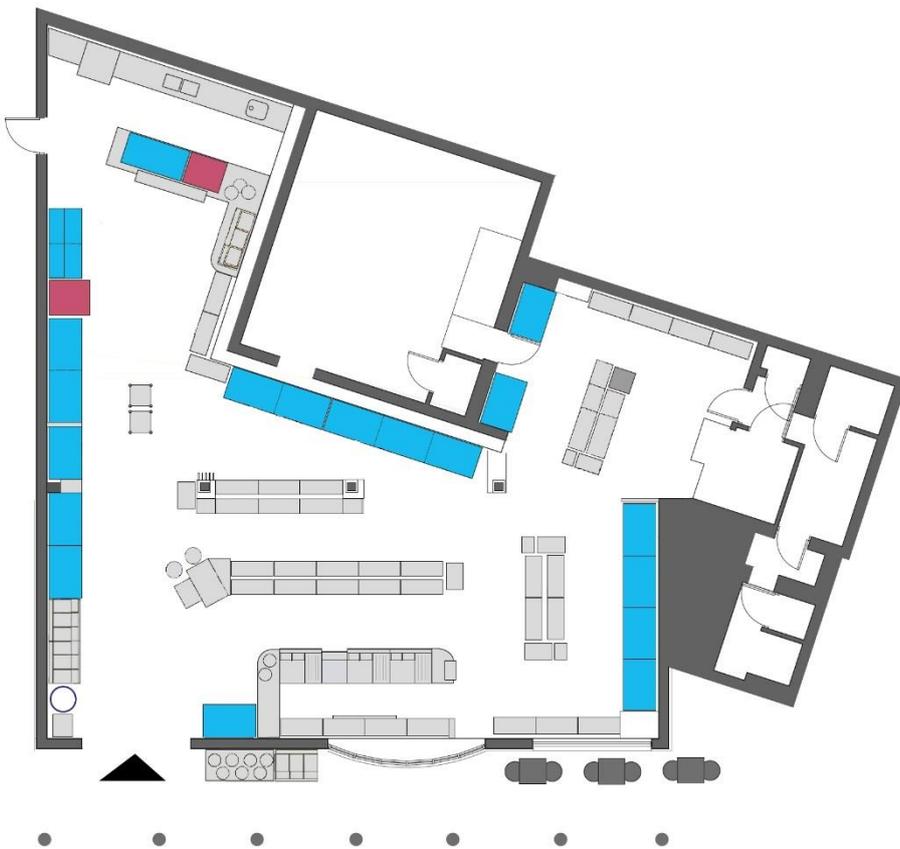
ACS conducts bespoke polling of its members on a range of policy issues, from crime and responsible retailing to low pay and taxation. This polling is conducted with retailers from all areas of the convenience sector.

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

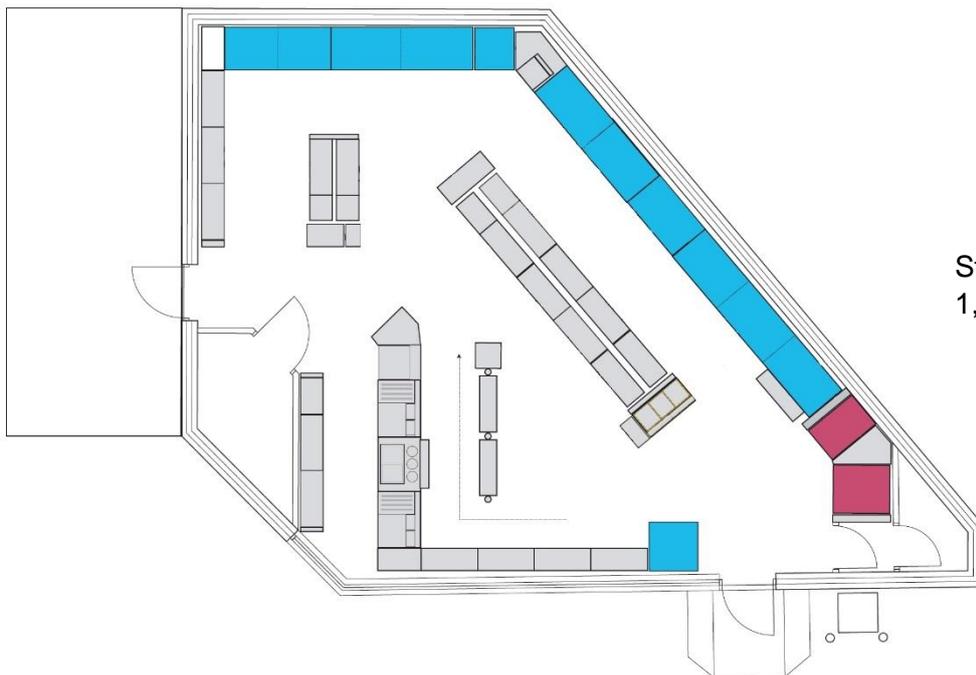
ANNEX B

Key

- Blue** – Refrigeration units
- Red** – Hot food-to-go units

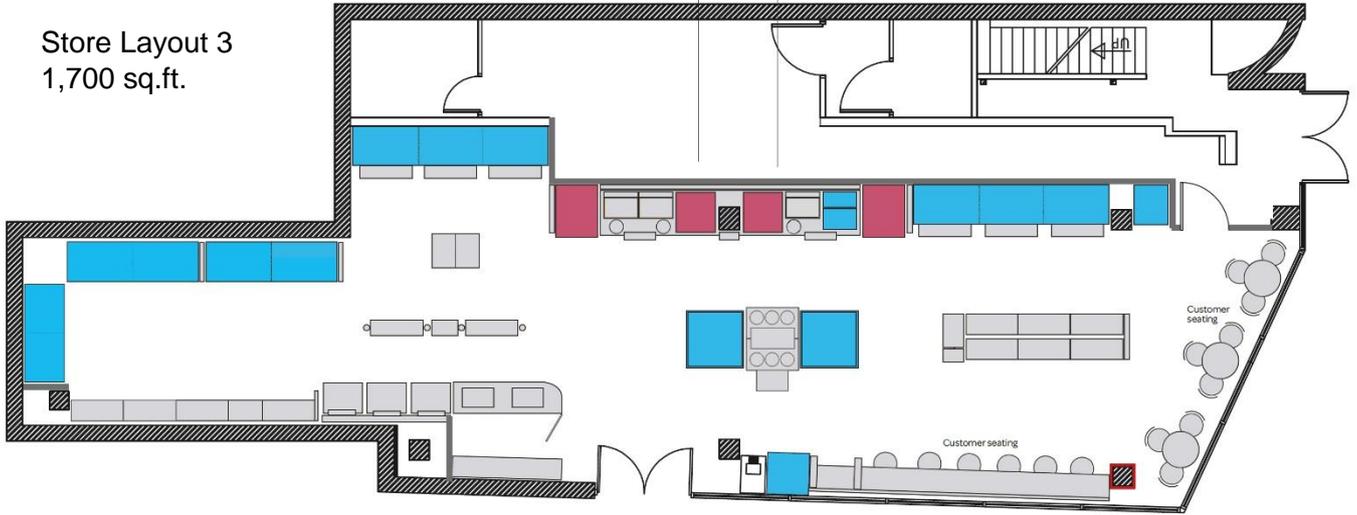


Store Layout 1
2,500 sq.ft.



Store Layout 2
1,100 sq.ft.

Store Layout 3
1,700 sq.ft.



Store Layout 4
2,700 sq.ft.

