



# Location, location, location



Exploring the impact and implementation of the promotion of high in fat, sugar and salt products by locations legislation in England.

**FOOD  
ACTIVE**



# Executive summary

Since October 2022, medium to large retailers in England are no longer able to display certain food and drink products that are defined as ‘less healthy’ by the Nutrient Profiling Model, from categories that are high contributors to calories in children’s diets (such as sweets, chocolate, crisps, ice creams, sugary yoghurts, pizzas and more). Brought in as part of 2020’s Obesity Strategy, the legislation seeks to take unhealthy food out of the spotlight and discourage impulse buys of these products in areas that are known to drive sales. One year on, there is little data and insight into how the legislation is being implemented locally, and the level of compliance. This report aims to provide a snapshot into compliance in-store and online, as well as providing some insight into the awareness and experiences of implementing/enforcing the legislation with store managers and trading standards officers.

## Key findings:

- **In-store visual checks:** Most stores were operating within the spirit of the law, if not quite to the letter (with fairly minor potential breaches), some stores were showing a blatant disregard for the policy and for child health.
- **Online compliance:** Overall, we found good adherence to the legislation across all supermarket websites, with four potential breaches found across the 5 supermarkets we checked. However, due to exemptions within the legislation, unhealthy products are still visible to consumers across key locations on online stores.
- **Survey with trading standards:** There was good awareness of the legislation amongst the officers we spoke to, however training opportunities and the number of inspections carried out were minimal. Officers reported staffing issues and competing priorities as key issues. Reporting of potential breaches in-store is a challenge.
- **Questionnaire with store managers:** We found that staff in compliant stores had a high awareness that they should not be placing unhealthy food and drinks near the checkouts and other high dwell time areas. In low compliant stores, staff had been left in the dark.

## Recommendations for government:

See Page 28 for the full set of recommendations.

- Ensure adequate funding is provided to local authorities and provide greater training and tools to support officers with enforcement.
- Commit to regularly reviewing the legislation to ensure it is fit for purpose, and review the exemptions identified in this report and any unintended impacts of the legislation.
- Streamline the process of submitting complaints of breaches to make the process simpler, easier to complete and align with other similar mechanisms.
- Due to the high levels of unhealthy food at point of sale in large cafes and fast-food chains, the Government should consider how this legislation could be applied to the out of home sector.
- Recognising that manufacturers use a number of marketing tactics to encourage consumption of unhealthy food and drink, release the consultation response for the 9pm watershed restrictions of less healthy advertising on TV and online media, and bring in the multibuy restrictions on unhealthy food as planned.

# Introduction

## About the legislation

In October 2022, the government introduced legislation to restrict the promotion of high saturated fat, sugar and salt (HFSS)<sup>a</sup> products as defined by the Nutrient Profile Model (NPM)<sup>b</sup> by location, both online and in store in England. This legislation applies to all businesses with over 50 employees that sell food or drink, even if this is not a primary purpose of their business.

The legislation was brought in as part of the National Obesity Strategy, published in 2020 and seeks to improve our food environment by ensuring healthier food is more easily accessible and more visible in shops, ultimately supporting people to lead healthier lives. The policy is designed to encourage non-HFSS to be placed in prominent locations. The policy intention is that people will swap from HFSS foods and drinks to healthier non-HFSS foods.

The legislation also included restrictions on the promotion of HFSS products by volume (i.e. buy one get one free), however this has been delayed until October 2025.

This legislation presents an important step towards making the retail environment more conducive to making healthier purchases not only by taking HFSS products out of the spotlight in retailers, but also by providing a nutritional benchmark for products which can then be placed at key locations in store, this can encourage companies to reformulate, so they meet the benchmark.

However, there have been various reports over the last year suggesting that compliance may not be equal across all retailers, funding for local authorities to enforce the legislation is limited and supermarkets are creating new methods of marketing their products in-store and online. Furthermore, the exemptions on businesses mean HFSS food and drink are still widely available at key locations within the out of home sector, including cafes, restaurants and takeaways and specialist stores, including chocolate and confectionery stores.

**To find out more about the legislation, businesses and food and drink in-scope, and exemptions, click here**



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*a) HFSS is otherwise known as ‘less healthy food and drink’ and is referred to as such in the nutrient profiling technical guidance 2011. [Read the guidance here.](#)*

*b) The nutrient profiling model was developed by the Food Standards Agency (FSA) in 2004-2005 as a tool to help Ofcom differentiate foods and improve the balance of television advertising to children. Ofcom introduced controls which restricted the advertising of HFSS foods in order to encourage the promotion of healthier alternatives.*

## Why locations matter

- Retailers and manufacturers use a combination of marketing approaches to ensure their products are in the spotlight in their customer's minds - advertising campaigns on TV, online media or outdoor advertising, price discounting or multi-buy promotions and by where they are placed in store and online.
- Where products are positioned in shops has an impact on how likely we are to buy them. Research shows that the visibility of products in a retail environment has a nudging effect on shoppers and ultimately influences which products we choose to buy [1].
- Eight months prior to the legislation being implemented, research found that HFSS products featured regularly on online supermarket homepages. Over two thirds of the products sampled on online supermarket homepages were identified as HFSS [2].
- Research from The Obesity Health Alliance in 2019 found that 43% of all food and drink products placed in prominent in-store locations (like aisle ends and checkouts) were for sugary food and drinks – these locations are known to tempt consumers to make impulse purchases, result in children pestering parents and boosting sales [3].
- Further evidence suggests that end-of-aisle promotions can lead to an increase in sales of 51.7% for carbonated drinks [4].
- UK in-store research has reported that over 70% of all food and drinks promoted in 'prime' locations (i.e. those located within 10 m for store entrances, etc.) are products classified as those which 'contribute significantly to children's sugar and calorie intake' [5].
- More than 3 in 4 parents (77%) in the Children's Food Campaign Parents' Jury survey in 2019 agreed that the government should ban unhealthy food displays at checkouts, aisle ends and store entrances [6].
- A recent qualitative analysis suggests that this legislation has the potential to reduce impulse HFSS purchases and makes a solid start towards creating healthier retail outlets for consumers [7].





## A summary of the emerging evidence on implementation, compliance and impact

- Research by the Grocer found that the legislation is driving a shift towards healthier food, with sales of HFSS-compliant products held up better than their non-compliant equivalents in fresh food, frozen and impulse [8].
- Kantar analysed sales data in the 12 weeks ending December 2022, compared to the 2021 equivalent, which found that healthier products also performed better in terms of volume, with a 1.9% increase in products sold, whereas the volume of less healthy products within the legislation categories declined by 5.1% [9].
- It's estimated by the government that retailers have spent £47 Million to implement the legislation [10], yet the Institute of Grocery Distribution's ShopperVista found that 66% of customers hadn't noticed a difference in store [11].
- According to the Grocer, the government expects to provide less than £35,000 a year to over 300 local food authorities in England to help them enforce the legislation. Trading standards organisation Chartered Trading Standards Institute warned not to expect rigorous enforcement given the "limited funding" available [12].
- A report by the trade publication Convenience Store said a Freedom of Information request released in December 2022 revealed that only two English local councils identified stores that allegedly violated the HFSS guidance. However, the council at that time had yet to issue any improvement notices based on the visits [13].
- The Department of Health and Social Care (DHSC) have reported that they are not routinely collecting data on enforcement and the number of penalties issued [14].

## About this report

This report has been written by Food Active and the Obesity Health Alliance, and aims to assess the legislation through a snapshot in time through the following lenses:

- Visual checks in a selection of retailers in store.
- Visual checks in a selection of retailers online.
- Knowledge, awareness and attitudes from store managers.
- Knowledge, awareness and experiences of carrying out inspections with trading standards and environmental health officers.

The data was collected at different time points between July and October 2023. Please note that this report is not designed as an evaluation of the legislation, rather an indication of different perspectives, attitudes and compliance across some stores. A team from the University of Leeds Customer Data research Centre, led by Professor Michelle Morris and supported by IGD, are currently evaluating the impact of this legislation. However, results are not expected for another 12 months, at the end of 2024. We hope that this report provides some useful initial insight which can help to inform the focus of this and other pieces of research, and to share feedback with the DHSC.

Please note this report specifically relates to England as the legislation is a devolved matter. The Welsh government announced earlier this year they will be introducing a similar policy on location-based promotions from 2024 [15]. The Scottish government consulted on this policy in 2018 and had initially committed to implementing a similar policy, however earlier this year it was announced they will be reviewing the legislation and exploring other ways to address obesity [16]. There are no current plans in Northern Ireland. The images used throughout this report were taken by the researchers, unless stated otherwise.

**UPDATE: Following an investigation by Trading Standards, it was identified that some Nutrient Profiling Model scores were incorrectly calculated. See page 17-18 for more information (January 2024).**



# Fieldwork in supermarkets

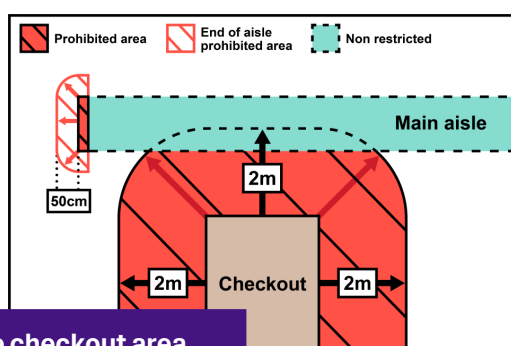
## Method

Researchers visited 25 different retailers in London, South West and North East of England known to be included in the parameters, including: Aldi, Aldi Local, Asda, Boots, Co-op, Iceland, Lidl, Marks & Spencer, Marks & Spencer FoodHall, Morrisons, New Look, Poundland, Primark, Sainsbury's, Sainsbury's Local, Flying Tiger, Tesco Express, TK Maxx, Waitrose and WHSmith. Researchers also visited other stores likely or known to be exempt from the legislation including; Hotel Chocolat and CandyLogo, Londis, Leon, Starbucks, Burger King, Caffè Nero, Greggs and Costa to better understand the availability of HFSS products at key locations within these stores.

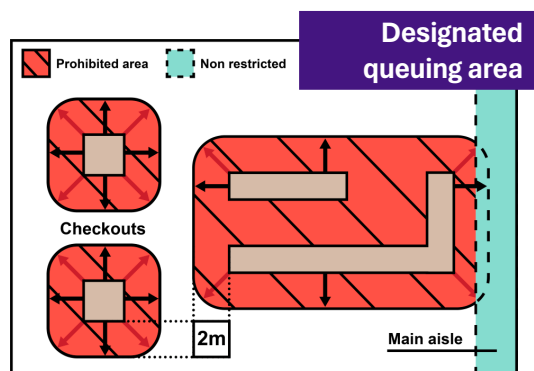
Fieldwork included a visual check of compliance at key locations i.e. whether the foods and drinks within the regulatory zones appeared to be 'mainly' compliant (non-HFSS) or not, with further follow up using photographic evidence obtained in store. Enforcement officers have been instructed to construe the word 'mainly' in accordance with its ordinary or natural meaning, taking into account the individual circumstances of each store.

The NPM was used to identify if a food was HFSS. A 'potential breach' has been defined as where the researchers saw and were able to photograph a product that would likely fail the NPM and was likely to be within a restricted area. The identified product was looked up on the manufacturer's website and the NPM score calculated as per the Department of Health's technical guidance. As researchers were unable to measure exact distances or purchase the products for analysis, we consider these to be potential breaches. All have been reported to trading standards for investigation. As such, we have tried to anonymise the stores, and are not naming stores that have been reported.

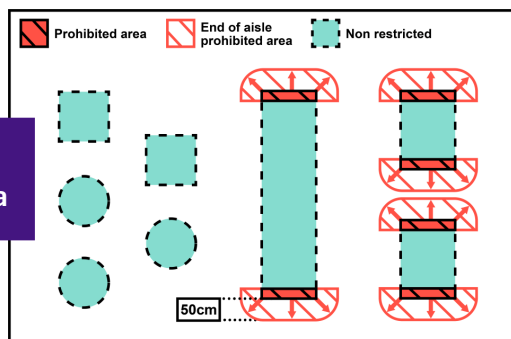
The fieldwork was carried out between July and October 2023 and examined whether HFSS items were located within the following locations:



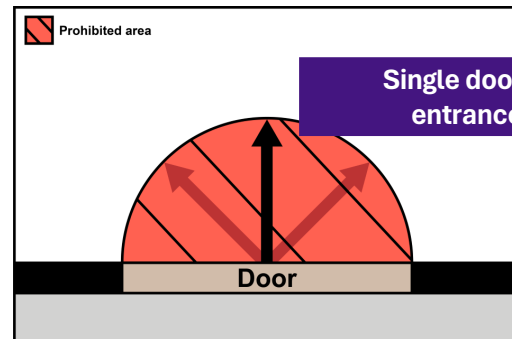
In-store checkout area



Designated queuing area



Designated queuing area



Single door entrance

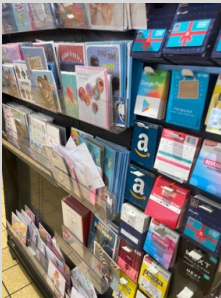
## Key findings

Our research has found that many of the smaller stores up and down our highstreets, as well as larger stores out of town, have gone to some effort to redesign their stores for health - taking junk food out of the spotlight and replacing it with healthier food like whole fruit, nuts and water, and non-food items such as flowers, cards and newspapers.

We found that whilst most stores were operating within the spirit of the law, if not quite the letter, 'less' compliant, with fairly minor breaches, some stores were showing a blatant disregard for the policy and for child health and were 'mainly' non-compliant.

- 18 of the 25 stores (72%) were 'mainly' compliant, with healthier (non-HFSS) food and drinks in key locations.
  - Some stores have opted to place whole, nutritionally dense foods or non-food items in key locations.
  - Some stores have opted to place non-HFSS versions of highly processed products in key locations.
- 7 of the 25 stores (28%) had potential breaches, with unhealthy food and drinks in key locations.
  - 5 of the 7 stores were 'less' compliant, with some less healthy (HFSS) food and drinks in key locations.
  - 2 of the 7 stores were 'mainly' non-compliant, with less healthy (HFSS) food and drinks in key locations.

## Examples of 'mostly' compliant stores



Below is a selection of the potential breaches we found as part of the fieldwork. These include ice-creams, pre-packaged biscuits and cookies, crisps, sugary breakfast cereals and more, which when analysed using the Department of Health’s NPM, were found to fail, being classified as ‘less healthy’.

These potential breaches have been reported to trading standards, via Citizens Advice, for investigation.

## Potential breaches: fail NPM and potentially within end of aisle prohibited area



### Products and NPM score:

Sour Cream and Chive Pringles = 10\*  
 Prawn Cocktail Pringles = 9\*  
 Texan BBQ Pringles = 13\*  
 Salt and Vinegar Pringles = 16\*  
 Original Pringles = 11\*

\* Cannot score for protein as less than 5 points for fruit, vegetables and nuts



### Products and NPM score:

La Boulangerie Pains Au Chocolat = 18\*  
 La Boulangerie Brioche Rolls Chocolate Chips = 11\*  
 La Boulangerie Croissants = 16\*

\* Cannot score for protein as less than 5 points for fruit, vegetables and nuts



### Product and NPM score:

Kit Kat Cereal = 10

\* Cannot score for protein as less than 5 points for fruit, vegetables and nuts

Foods scoring 4 or more points, and drinks scoring 1 or more points, are classified as ‘less healthy’ according to the NPM



## What can now be found in key locations?

There has been a huge amount of innovation and reformulation in the food and drink sector, resulting in what would usually be HFSS foods, becoming non-HFSS compliant. Many of these foods are non-HFSS but would be classified as Ultra Processed Foods (UPF).

Stores can legitimately present UPF foods and drinks as 'healthier' than their HFSS equivalents, but there is no evidence to suggest they are 'healthy'.

We found a huge array of products that are UPF but contain nutritional ingredients like nuts, fruit, yoghurt and oats. We also found a huge array of non-HFSS UPF that is not aligned with the government's healthy eating guidance and is not part of a 'healthy diet'. Sugar free sweets and drinks, slightly-less sugary cereals, slightly-less salty crisps and snacks.

These foods give the health-halo impression of being healthier, and are allowed in prominent locations in store, whilst being nutrient-poor and maintaining a preference for intensely sweet and salty flavours.

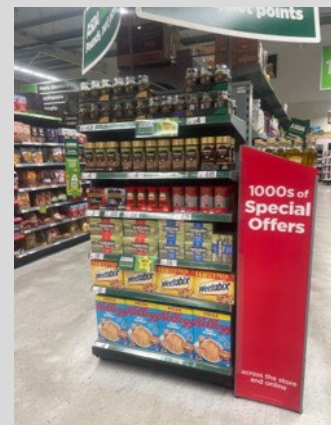
### A note on Ultra Processed Foods

The UK's NPM defines whether a product is HFSS. It considers not just negative nutrients (salt, saturated fats, and sugars) but also positive nutrients such as fibre, protein, nuts, fruit and vegetables.

UPFs are classified by the NOVA classification system, which considers the extent of industrial processing and manufacturing methods involved in production.

Associative evidence is growing that suggests UPF is harmful above and beyond its (also harmful) nutritive components (i.e. salt, saturated fats and sugars). The benefits of focusing on UPF above and beyond the HFSS are not yet known and should be assessed when considering how to strengthen the Locations regulations in future.

### Images of Non-HFSS UPF products containing healthful ingredients in key locations



## Images of Non-HFSS UPF products not containing healthful ingredients in key locations



### Exclusions from the policy

Not included within the scope of the regulations, and therefore not causing stores to be non-compliant, are a number of products that are not 'healthy' in key locations. This includes, but is not limited to (for full list of category inclusions and exclusions, please see the implementation guidance [here](#)):

- Alcohol (cases of beers, wines and spirits, pre-mixed cans)
- Vapes
- Unpackaged bakery goods (doughnuts, muffins, sausage rolls etc)
- Bags of sugar
- Fruit-based snacks for young children
- Party food, Starters, Side Dishes
- Sweet Spreads

Large out of home cafes, coffee shops and fast-food chains up and down the highstreets are excluded from the policy, and thus are able to freely include HFSS foods in dwell areas and on their order screens.

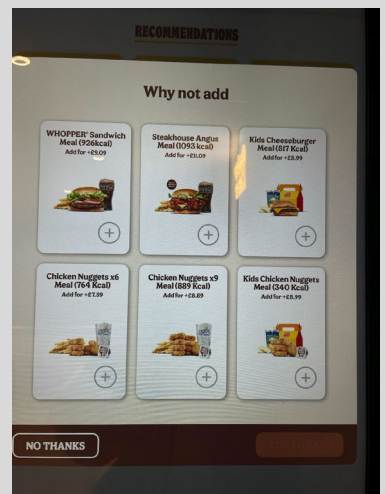
Specialist stores, such as chocolate and candy stores that would be excluded from the policy, and thus are able to freely include HFSS foods in dwell areas. Small (less than 50 employees) businesses, such as independent newsagents, are also excluded.

Also exempt are other areas in store, leading to the creation of in-aisle displays and floor stickers to help their products stand out better, or placing pallets of HFSS foods in sporadic locations in store.

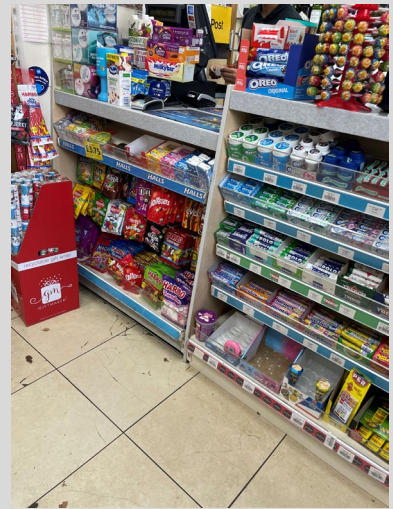
## Images of products excluded:



## Images of out of home food and drink companies excluded:



## Images of retailers excluded:



## Images of retail space excluded:



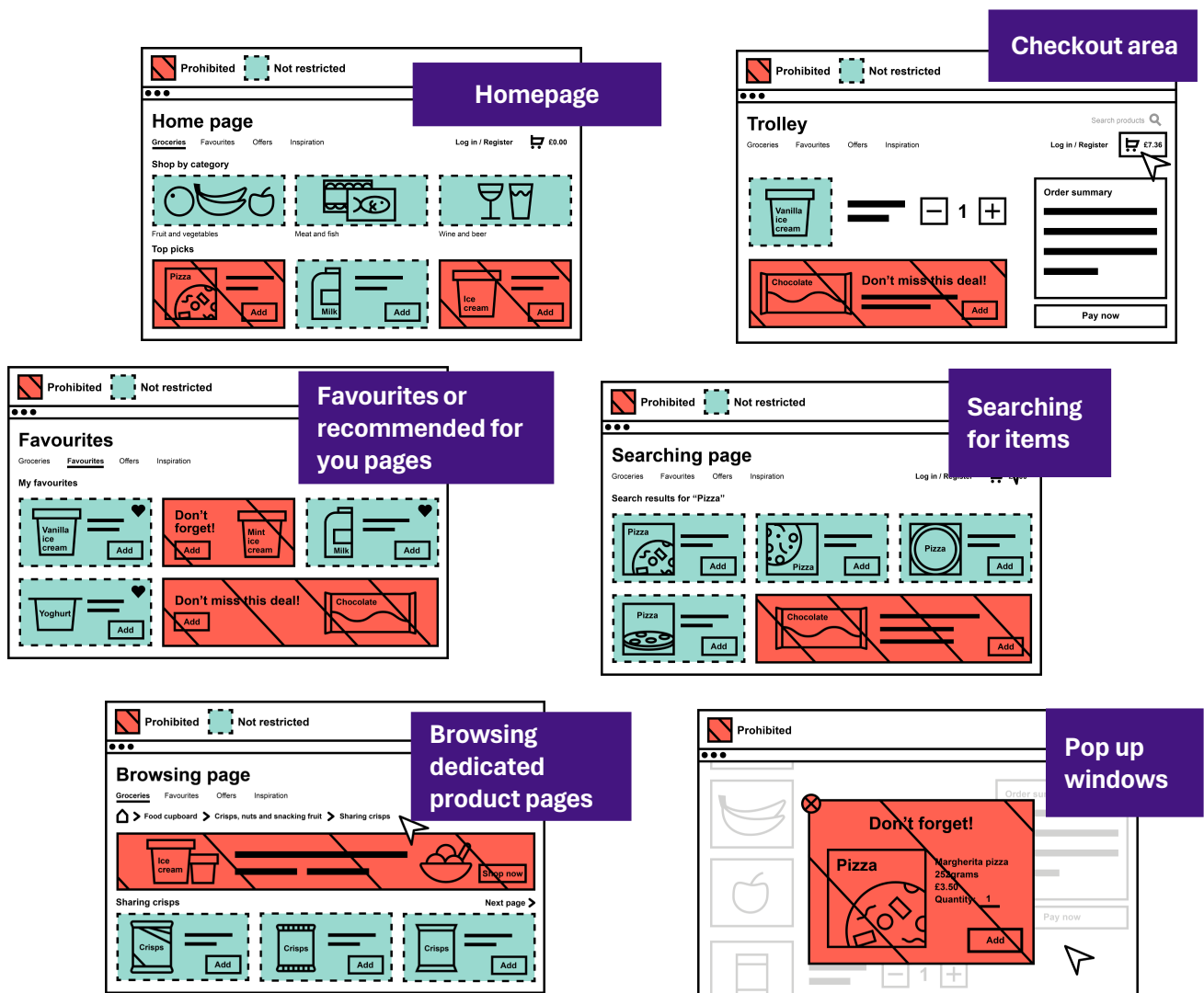
*Images left from right (taken by Beth Bradshaw [left], Henry Dimbleby via Twitter [middle] and Christina Vogel via twitter [right - in the fruit and vegetables aisle]).*

# Fieldwork on online supermarket websites

## Method

Fieldwork was also carried out on online supermarkets, to examine levels of adherence across 5 supermarket websites, including Tesco, Aldi, Asda, Sainsburys and Morrisons. A research protocol was developed for identifying potential breaches on the homepage, browsing pages, search results, pop up windows, checkout area and favourites/recommended for you pages was carried out in October-November 2023. The NPM was used to identify if a food was less healthy.

A 'potential breach' has been defined as where the researchers saw and screenshot a product that was likely to fail the NPM, and likely to be within a restricted area. The identified product was looked up on the manufacturer's website and the NPM score calculated as per the Department of Health's technical guidance. The breaches were then reported to the Advertising Standards Authority (ASA), who the guidance stipulates will then refer the matter to the relevant enforcement authorities. The fieldwork examined the following prohibited areas of the online regulations (images taken from DHSC guidance, please see [implementation guidance for full descriptions and exemptions](#)):



## Key findings

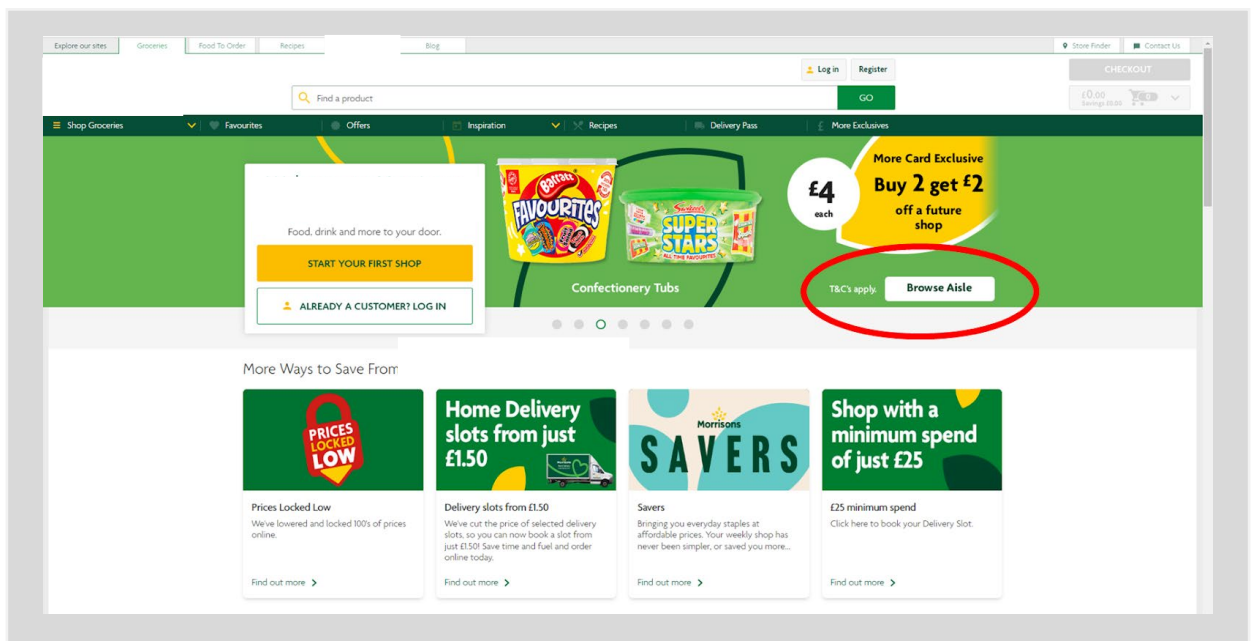
- Overall, we found good adherence to the legislation across the small number of supermarket websites we checked.
- 3 of the 5 stores were ‘mainly’ compliant, with healthier (non-HFSS) food and drink products taking precedent at key locations. Products found in key locations of these stores were largely found to be milk, cheese, bread, fruits, vegetables, diet/zero sugar drinks and non-food household items. However, small exemptions meant that some HFSS products are still visible on key locations, in particular the homepage, without breaching the regulations.
- 2 of the stores had potential breaches, a total of 4 across these two sites, where products in-scope and failed the NPM were found in prohibited areas including the checkout, favourites page and whilst browsing specific pages. These have been reported to the ASA.

	Potential breaches found	Number of products visible on page	Number (%) of products visible that are HFSS	Details on exemptions
<b>Homepage</b>	0	26	10 (26%)	The HFSS products can be displayed on homepages, as long as they don't contain an 'add to basket' button. 'Shop now' or 'browse aisle' which directs to taxonomy pages are permitted.
<b>Checkout</b>	0	43	0 (0%)	All foods that the consumer has chosen to put in their trolley are not restricted. HFSS adverts or banners are not permitted.
<b>Favourites / recommended for you</b>	0	22	0 (9%)	HFSS products which have been previously purchased or favoured by customer exempt.
<b>Searching pages</b>	0	100	35 (35%)	If a consumer intentionally searches for a specified food – for example, 'chocolate' – in any part of their search, the search results can be any product marketed as or with the ingredients of chocolate – for example, chocolate confectionery, chocolate biscuits or chocolate-flavoured confectionery.
<b>Browsing pages</b>	2	2	2 (100%)	If a consumer browses a 'chocolate' taxonomy tab page, no other specified food should be shown on that page. This includes banners with an 'add to basket' option or similar.
<b>Pop up windows</b>	0	0	0	HFSS products are not permitted in any pop up windows.

## Homepages:

Across the supermarket homepages we checked, no breaches were found. However, HFSS products were still displayed on some homepages, within the legislation there is an exemption that where HFSS products are displayed on the homepage, they must not contain a button where customers can add the item directly to their basket (i.e. 'add to basket'). HFSS products can however be displayed if customers are taken to a taxonomy page (i.e. browse aisle or shop now). See below for an example of this in practice.

This exemption meant that despite no breaches being found, on average 26% of the products found on all homepages in this research were HFSS (10/26 products). This varied significantly between supermarkets, with one supermarket displaying no HFSS products on their homepage, but on another, all of the products displayed on their homepage were HFSS. Note that whilst HFSS products were present, this was not in breach due to the exemption described above.



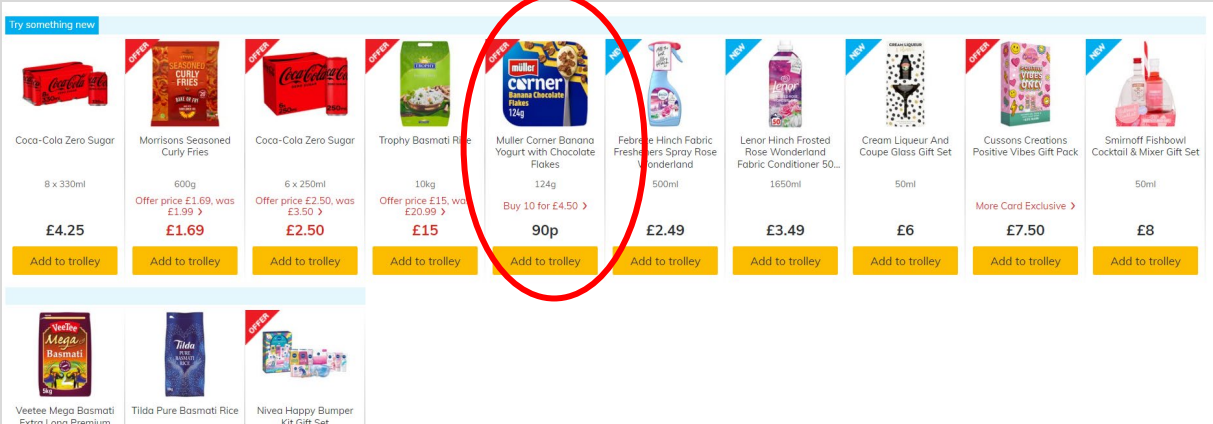
## Checkout area:

Across all supermarkets, 43 products were recorded in checkout areas. One supermarket did not display any products in the checkout, whereas others had up to 16 products in the area.

At the time of publication (December 2023) this report identified one potential breach in this prohibited area, featuring a sugary banana and chocolate flavoured yogurt. However, following an investigation by Trading Standards, it found that the NPM score had been calculated incorrectly. The current product for sale passes the NPM, meaning it was allowed to be placed at this location in the online store (see following page).

However, on the whole, products found in the checkout were items such as fruit, vegetables, milk, meat, bread and household products.

## CORRECTION – NOT A BREACH: within checkout prohibited area but item passes NPM



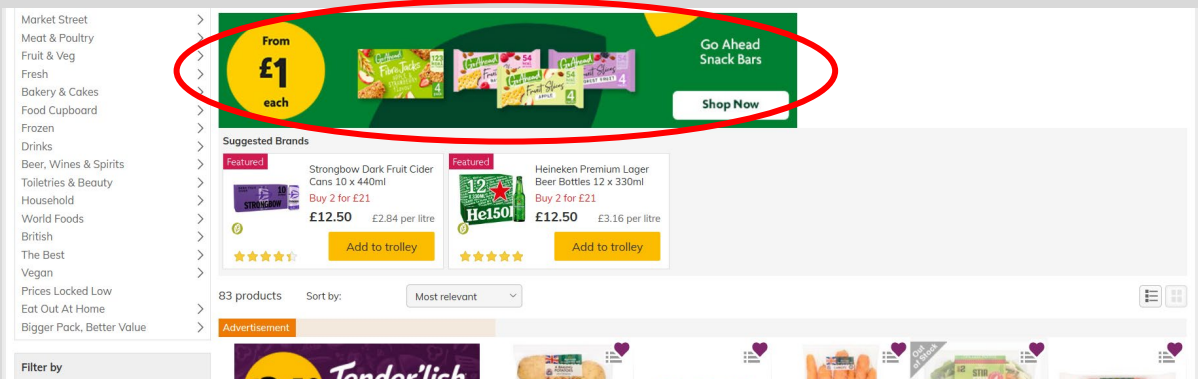
Following an investigation, it was confirmed that this was not a breach as the NPM score had been calculated incorrectly.

Muller Corner Banana Yogurt with Chocolate Flakes = 3 (passes the NPM)

## Favourites / recommended for you pages:

HFSS products that have been previously purchased or favourited by the consumer are exempt from this area, however many supermarkets used banner adverts to promote other products on this page. Within the favourites and recommended for you pages on the supermarkets we checked; one potential breach was found. However, following an investigation by Trading Standards it was deemed the NPM score was incorrect (see below).

## CORRECTION – NOT A BREACH: within favourites prohibited area but passes the NPM

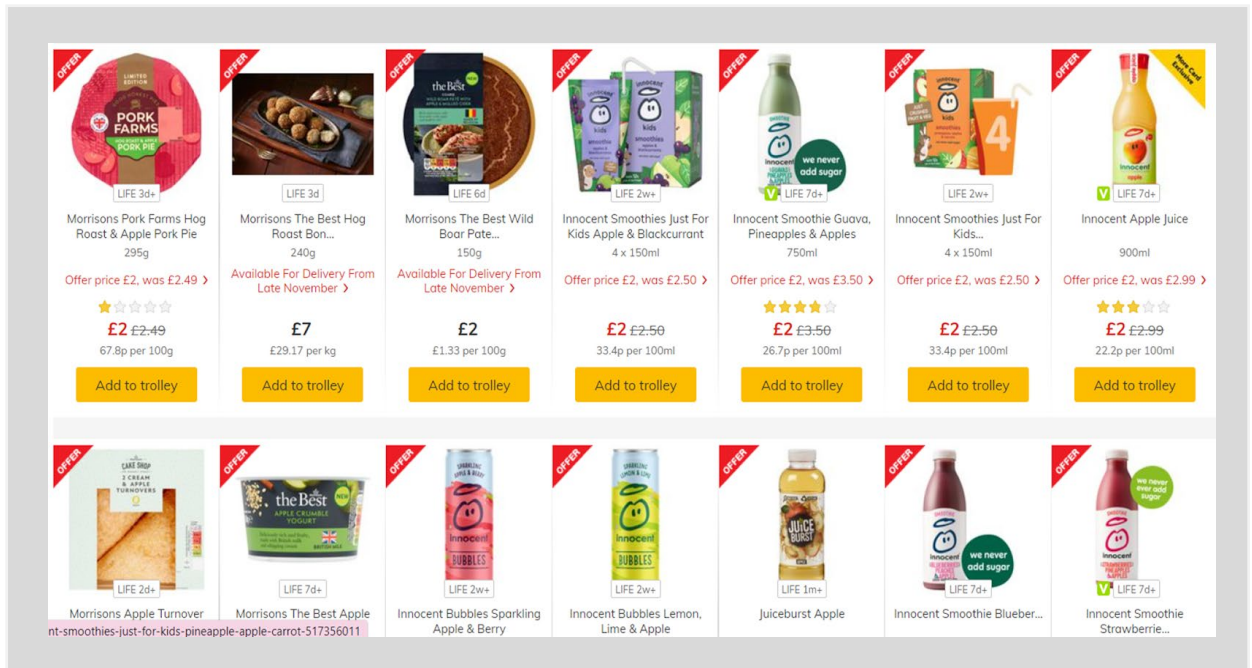


Following an investigation, it was confirmed that this was not a breach as the NPM score had been calculated incorrectly.

Go Ahead Apple Crispy Fruit Slices Snack Bar = 2 (passes the NPM)

## Searching pages:

No breaches were found on browsing pages for 'apples', however HFSS products were still present whilst browsing for apples due to the exemption that search results can be any product marketed as or with the ingredients of the search term - in this case 'apple'. For example, apple sweets, pies containing apples, apple turnovers etc (See below for an example of the range of products that can be displayed whilst searching for a specified food, including in-scope categories such as yogurts and baked sweet pastries). We recorded the first 20 search results from each supermarket, and 35% of these results were found to be HFSS (35/100 products). This varied significantly across supermarkets, with some displaying no HFSS products whilst browsing for apples, and others featured 65% of results as HFSS. Note that whilst HFSS products were present, this was not in breach due to the exemption described above.



## Pop-up windows:

Across the supermarkets we checked, no pop-up windows containing food and drink products were found.

## Browsing pages:

Across all sites we examined the 'sharing crisps and snacks' page in relation. Outside of the products that are intended to be on that page (in this case, crisps), two potential breaches were found in the form of advertising banners at the top of the page displaying in-scope products that fail the NPM (see the following page for examples). However, the remaining supermarkets did not display any banners advertising any food and drink products whilst browsing for sharing crisps and snacks.

# Potential breaches: fail NPM and potentially within browsing prohibited area

Browse ▾ | Food Cupboard ▾ | Crisps ▾ | Sharing Crisps & Snacks ▾

170 products in Sharing Crisps & Snacks

Advertisement for Butterkist Sweet Popcorn is circled in red.

Product	Price	Per 100g	Rating	Action
Butterkist Sweet Popcorn (Sweet & Salty)	£1.25	-	4.5	Shop Now
Walkers Sensations Lime & Curry	£2.50	£3.03 per 100g	4.5	Add to trolley
Walkers Sensations Mango & Chilli	£2.50	£3.03 per 100g	4.5	Add to trolley
Doritos Tangy Cheese Multipack	£2	£1.33 per 100g	4.5	Add to trolley
Doritos Chilli Heatwave Multipack	£2	£1.33 per 100g	4.5	Add to trolley
Walkers Sensations Thai Sweet	£2.50	£1.67 per 100g	4.5	Add to trolley
Walkers Sensations Balsamic Vinegar	£2.50	£1.67 per 100g	4.5	Add to trolley
Pringles Sour Cream & Onion Sharing Crisps	£1.85	£1.00 per 100g	4.5	Add to trolley
Pringles Original Sharing Crisps	£1.85	£1.00 per 100g	4.5	Add to trolley
Morrisons Cheese Curls	Buy 2 for £2	-	-	Buy 2 for £2
Doritos Chilli Heatwave Multipack	Buy 2 for £3.25	-	-	Buy 2 for £3.25
Doritos Tangy Cheese Multipack	Buy 2 for £3.25	-	-	Buy 2 for £3.25
Morrisons Lightly Salted Tortilla Chips	Chips and Dips Bundle for £4	-	-	Chips and Dips Bundle for £4
Morrisons Prawn Crackers	Buy 2 for £2	-	-	Buy 2 for £2
Morrisons Mini Poppedoms	Buy 2 for £2	-	-	Buy 2 for £2
Pringles Salt & Vinegar Sharing Crisps	Offer price £1.85, was £2.25	-	-	Offer price £1.85, was £2.25
Pringles Texas BBQ Sauce Sharing Crisps	Offer price £1.85, was £2.25	-	-	Offer price £1.85, was £2.25
Morrisons Bacon Rashers	Buy 2 for £2	-	-	Buy 2 for £2
Morrisons Cool Tortilla Chips	Chips and Dips Bundle for £4	-	-	Chips and Dips Bundle for £4

## Product and NPM score:

Butterkist Sweet Popcorn = 10\*

\* Cannot score for protein as less than 5 points for fruit, vegetables and nuts

## Sharing Crisps

Explore shelves

- Sharing Crisps
- Pringles & Tube Snacks
- Sharing Baked Crisps & Lighter Options
- Tortilla Chips & Dips
- Lentil & Vegetable Sharing Crisps
- Meat Snacks
- Extra Special Crisps & Snacks
- Hand Cooked Crisps

Advertisement for Jus-Rol Pan au Chocolat is circled in red.

ESTD 1954  
**JUS-ROL™**  
 A quick, easy & delicious treat for the whole family...  
 That's Jus how I Rol...  
 Shop now

Sort Relevance | Dietary & Lifestyle | Brand

 Cheesy Balls 150g	 Onion Rings 150g	 Bacon Bites 150g	 Sour Cream & Onion Party Bites 150g	 New ASDA Spicy Chicken Ramen Soup Meal for One 350g £3.00
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## Product and NPM score:

Jus Rol Bake at Home Pan au Chocolat = 22\*

\* Cannot score for protein as less than 5 points for fruit, vegetables and nuts

# Survey with store managers

## Method

When conducting in-store visual checks of compliance, we also carried out short, anonymous questionnaires with members of staff. A store manager was requested, if not available, a floor manager or checkout supervisor was spoken to. The aim was to understand their overall awareness of the regulations, and whether instructions had been cascaded down from store headquarters.

A copy of the survey can be found in Appendix 1.

## Key findings:

- Our in-store staff questionnaires found that staff, regardless of seniority, in stores where compliance was high, had a high awareness that they should not be placing unhealthy food and drinks near the checkouts and other high dwell time areas.
- In stores where compliance was low, floor staff either refused to answer the survey, or answered that they were unaware of the restrictions.
- Of all of those that answered that they were aware of the restrictions, no one said they had any problems with complying with the restrictions.
- Anecdotally (not included as a survey question), staff appeared happy and proud if their stores were compliant.

Compliance	No. stores (%) of total stores surveyed with perceived HFSS	Are you aware HFSS food is not allowed to be near the checkout?	Have you had any problems applying these restrictions?
<b>'Mainly' compliant stores</b>	18 (72%)	100% answered that they were aware	100% answered that they had no problems
<b>Less or 'mainly' non-compliant stores</b>	7 (28%)	0% answered* that they were aware	0% answered that they had had no problems

*\*Some store staff were not able to speak to us, and have been noted as 'not answered'.*

# Survey with trading standards and environmental health officers

## Method

A short online survey was disseminated via the Food Active local authority network to engage with local trading standards and environmental health officers who are involved in the implementation of the location promotions legislation of less healthy food and drink. A copy of this survey can be found in Appendix 2.

A total of 32 officers responded to the survey, predominantly from the North West of England but also covering other regions such as the North East, Yorkshire and Humber, East Midlands and the South West, providing us with an initial snapshot of their firsthand experience of training opportunities, carrying out inspections, impact of the legislation and suggestions on how the legislation could be improved.

Please note that this research is designed to provide some initial insights and is not a representative sample of all trading standards officers in England.

As ‘potential breaches’ have to be reported to trading standards, our researcher’s experience of this process has been recorded <sup>d</sup>.

## Key findings:

- There was good awareness of the legislation amongst the officers we spoke to, however training opportunities and the number of inspections carried out were limited.
- Whilst the majority (84%, n=27) of officers we spoke to were aware of the legislation, 7% (n=2) had carried out an inspection and just 26% (n=7) had received some form of training on the legislation and carrying out inspections.
- None had issued any improvement notices to businesses.
- Having observed potential breaches of the regulation in several stores, reporting the findings to trading standards for investigations was found to be convoluted and cumbersome.
- Officers we spoke to were divided on whether the legislation has had an impact, with 50% (n=13) believed it had, 38% (n=10) were not sure and 12% (n=3) believed it hadn’t had an impact. They were also asked to explain their answer, of which the responses have been summarised below:
  - Some felt from their own personal shopping experiences, there had been minimal changes, yet others felt they had seen less chocolate and sweets at the checkout areas.
  - There were concerns about the shift from unhealthy food and drink near checkouts to vapes or alcohol.

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*d) There are 2 options following an offence committed:*

- *The offending business is criminally prosecuted, or*
- *An enforcement officer can impose a fixed monetary penalty (FMP) of £2,500 (a civil sanction). In accordance with the Regulatory Enforcement and Sanctions Act 2008 (RESA).*

*“The number of unhealthy products in store, especially at the end of aisles seems to have remained similar. There is concern that unhealthy food products which were located near to checkouts have been replaced by vapes or other dubious non-food products.”*

- Some felt there had been a positive impact on when a parent is present at the till with a young child. Potential benefit for consumers, especially children, when less healthy options are less visible.

*“This may help consumers, especially children, from purchasing less healthy foods as they are out of sight, especially at store entrances and end of aisles. It would be good to have an idea if this has impacted on the sales of less healthy products.”*

- There was some scepticism about regulations alone changing consumer habits. Acknowledgment that regulations are a small part of a broader issue, impacted by the cost of unhealthy food and economic factors.
- Officers were also asked for their thoughts on how the legislation could be improved. Their responses have been summarised below:
  - **Making it easier to identify in-scope food and drink and business size:** Officers suggested they would benefit from being able to easily identify foods and drinks which are in-scope of the regulation. Suggestions included a clear label on packaging. Officers noted that this is also a challenge for businesses, which may be resulting in unintentional breaches.

*“Large businesses have complied (and spent a lot of money doing so), we have been involved with various primary authority businesses on advising on the implementation of the Regulations. [In-scope] smaller businesses are often unaware of the requirements, and it is difficult and onerous in such businesses to establish the number of employees and store area unless this information is volunteered by the business.”*

*“It's difficult for both businesses and enforcement staff to fully understand what foods are covered by the regulations.”*

- **Addressing staff shortages:** It was regularly noted that there is an urgent need to address staffing shortages currently being experienced within trading standards and environmental health, and how this may be affecting the enforcement of the legislation.

*“With current staffing resource enforcement/inspection for compliance with this legislation is not currently a priority for our service.”*

*“The problem is lack of officers in trading standards service and EH Services - who have many competing demands, many of which are higher priority than this legislation. Funding would not assist as there would be no increase in officers available as we are unable to recruit suitably qualified officers.”*

- **Increasing training opportunities for officers:** There was an emphasis on the need for additional training for officers to carry out inspections effectively.
- **Increasing funding:** There were proposals for ring fenced, long-term funding from the Food Standards Agency for food inspections, enabling recruitment and training to address current capacity issues.

*“More resources - proactive inspections of this type are very low priority since we are so short staffed & there are so many safety issues to deal with, particularly allergen issues & imported foods.”*

*“Food officer capacity is absorbed carrying out risk rated inspections (high risk only) and responding to Food Standards Agency referrals. Many food retail businesses will fall into the low or medium risk category meaning they are unlikely to receive a visit from a food officer unless a significant complaint is received which requires an inspection.”*

*“The main problem is that food safety environmental health officers are taking on more roles that were once the traditional remit of trading standards officers’ at a time when they are also under considerable pressure from the Food Standards Agency post - Covid to catch up on inspections. Ultimately, too few officers are being charged with too much to do and this means that prioritisation of higher risk areas take precedence.”*

- **Robust enforcement measures:** Some suggested more robust enforcement through primary authority and easier issuance of Fixed Penalty Notices to offenders.
- **Better collaboration:** Collaboration between Environmental Health and Public Health teams, and clarification of roles to avoid overlap and streamline responsibilities.
- **Sharing inspection experiences:** Some officers expressed a desire for a platform to share experiences and outcomes of inspections, both identifying problems and positive impacts, to facilitate mutual learning among officers.

*“I have yet to complete an inspection in respect of the new requirements so it would be useful to hear if other officers have and what problems have been found if any and how they have been dealt with. Equally it would be useful to hear where inspections have had a positive outcome and impact.”*

## Experience of reporting to trading standards

Having identified potential breaches in our in-store visual checks, we undertook reporting these to trading standards for investigation. The experience was challenging, and in our view, would be hard for a member of the public to replicate.

Firstly, the relevant compliance route had to be sought in the regulations (trading standards). Secondly, having searched within the trading standards website, we were sent to Citizen’s Advice to make a report. Thirdly, a phone conversation was had with a Citizen’s Advice advisor, logging each breach individually with full information. We were informed this information would be passed to trading standards and are yet to hear back.

The process of submitting online potential breaches to the Advertising Standards Authority was simple and speedy.

# Summary of findings

**Overall compliance in-store was good, with the policy working as planned to keep less healthy food and drink out of sight of children.** Yet despite this being the only meaningful policy in place to address obesity, and having been widely consulted on during the process, two stores appeared to show disregard for the legislation. Whilst the proliferation of healthier (non-HFSS) items is an interesting development, showing how well the food industry can respond to a challenge, there is a vast array of highly processed products, including sugar-free soft drinks and confectionery, as well as alcohol, that appears to have taken centre stage.

**Overall compliance online was good; however, exemptions mean HFSS products are still visible to consumers.** Whilst it was promising to see the online supermarkets we examined correctly enforcing the legislation online, except for four potential breaches, we feel some have not been acting in the spirit of the legislation by exploiting the exemptions. The legislation is designed to improve our food environment by ensuring healthier food is more easily accessible and more visible in shops, ultimately supporting people to lead healthier lives. At present, we found that due to these significant exemptions, HFSS products are still visible specifically on the homepage of online supermarket websites. The four potential breaches we found in the checkout area, favourites page and two during browsing and complaints have been submitted to the ASA for further investigation and referral to the relevant enforcement authorities. The outcome is pending at this time.

**Store managers work well with clear guidance, and are able to enforce quite complex legal parameters, when supported by upper management.** There was concern about how stores would be able to carry out the legislation, however, most have accepted and adapted the changes and appear to be proud that they have created a more healthful environment for their customers.

**General awareness of the legislation is high, yet training opportunities and the number of inspections carried out is low.** Whilst awareness of this legislation is high in the officers we spoke to, the proportion that had both taken part in training on the legislation and carried out inspections was very low. Some of the key challenges they reported to experience relates to the challenges of enforcement (specifically how to identify in-scope foods and drinks) however what was evidently clear with the officers we spoke to in this survey was how the current staffing and resource issues within this field are having an impact on enforcement, and that this legislation falls down the priority list as a result. Officers provided lots of useful suggestions on how the legislation could be improved to better support them in carrying out inspections, including more training opportunities and better identification of in-scope foods, drinks and businesses.

# Conclusions

This report, whilst limited in its scope as a snapshot in time, has found that many retailers are doing their bit to help take less healthy options out of the spotlight in stores, and make our food environment healthier by complying with the promotions by place legislation. We congratulate all the retailers who have cooperated fully with the legislation, appreciating the time, effort and money that has been invested into making their stores display healthier foods in prominent places. These stores are making it easier for parents to make a healthier choice and limiting ‘pester power’. To level the playing field, and to ensure that shoppers see healthier food wherever they choose to shop, the stores we found potential breaches need to work harder to take unhealthy food out of key locations.

Due to the significant exemptions built into this legislation, this means that some HFSS products are still present at key locations in store. We strongly feel that these exemptions should be addressed, if the government wishes the policy to meet its key aims of ensuring healthier food is more easily accessible and more visible in shops. Products that would fall under the definition of non-HFSS, but are still highly processed, have proliferated and increased in visibility under the new policy, and it is difficult to see how they will contribute to an improved dietary pattern, without an overall increase in more wholesome, nutritious foods.

Furthermore, this snapshot has also shown that exempt businesses, specialists and the out of home sector, are freely promoting HFSS products in store to consumers. This is of concern given recently published research from Action on Sugar found that a third of sweet food and drink products sold in major high street coffee shops exceed an adult’s daily limit of sugar (30g for free sugars) in just one serving [17]. We have also seen how some retailers have responded by attempting to make less healthy options more visible in-stores, despite not being able to be placed at key locations anymore, as reported on page 14.

This report has also clearly identified the challenges that are being experienced locally with regards to enforcement of the regulations, which may be having an impact on the rigour of which the legislation is being enforced.

To summarise, in the first year of this legislation, this has proved itself to be a useful step towards shifting less healthy foods and drinks away from the spotlight in retailers and online. However, it is clear the legislation could go much further through the significant exemptions that currently exist and provide more support to local enforcement bodies to effectively implement the legislation. Importantly, had the legislation been brought in alongside the (long delayed) evidence-based plans to restrict less healthy food and drink advertising to children, and to only allow multi-buy offers on healthier food and drink in store, we would finally be putting healthier food back in the spotlight, where it belongs.

# Recommendations for government

- Commit to regularly reviewing the legislation to ensure it is fit for purpose, and review the exemptions identified in this report and any unintended impacts of the legislation (i.e. displacement of alcohol to key locations in store and the creation of new displays within stores).
- Streamline the process of submitting complaints of in-store breaches to make the process simpler, easier to complete and align with other similar mechanisms such as submitting complaints to the Advertising Standards Authority for breaches of online HFSS location and HFSS advertising codes.
- Consider how this legislation could be applied to the out of home sector, specialist and smaller retailers. For example, where HFSS options are displayed on online menus, pop up offers and in-store at the checkout.
- Ensure adequate funding is provided to local authorities in order to effectively implement the legislation and ensure this is ring fenced.
- Provide greater training and tools to support officers with enforcement. This should include resources to help officers easily identify foods and drinks in-scope of the regulation, and in-scope businesses.
- Promotion of HFSS food and drink at key locations in store will only address one part of the marketing mix. To fully take less healthy food out of the spotlight and protect children's health, promotions by price and marketing across TV, online media and other platforms such as outdoor spaces needs to be addressed. We urge the government to release the consultation response for the 9pm watershed restrictions of HFSS advertising on TV and online media and bring in restrictions on multibuy of unhealthy food.



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# Appendices

## Appendix 1: Store managers survey questionnaire

Locations - in store questionnaire

Project Title: Assessing the compliance to 'unhealthy food at the checkouts' regulations

Aim: To ask store managers/supervisors a series of questions to see if they are familiar with the regulations and if they are having any issues complying with them

Data: all data will be anonymous, not attributed to a store or a person

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Thank you for speaking to me today. I am conducting a survey to see if supermarkets are following the regulations that came into place last year, restricting the types of foods and drinks you can place near the checkouts.

I would like to ask you some questions, which will be anonymous, not attributed to the store. Are you happy to answer three short yes/no questions?

1. Are you aware that you are not allowed to put unhealthy food and drink near the checkouts? (unhealthy = High fat, Salt or Sugar - HFSS)

Yes/no

(any comments)

2. Have you been told by your senior management team to apply the restrictions in your store?

Yes/no

(any comments)

3. Have you had any problems applying the restrictions?

Yes/no

(any comments)

4. Has anyone from Trading Standards come in and checked if you are complying with the restrictions?

Yes/no

(any comments)

Thank you very much for your time today

*Volunteer question - does this store appear to be applying the restrictions in store? Yes/no/not sure*

## Appendix 2: Interviews with Trading Standards Officers – Implementation of Placement Promotions Legislation. Survey Questionnaire

This survey is aimed at local authority trading standards and environmental health officers.

The survey relates to the implementing the Food (Promotion and Placement) (England) Regulations 2021, and officers' experiences of implementation.

Please note that this survey is anonymous, and we will not ask you for any identifiable information. The findings of this survey will be used to shape recommendations on improving the implementation of the policy. This survey is being carried out by Food Active (part of the Health Equalities Group), registered charity number: 1110067.

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1. Which region of England do you currently work in?
2. Are you aware of the legislation that restricts less healthy food and drink being placed at key locations in medium and large retailers, including store entrances, end of aisles from October 2022? (if yes, go to next Q. If no, thank and exclude from survey? agree)
3. Have you had any training on inspections? (yes/no)
4. Have you undertaken any inspections? (yes/no)
5. Have there been any challenges in completing the inspection? [comment box – can just add n/a if not undertaken any?]
6. Have you issued any improvement notices to businesses? (yes/no/n/a)
7. Do you think this legislation has had an impact on the amount of less healthy food and drink being displayed at key locations in store (i.e., end of aisles, store entrances and checkouts). – yes/no/n/a)
8. Please explain your answer.
9. Please share any thoughts on how you could be better supported to carry out inspections and implement these regulations.

### Appendix 3: Full list of product categories included (y) and excluded (n), from the scope of the regulations (with credit to Action on Sugar)

Product	Promotion restrictions	Product	Promotion restrictions
soft drinks with added sugar	Y	bread	N
juice drinks with added sugar	Y	cheese	N
milk drinks with added sugar	Y	butter	N
beverages (dried beverages)	N	fat spreads	N
alcohol	N	baked beans	N
follow on' formula milk	N	soups	N
crisps and savoury snacks	Y	table sauces and condiments	N
breakfast cereal	Y	cook-in and pasta sauces, thick sauces and pastes	N
chocolate confectionary	Y	biscuits (savoury)	N
sugar confectionary	Y	pasta	N
ice cream	Y	rice	N
cakes	Y	other cereals	N
sweet biscuits	Y	quiche	N
morning goods	Y	scotch eggs	N
pudding and dairy desserts	Y	canned fish	N
yoghurts	Y	canned vegetables	N
pizza	Y	meat alternatives	N
chips and potato products	Y	stocks and gravies	N
family meal centres	Y	Wholesale Salt	N
complete main meals (ready meals)	Y	Wholesale Sugar	N
breaded and battered products	N	WholeSale Syrups	N
Meal replacement products	N	Wholesale Fruit Extract	N
Food products targeted to infants under 36	N	Naturally occurring sugars	N
main meals (out-of-home (OOH))	N	Fruit sugars	N
starters, sides and small plates (OOH)	N	Wholesale Vegetable oils	N
children's meal bundles (OOH)	N	Wholesale Fats	N
sandwiches (retail & OOH)	N	garlic/cheesy bread	N
sweet spreads and sauces	N	meat products	N



## Location, location, location: Exploring the impact and implementation of the promotion of high in fat, sugar and salt products by locations legislation in England.

Winter 2023.

### Acknowledgements:

Food Active would like to thank its local authority network for disseminating the survey for trading standards and environmental health officers, and for their continued support in the programme. Obesity Health Alliance would like to thank their members for their contributions, with a special acknowledgment to our work experience student, Isaac.

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