

Promotions Restrictions

Tuesday 12th January

Eleanor O'Connell, Public Affairs Executive

Ed Woodall, Government Relations Director

Agenda

Item	Points to Agree
Obesity Strategy	<ul style="list-style-type: none">• Background and overview
DHSC Enforcement Consultation	<ul style="list-style-type: none">• Objectives• Proposals and scope
Evidence and Information	<ul style="list-style-type: none">• Key arguments• What we need from members
ACS Activity	<ul style="list-style-type: none">• Plan to influence• Support for members

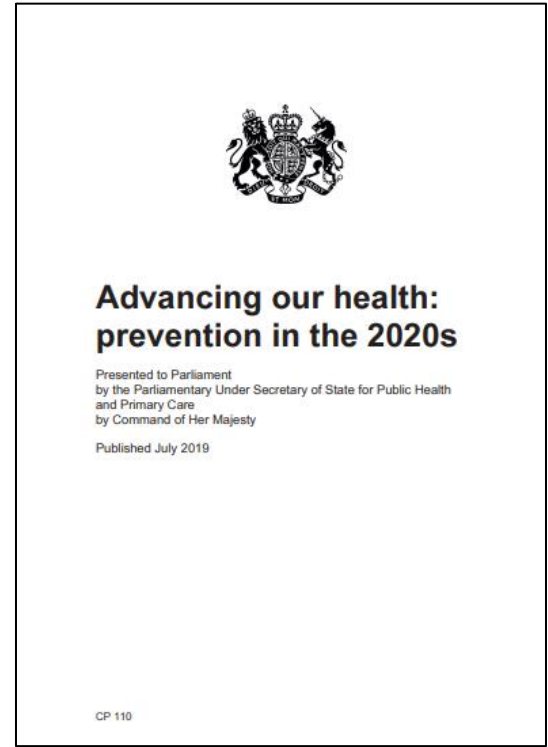
2019-2020: A focus on Prevention

July 2019 ‘Advancing our health: prevention in the 2020s’ identified obesity as a major health challenge that had not been successfully tackled.

- The Government stated it would publish Chapter 3 of the Childhood Obesity Strategy with action on infant feeding, labelling, food reformulation
- The green paper also committed to ending the sale of energy drinks to children

July 2020 Whilst the Scottish and Welsh Government’s opted to put obesity policy plans on hold due to the pandemic, Boris Johnson’s own experience of Coronavirus prompted a rapid review.

- New strategy was published in July with more focus on adults
- Includes measures previously consulted upon and new measures in light of links between obesity and serious illness or death from Covid-19



ACS Position and Activity

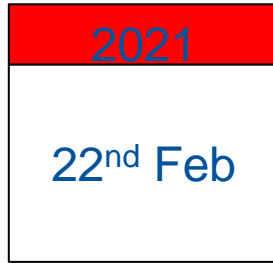
ACS has strongly advocated for a 3,000sqft exemption from location restrictions and will continue to hold this position

- **Policy Response** - ACS submitted a detailed policy response to the DH Consultation on Restricting Promotions, held further briefings with officials and submitted further written evidence
- **Parliamentary Engagement** - ACS briefed MPs in writing and in person at store visits on the impacts of siting restrictions on small shops
- **Engagement with SoS** – ACS letter to Health Secretary, supported symbol groups to write to Health Secretary, coordinated joint Conservative MP letter to Health Secretary

Enforcement consultation

- The enforcement consultation is limited to a discussion of the regulations
- Provides further scope to look at definitions included in the proposals
- The consultation is not an opportunity to review the policy
- ACS will be engaging in additional activity to influence the policy

Enforcement Consultation: Timeframes



8 week technical
consultation ends



Final Regulations
Published



Regulations
Implemented

ACS Objectives

- **Revert** to a 3,000sqft exemption criteria for location restrictions
- **Remove** symbol group retailers from being in-scope of location restrictions
- **Reduce** the impact of in-store definitions (checkout and queuing area, end of aisle and store entrances)

Businesses in scope and locations

Which stores are included?

- Medium and large businesses (50 or more employees)
- Symbol groups (total employees under business name is 50 or more)
- Symbol groups are defined as:
 - the **products provided in the franchise business**;
 - the **internal or external appearance** of the premises where the franchise business is carried on; or
 - the **business model used for the operation of the franchise business**, are agreed by the franchisor, and are similar to that of other undertakings in respect of which the franchisor has entered into comparable contractual arrangements.

Which stores are exempt?

- Stores with a floor area of less than 2,000sqft (185.8sqm)
- Business with less than 50 full time or part time employees

Businesses In Scope and locations

ACS Position and Arguments

- 3,000 sqft is widely accepted industry definition that is understood and easy to enforce
- Symbol group head offices have no operational control over symbol retailers sites
- Symbol groups are treated as small businesses in all other policy areas (rates, HMRC, bag charge etc)

Evidence and information needed

- Sunday trading legislation definition of 'designate trading area' instead of 'main shopping area'
- Examples of symbol group contracts
- Anonymised data on compliance with promotional activity
- All tax and regulatory mechanisms recognising symbol groups as small businesses

In-store Environment

What areas of the store are affected?

- Store entrance, end of aisle, checkout area

How are areas of the store defined?

- **“checkout area”** means a point in the store intended to be used by consumers to pay for products, including a self-checkout till and a counter at which a cash register is used (including the area behind such a counter)
- **“designated queuing area”** means an area where consumers are intended to queue when waiting to complete a purchase
- **“end-of-aisle display”** includes a separate display unit located adjacent to the end of a main shopping aisle (such as an island bin display)
- **“prohibited entrance area”** Option 1: of area equal to the smaller of 225m² or 5% of the store’s floor area or Option 2: “the prohibited distance” means a distance being the smaller of 15m or the following— (square root of (0.05 x area))

ACS Position and Arguments

- Stores over 2,000sqft do not always have distinct store entrances and queuing areas.
- Designate queuing area definition is too prescriptive, especially in Covid context or busy trading periods.
- **Option 2** is preferred definition for store entrance, but this will be difficult for enforcement officers to assess.

Evidence and information needed

- Planograms and store layouts for sites over 2,000sqft
- Store layouts showing dynamic queuing areas and impact of Covid social distancing measures
- View from trading standards (Primary Authority partners) on measurement of in-store environment

Volume Promotions

Which stores are included?

- Medium and large businesses (50 or more employees)
- Symbol groups (total employees under business name is 50 or more)

What promotions are in-scope?

- Multi buy promotion: “three for the price of two”, “3 for £10”, “buy 6 and save 25%”
- Free products: “fifty per cent extra free”, or “buy one get one free”
- Applies to promotions that are included on the packaging of food as well as to promotions that are communicated to a consumer via other means

What products are included?

- Public Health England’s Nutrient Profiling Model used to determine products in scope
- The following products are listed in the consultation document: Soft drinks, Milks and juice with added sugar, Crisps, Breakfast cereals, Confectionery including chocolates and sweets, Ice cream, desserts and pudding, Cakes and sweet biscuits, Croissants and pastries, Yoghurt, Pizza and Ready meals, Roast potatoes and chips, Breaded or battered meat and alternatives

Volume Promotions

ACS Position and Arguments

- Clearer definition of promotions in scope: meal deals, meal solutions, roll back
- There is uncertainty about lots of categories in-scope; Ice Blast, Ice Cream Milkshakes, Coffee Machines with syrups
- Discretion needed on products where NPM is not provided by suppliers i.e. SME suppliers

Evidence and information needed

- Examples of promotions that may fall outside of definitions; meal deals, price mark packs
- Examples of pre-packaged products where it is not clear about their exclusion

What checks will be made?

- whether the store is part of a medium or large business
- whether the internal store size is less than 185.8 square metres (2,000 square feet) 185.8 (exempt from location restrictions)
- the presence of any products that are part of the 'in scope' categories in a restricted volume or location promotion
- if there are products in these categories on volume or location promotions, to ascertain from the retailer how they have ensured that these are not HFSS, as defined by the 2004/5 NPM score

What are the penalties for non-compliance?

- businesses will be issued with improvement notices
- failure to comply with an improvement notice results in a fixed monetary penalty of £2,500
- a person has 28 days in which to make representations and objections to the regulator or to discharge liability
- there may be instances, such as repeat offences, where a different approach or penalty may be more appropriate

ACS Position and Arguments

- Information on contractual arrangements, store size, product range are not readily available at enforcement visits
- Costs associated with complex definition result in higher enforcement costs
- Clearer definitions to avoid confusion for retailers and enforcement officers
- Understanding NPM of products sourced from SME suppliers will be challenging for retailers and enforcement officers
- 3,000sqft definition much easier to establish

Evidence and information needed

- Examples of varying interpretations by enforcement officers

Overview: Information needed

- Number of your sites in scope of regulations
- Examples of symbol group/ franchise contracts
- Anonymised data on compliance levels with promotions and other commercial advice offered to symbol retailers
- Store Layouts/ Planograms of sites over 2,000sqft stores that do not have distinct entrances and till areas

Plan to influence

Technical Consultation

- High volume of industry responses
- Demonstrate complexity for retailers & regulators
- 3,000sqft is most practical solution
- Outline impact on small businesses
- ACS to co-ordinate responses from other industry groups

Campaigning

- Direct appeal to Secretary of State for BEIS and DHSC
- MP representation to Secretary of State on behalf retailers
- MP Parliamentary Questions

Symbol Head Office & Multiple Retailers

Action	ACS Support
Respond to technical consultation (by 22.02.21)	ACS Template response
Chief Executive Letter to Secretary of State for BEIS and DHSC (before 22.02.21)	ACS to develop briefing on key arguments but letters must be bespoke and demonstrate unique business impact
Encourage all impacted symbol retailers/ franchisees to response to consultation (w/c 18.01.21)	ACS to develop template response
Encourage all impacted symbol retailers/ franchisees to write to MPs (w/c 18.01.21)	ACS to develop template for retailers to send to MPs
Share contact details of impacted retailers with ACS (ASAP)	ACS to share template letter and consultation response with retailers

Symbol Retailers & Franchisees

Action	ACS Support
Respond to technical consultation (by 22.02.21)	ACS Template response
Letter to your MP (w/c 18.01.21)	ACS to develop template for retailers to send to MPs

Technical consultation

- Meet with DHSC officials
- Collate member information and respond to consultation
- Co-ordinate members responses to consultation
- Co-ordinate stakeholder responses to consultation (trade bodies/ enforcement community)

Campaigning

- Template letters for Ministers and MPs for retailers
- MP Briefings and Parliamentary Questions
- Look for media opportunities to communicate impact

Questions

Edward.woodall@acs.org.uk

Eleanor.O'Connell@acs.org.uk