

HFSS Promotional Restrictions

Top 25 unanswered questions



BUSINESSES IN SCOPE

1. What is the definition of a specialist retailer? Many common examples (e.g. chocolatier, cake shop, off license) sell products from more than one category so the current definition is not appropriate.
2. When determining size of business, should the number of employees include those registered within England, UK or globally? Please provide a specific legal reference on how this is defined.
3. What is the definition of 'food for immediate consumption' included in the definition of restaurants? This must align with the out of home calorie labelling Regulations.
4. DHSC has explained that 'a premise that *mainly* sells or produces food for immediate consumption' in the definition of restaurant relates to the business function. How can we legally justify the exclusion of supermarket cafes from the scope of the Regulation?

ONLINE PROMOTIONS

5. The Regulation applies in England. Do the rules apply to businesses registered in England only? Or to business selling food and delivering in England? If the latter is the case, how will this be enforced?
6. How do the online promotion rules interplay with the new online advertising rules and existing CAP codes?
7. In what capacity and how will retailers be expected to work with third party delivery platforms to assess the product category and NPM score of each product sold?
8. Customers can opt into being delivered a substitute if their chosen product is not available. Why can the customer not be offered a substitute on the website, when one of their favourite products is not available?

VOLUME PRICE PROMOTIONS

9. Please can you share further principles and examples of what constitutes a 'meal deal' and 'relevant special offers' that are exempt (e.g. 'Big Night In', BBQ/gift bundles)?
10. Can non-food and specified foods be promoted together, for example a newspaper and a drink for £x or newspaper and a chocolate bar for £x?
11. Will retailers have an additional sell through period for products with on pack promotions past October 2023?

PRODUCTS AND CATEGORIES IN SCOPE

12. How should products be categorised that contain elements from different schedule 1 categories e.g. granola and yoghurt pots or chocolate covered savoury snacks? Is this based on the category that the largest proportion of the product falls into?
13. There are many references to packaging format (e.g. bagged snacks, roll pack, bar shaped etc.) but this does not cover all format options. Clarification is needed on whether non-specified product formats are in or out of scope?
14. When will the Nutrient Profile Model Technical Guidance be updated and published so that companies can accurately calculate the NPM scores? Will a standardised online calculator be shared?
15. What are the practical criteria and principles to determine which products are in or out of scope for each category? E.g. what criteria determines whether a product is considered a starter/side/small plate (out of scope) rather than a meal centre/ready meal/breaded or battered product (in scope)?

An extensive list of product specific questions has also been submitted.

LOCATIONS IN STORE

16. Do seating areas count towards relevant floor space calculations?
17. What is the definition of 'covered external areas' in regard to store entrances and the entrance space calculation? For example, considering petrol forecourts.
18. Are HFSS products allowed to be displayed where a premise has a dedicated exit?
19. What does 'set aside and marked' relate to? All floor markings? What about promotional bins that do not mark out queuing areas?
20. What is the definition of an aisle for purpose of in aisle exemption within 2m of a designated queuing area and within 2m of a checkout facility?
21. What is the definition of a 'customer route through store' and how does this affect inclusion of end of aisles? What would be exempt (e.g. islands, and how are these defined)?
22. How are concessions being determined? Under Example 2 in the guidance, it makes no reference to their own payment facilities. What is the definition of 'primary responsibility' of a concession in store?
23. Why are aisles covered in the semicircle defining store entrance included, even when they cannot be seen when the customer walks into store?

LIABILITY AND ENFORCEMENT

24. Where does liability sit for products on online delivery platforms? Retailers will not be able to control where a product is placed or promoted on the platform.
25. Who is to lead on enforcing this Regulation - Trading Standards, Environmental Health Officers or both?