

Ms Clare Haughey,
Convener,
Health, Social Care and Sport Committee,
Scottish Parliament, Edinburgh.

18 November 2025

Dear Ms Haughey,

The Food (Promotion and Placement) (Scotland) Regulations (SSI 2025/303)

Thank you for contacting us on 11 November 2025 relating to the regulations that your committee is considering. In the time available, we are not in a position to offer detailed scrutiny and reference our evidence; we assure you, nonetheless, that the assertions we make are each evidence based.

Obesity Action Scotland was established in 2015 to provide clinical leadership and independent advocacy on preventing and reducing overweight and obesity in Scotland.

The main aims of the Unit are:

- 1. To raise awareness and understanding of what drives obesity and the health problems associated with obesity and overweight with health practitioners, policy makers and the public*
- 2. To evaluate current research and identify strategies to prevent obesity and overweight based on the best available evidence*
- 3. To work with key organisations in Scotland, the rest of the UK and worldwide, to promote healthy weight and wellbeing*

Our organisation is focussed on the most important alterable influence on obesity, and that is the obesogenic environment we all live in, and which currently makes overweight the more likely outcome for the whole population – the majority of us are living with overweight, and that is no accident or reflection of individual weakness. Regulation of this environment, specifically the retail environment in the case of the regulations, is therefore a core topic in efforts to prevent and reduce overweight and obesity. If we don't act, decisively and at scale, the position will reliably worsen – the Policy Note attached to the regulation tells us that.

The regulations have been subject to no less than four consultations. Obesity Action Scotland commented on each occasion; our critique and suggestions are contained in these responses. The net effect in the document we are considering has been progressively narrower and more cautious intentions, with commensurate caution on scope, ambition and likely scale of effect. The outcome has broadly met with industry stakeholder's responses and not with public and third sector stakeholders – see page 4 of the Policy Note to the regulations.

We will focus our response on:

- *Whether the Regulations are likely to achieve the effect they intend*
- *Whether the Regulations are novel, groundbreaking or contentious as measures to achieve the policy aim.*
- *Whether there is going to be evaluation of the measure of a quality that derives with confidence an assessment of its effectiveness.*
- *Whether there will be an enforcement framework and resource that proportionately addresses the importance of the measure to population health.*
- *What lies behind the food and drink business view that their activities and the health consequences don't seem to figure?*

Whether the Regulations are likely to achieve the effect they intend.

The Government states the policy intention: *'The purpose of these regulations is to restrict the promotion and placement of targeted foods high in fat, sugar or salt (HFSS) where they are sold to the public. Regulations aim to make the balance of products available on promotion healthier; reduce overconsumption of HFSS products that can contribute to overweight and obesity; and contribute to reducing population levels of overweight and obesity and their consequent health harms.'*

The regulations are as set out in the response to consultation, issued in the summer. They are narrow in scope and we assume they are not for further alteration; they have plenty of exemptions (types of food and drink, types of offer and preparations such as temporary price reductions, meal deals – Regulation 3; type and size of business, premises, general rather than specialist retailers – Regulations 4-6; positioning of food and drink on promotion, such as temporary stands, near the entrance or exit – Regulations 7-9 etc.) – see detail also in the regulation part 7.2, and Schedule sections. We endorse the NCD Alliance's response that the omission of TPRs – Temporary Price Reductions – and Meal Deals from restrictions is a serious error, and will have consequences, blunting the effect of this Regulation. They set out a strong case for both measures, in evidence and in modelling future effects. The Committee should take these, and the issues raised by our Alcohol Focus Scotland colleagues, seriously. Not only is alcohol sale associated with food and other drink promotions, but alcohol is also an important source of excess calorie intake in adults.

A prominent exemption from scope in these and other policy proposals are energy drinks, that are subject of firm proposals elsewhere in the UK – this is a further serious shortcoming.

Evidence strongly suggests that regulations to restrict foods that are high in fat, sugar and salt (HFSS) are likely to have an equitable positive effect on consumer choices and eventually population health where the effect is sustained, but also that exemptions, workarounds and loopholes erode the effects of such provisions. The potential for a positive effect is not in doubt; scope and ambition is very limited and therefore the scale of effect is in doubt – even whether the effect is going to be distinct enough to be attributable, and large enough to be detectable.

Possible questions to pose Government representatives when the Committee comes to scrutinise the regulations might be:

Q. Given that diet, overweight and obesity are one of the top two priorities within the Scottish Government's recently published Population Health Framework; that many measures are often required to make a substantial difference to population health through changing the key nature, acceptability, availability, affordability of products that are harmful to health, is this regulation proportionate to the scale of the health challenge?

Q. Has the proposal struck the right balance between health interests (its policy aim), public and third sector stakeholders views, statutory organisations, and commercial stakeholders?

Whether the Regulations are novel, groundbreaking or contentious as measures to achieve the policy aim.

In our view - no, they are not. As the Policy Note tells us: '*The policy aligns with equivalent policies to restrict the promotion of less healthy food and drink in England and in Wales.*' So, similar measures are seen as evidence-based, acceptable and achievable in neighbouring jurisdictions, and therefore the same business environment as many of the commercial organisations viewing this set of regulations.

We would therefore suggest that the Committee need not spend much time debating whether the measures are expressed properly in regulation, or whether they are competent or enforceable - drafting, provision and enforceability are probably not in doubt as they have been examined and implemented in neighbouring jurisdictions.

The greatest detail on impact in the Policy Note is devoted to the regulatory and business burden. Business favours the relative lack of burden to them, in that England has already set the regulatory environment. We know from recent research (Insights from the HFSS policy evaluation, Aberdeen and Leeds Universities) that disruption to business when the regulatory environment changes can be significant: businesses wish to adjust and comply. We also know that series of changes is more costly and burdensome than one; we realise that the scope and ambition of these regulations is unlikely to be sufficient on its own to change the population's health significantly for the better; also that the health gap between England and Scotland may well remain.

We then face the same struggle: the public wants governments to protect their health - their appetite for protection and appropriate action is rising, according to the Policy Note citing FSS's surveys. Attempts to create a progressively pro-health environment are going to encounter the same resistance - against the wishes of businesses who dislike uncertainty, disturbance and high transaction costs of change brought on by external influences.

It might be prudent for the Committee to ask a specific question, and some pose some broader policy questions:

Q. Given the poorer overall health record in Scotland, including conditions and diseases associated with poor diet, overweight and obesity, what is the likelihood that the measures are, in time, going to be superseded by tighter and broader measures, aligning with and perhaps exceeding those of neighbouring jurisdictions, in a regulatory environment favouring health, given the current scope of Scottish Government proposals?

Q. Why not be bolder in one stroke? Why propose a set of regulations that have the minimum possible scope and ambition, when a bolder approach would be more likely to

achieve measurable population health benefit without the risk of needing to return to the issue in a relatively short time? Would this not have attractions for businesses?

Whether there will be independent and rigorous evaluation of the measure:

Impact assessments deal with several different approaches (pages 5 onward of the Policy Note). To begin with, the Equality Impact Assessment envisages effects on *'different population groups including people with protected characteristics....and children'*; Fairer Scotland impact identifies *'people socio-economically disadvantaged'* as potential beneficiaries; The children's rights and wellbeing assessment states *'The regulations are expected to improve the food environment, encouraging healthier food choices and supporting people, including children and young people, to maintain a healthy weight in line with the vision for everyone in Scotland to live healthier lives for as long as possible.'*

There is no expected beneficial effect on Island communities, although several have significant proportions of their populations who are people socio-economically disadvantaged (see above).

We will want to know whether the regulations have the expected effect, what is that effect, and why – in a complex area where other influences can affect the change one way and another.

So, the questions the Committee may wish to ponder are:

Q. How can we monitor and measure change, where it is likely to be complex and affect sub-populations – as the policy statement and several impact assessments have strongly suggested?

Q. Will businesses be much freer in sharing data that complete the picture of consumption patterns and consequences (made easier by data and artificial intelligence developments) – current research in the HFSS policy area recommends this development?

Q. Will there be investment in evaluation of measures to tackle overweight and obesity, on a par with previous internationally acclaimed frameworks for tobacco and alcohol related harms that centred on Scotland?

Whether there will be an enforcement framework and resource that proportionately addresses the importance of the measure to population health?

The policy note closes by stating *'Scottish Government is supporting COSLA and local authorities with preparing for enforcement, including ensuring adequate resource to support implementation'* It would be legitimate to ask whether there will be sufficient enforcement activity and action, and how it will be possible to judge.

We suggest the following question:

Q. Please could the Committee ask Government and COSLA to provide detail of that commitment? Do they have an enforcement monitoring scope and data set in mind?

What lies behind the food and drink business view that their activities and the health consequences don't seem to figure?

The regulations seem to be a done deal – we hope not. They are encountering no particularly new territory; the competence and drafting have been explored in other parliaments and have passed scrutiny. The Committee may wish to explore broader issues of policy – how we create the conditions that could meet the aims of this and other diet, and healthy food environment ambitions.

We suggest that the Committee should request business representatives to discuss the regulations. It is clear that the Scottish Government has listened closely to them and regulations reflect that. It is also clear that we have a great deal to do in Scotland to improve population health, diet is poor and lies at the root of many of the country's problems, there is an enormous cost in health, social and economic terms to *not* addressing the problem, and yet businesses have not engaged with that for their own customers' sakes, or for their employees and future employees – the food chain is a very substantial employer and a healthy, productive workforce is perhaps in their interest longer-term.

For businesses, there are these questions:

Q. What is your business model? – Is it primarily to shareholder, private equity owner enrichment and the payment down of loans shorter-term? What importance do they attach to sustaining the confidence of shoppers and their longer-term health interest? Are the two aims currently compatible without a level playing field created by regulation?

Q. Examples of pet-food marketing are instructive – health seems to be quite an important element; the history of tobacco and alcohol business interests and actions are the opposite of heartening, but food and drink happen to be essential daily human requirements; consumer food, drink and nutritious diet interests (ideally) would be more important to align with business models. Should food and drink marketing attract clearer (and valid) longer-term health and wellbeing benefits?

Q. Given that food and drink industries are major employers – would business representatives want to employ the people who respond to, or depend on, their offers of products on promotion that are high in fat, sugar and salt? They are probably those of us who are more likely to have poorer health longer-term, who will be less productive, sicker more often, with a shorter healthy working life-span.

Q. Would businesses respond to incentives that prioritise health considerations over sales volume and market share of HFSS food and drink, evolving and strengthening progressively over time? Would they transform business models that comply with objectively set standards – how would they wish to be assessed? Regulation – and much more ambitious regulation than the set we consider here – is a necessary part of that new way of thinking, in order to disincentivise bad actors – is that not the case?

Thank you for the opportunity of contributing to the Committee's work in scrutinising these regulations.

Obesity Action Scotland, November 2025