The Food (Promotion and Placement) (England) Regulations 2021

UK Draft Explanatory Memorandum

- There has been growing concern about the impact of promotional offers on influencing and shaping food preferences toward less healthy products
- Evidence shows promotions are effective at influencing purchases and tend to be heavily skewed towards less healthy options.
- Volume price promotions lead us to buy almost 20% more than we otherwise would, and
- location promotions often lead to ‘pester power’ from children

Volume Promotions

The latest data shows that we buy almost 20% more as a direct result of promotions

Consumers typically do not stockpile these extra purchases to take advantage of the lower price, instead they increase their consumption.

Evidence also shows that volume promotions (multi-buys) cause a greater sales uplift compared to other types of price promotions such as simple price reductions.

Shopping Environment

simple factors such as the location of products within stores significantly affecting what we buy.

end of aisle displays can increase sales of soft drinks by over 50%

Children are uniquely vulnerable to the techniques used to promote sales. These effects can then be transmitted into the purchasing behaviours of parents through ‘pester power’, with evidence showing 70% of parents purchased at least one food item requested during a shopping trip

Purpose of the legislation

- The regulations provide for restrictions on the promotions and placement in retail stores and their online equivalents of certain foods and drinks that are high in fat, salt or sugar (HFSS) or ‘less healthy’
- to restrict the promotion of HFSS products by volume price (for example, ‘buy one get one free’)
- To restrict advertising of less healthy foods

Restrictions

- Volume price restrictions will prohibit retailers from offering promotions such as "buy-one-get-one-free" or "3 for 2" offers on HFSS products (Reg 5)*.
- Prohibit the offering of free refills for less healthy drinks (Reg 6)*
- Locations restrictions will apply to store entrances, aisle ends and checkouts (Reg 7)** and
- their online equivalents (that is, entry pages, landing pages for other food categories, and shopping basket or payment pages). (Reg 8)**

- * Implemented Oct 2023
- ** Implemented 1 Oct 2022

Specified Food (Reg 3)

is food contained in a prepacked food item which

is Schedule 1 food,

is less healthy, and

is not charity food sales

Is Less Healthy – (Reg 3 para 4)

- food that is not a drink is less healthy if it scores 4 or more points in accordance with the Nutrient Profiling Technical Guidance;
- a drink is less healthy if it scores 1 or more points in accordance with the Nutrient Profiling Technical Guidance.
- “the Nutrient Profiling Technical Guidance” means the guidelines published by the Secretary of State on 14th January 2011 about the application of the 2004-2005 Nutrient Profiling Model

Nutrient Profiling Model

- Based on 100g of food or drink
- Awards points for ‘A nutrients’
  - energy, saturated fat, total sugar and sodium
- Awards points for ‘C nutrients’
  - fruit, vegetables and nut content, fibre and protein

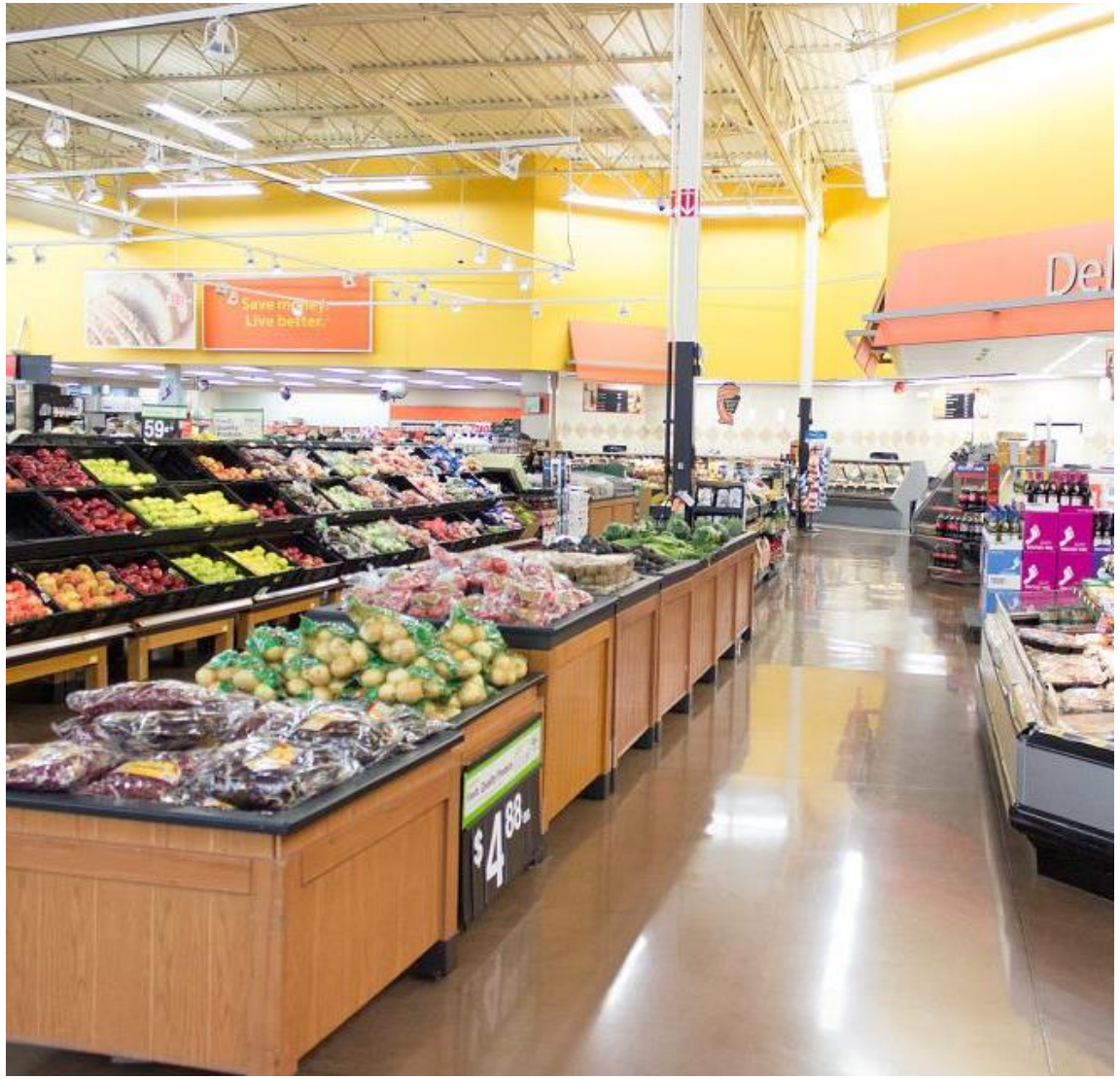
- A-C= Nutrient Profile score
- Less Healthy is >4 for food >1 or drink

“qualifying business” (regulation 4)

- Offers for sale any prepacked foods
- 50 or more employees
- Not a care home, educational institution or restaurant.
- Different for drinks refills

Location Restrictions Reg 7

- Applies to businesses with a floor area of 2,000 sq ft (185.8m^2)
- Excluding
  - Areas not used for displaying goods or serving customers e.g. back of store, storage areas, offices, toilets
  - Areas used mainly for preparation and service of food for immediate consumption e.g. cafes and their seating area
  - Concessions
- But including areas behind the counter
- Doesn't apply to stores selling only/mainly food from a single category.



Reg 7

- a qualifying person must not place specified food inside a store—
- within two metres of a checkout facility, unless the specified food is placed in (but not at the end of) an aisle;
- within two metres of a designated queuing area, unless the specified food is placed in (but not at the end of) an aisle;
- in a display—
  - at the end of (but not in) an aisle, where the aisle end is adjacent to a main customer route through the store, or
  - on a separate structure (such as an island bin, free-standing unit, side stack or clip strip) connected or adjacent to, or within 50cm of, such an aisle end;
- at any point within the prohibited distance of the midpoint of any public entrance to the store's main shopping area;
- in a covered external area.

Volume Price Promotion Restrictions Reg 5

- a qualifying person must not offer specified food for sale as part of a volume price promotion whether in store or on an online marketplace

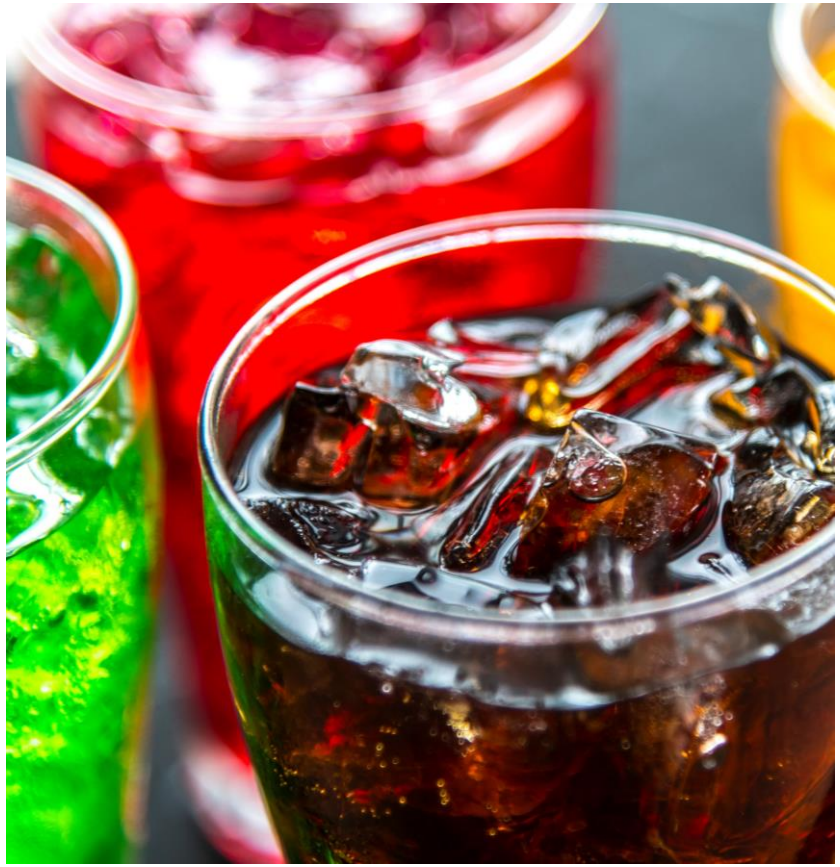
- “Volume price promotion” means—
- a multibuy promotion, being the express offer of a financial incentive for buying multiple items compared with buying each item separately (including “3 for the price of 2”, “3 for £10”, or “buy 6 and save 25%”);
- a promotion that indicates that an item, or any part of an item, is free (including “50% extra free”, or “buy one get one free”).

Price Promotions

- Bogof prohibited
- “relevant special offer”for example “meal deal” or “dine in for two” offers –not prohibited
- Price Promotions/Reductions –not prohibited

Free Refills Reg 6

- Applies to restaurants
- A qualifying person must not offer a free refill promotion on a drink to which this regulation applies
  - Not prepacked
  - falls within category 1 of Schedule 1 – soft drinks
  - is less healthy by virtue of scoring 1 or more points in accordance with the Nutrient Profiling Technical Guidance, and
  - is not charity food sales



Enforcement

- Formal enforcement via Improvement Notice stating
  - the authority's grounds for believing failing to comply
  - specify the matters which constitute the person's failure so to comply;
  - specify the measures which the person must take in order to secure compliance; and
  - within such period as may be specified in the notice.

- Failure to comply is an offence
  - Can prosecute
  - Or fixed monetary penalty of £2500