

**EXPLANATORY MEMORANDUM TO**  
**THE FOOD (PROMOTION AND PLACEMENT) (ENGLAND) (AMENDMENT)**  
**REGULATIONS 2022**

**2022 No. 1007**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (“DHSC”) and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The purpose of this instrument is to amend the Food (Promotion and Placement) (England) Regulations 2021 to enact a twelve-month delay to the implementation of the ‘volume price promotion restrictions’ which are currently coming into force on 1 October 2022. The delay is due to the unprecedented global economic situation.
- 2.2 The purpose of the Food (Promotion and Placement) (England) Regulations 2021 is to restrict the promotion of high fat, sugar, or salt (HFSS) products by location and volume price in medium and large businesses (50 or more employees) that sell food or drink in England. Location restrictions will apply to store entrances, aisle ends, checkouts and their online equivalents. Volume price promotion restrictions will prohibit medium and large businesses that sell food or drink in England offering promotions such as “buy-one-get-one-free” or “3 for 2” offers on HFSS products.
- 2.3 This instrument only amends the implementation date of the volume price promotion restrictions. This instrument does not amend the implementation date of the location restrictions, which will still come into force on 1 October 2022.
- 2.4 This instrument will come into force on 30 September 2022.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 DHSC regrets that this instrument breaks the 21-day rule.
- 3.2 On 16 May 2022, DHSC announced to Parliament a twelve-month delay to the volume price promotion restrictions. This instrument seeks to enact this delay by amending the implementation date of the volume price promotion restrictions to 1 October 2023. This needs to happen before the current implementation date of the volume price promotion restrictions on 1 October 2022.
- 3.3 If this instrument was delayed to be made in line with the 21-day rule, the volume price promotion restrictions would be legally enforceable on 1 October 2022, this would be in contradiction to the announced policy and would create considerable legal uncertainty for industry. Manufacturers and Retailers have stopped preparations for the implementation of the volume price promotion restrictions following the announcement in May. It is the opinion of Government that this instrument is urgently necessary, and it is therefore unavoidable to breach the 21-day rule.

#### **4. Extent and Territorial Application**

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

#### **5. European Convention on Human Rights**

5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

#### **6. Legislative Context**

6.1 This instrument is being made to delay the implementation of the volume price promotion restrictions by twelve months.

6.2 The Food (Promotion and Placement) (England) Regulations 2021 were made to restrict the promotion of HFSS food and drink in favour of healthier options to help reduce the overconsumption of HFSS products in children and reduce children's sugar and calorie intakes. The volume price promotion restrictions will prohibit medium and large businesses that sell food or drink in England offering promotions such as "buy-one-get-one-free" or "3 for 2" offers on HFSS products.

6.3 The Secretary of State has consulted in accordance with sections 48(4) of the 1990 Act. The Food Standards Agency has, to the Secretary of State's knowledge, produced no relevant advice.

#### **7. Policy background**

##### *What is being done and why?*

7.1 This instrument is being made to delay the implementation date of the volume price promotion restrictions by twelve months. The volume price promotions are due to come into effect from 1 October 2022 as part of the Food (Promotion and Placement) (England) Regulations 2021. This instrument would therefore delay the implementation date of the volume price promotion restrictions to 1 October 2023. The delay is due to the unprecedented global economic situation.

##### *Explanations*

##### *What did any law do before the changes to be made by this instrument?*

7.2 No such restrictions on less healthy food and drink products have existed in England before. The restrictions as set out below were introduced by the Food (Promotion and Placement) (England) Regulations 2021, which are due to come into force on 1 October 2022.

7.3 The Regulations aim to reduce excess purchases and therefore overconsumption of HFSS products that contribute significant sugar and calories to children's diets and are heavily promoted, and therefore are of most concern for childhood obesity. The Regulations restrict the promotion of HFSS products by location and volume price as follows:

Location restrictions will apply to store entrances, aisle ends, checkouts and their online equivalents (entry pages, landing pages for other food categories, and shopping baskets or payment pages).

Volume price restrictions will prohibit retailers from offering promotions such as “buy-one-get-one-free” or “3 for 2” offers on HFSS products. The restrictions will also apply to free refills of sugar-sweetened drinks in the out-of-home sector (for example restaurants, coffee shops).

- 7.4 The Regulations apply to medium and large businesses (with 50 or more employees) including franchise and symbol groups. Micro and small businesses (fewer than 50 employees) are exempt from the restrictions. Stores that are smaller than 185.8 square metres (2,000 square feet) (even if they are part of a medium or large business) are exempt from the location restrictions. Specialist retailers that mainly sell only one type of food product category, for example chocolatiers or sweet shops are exempt from the location restrictions.
- 7.5 There is a two-stage approach to determine if a product is HFSS. First, products will need to fall into a list of categories, which is listed in schedule 1 of the Food (Promotion and Placement) (England) Regulations. The 2004/5 Nutrient Profiling Model is then applied to the product, if it scores 4 or more for food or 1 or more for drinks then it cannot be promoted.
- 7.6 The Regulations come into force from 1 October 2022.

*Why is it being changed?*

- 7.7 On 16 May 2022 DHSC announced to Parliament that the implementation of the volume price promotion restrictions part of the Regulations would be delayed. This was due to the unprecedented global economic situation.

*What will it now do?*

- 7.8 This instrument will delay the implementation of the volume price promotion restrictions by twelve months. The volume price promotion restrictions are due to come into effect from 1 October 2022 as part of the Food (Promotion and Placement) (England) Regulations 2021. The volume price promotions will therefore in fact come into effect from 1 October 2023, as a result of the amending instrument. This instrument does not change the implementation of the rest of the Regulations (including the location restrictions), which will still come into effect from 1 October 2022.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

## **9. Consolidation**

- 9.1 This instrument does not involve consolidation and there are no plans to consolidate the relevant legislation at this time.

## **10. Consultation outcome**

- 10.1 A consultation on this instrument was conducted between 3 August 2022 and 17 August 2022. The consultation was sent to stakeholders including industry trade bodies, organisations (non-governmental organisations and charities) and enforcement officers. The consultation sought views on the proposed text of this instrument. The consultation received 11 responses including from organisations that represent over 50

health organisations and industry trade bodies that represent manufactures and retailers.

- 10.2 The consultation sought specific views and proposed changes to this instrument. All proposed changes were then considered in light of ensuring this instrument serves the intended purpose of delaying the implementation of the volume price promotion restrictions. Some of the proposed changes went beyond the scope of the consultation and were therefore discounted. Several of the responses proposed changes to provide further clarity for those implementing the restrictions. However, the proposed changes were already clarified in the regulations and did not need to be included in this instrument. Other proposed changes were not procedurally correct and therefore could not be included in this instrument.
- 10.3 As a result of the consultation, it was concluded that none of the proposed changes were required to ensure that this instrument enacted the desired change of delaying the volume price promotions restrictions.

## **11. Guidance**

- 11.1 Guidance to support businesses and local authorities to implement the requirements of the Regulations was published 6 April 2022 and can be found on the gov.uk website.<sup>1</sup>
- 11.2 We will update the guidance to reflect this instrument and the 1 October 2023 commencement date of the volume price promotion restrictions.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because this instrument is being made only to delay the implementation date of the volume price promotion restrictions by twelve months.
- 12.4 Businesses affected by this instrument were informed in May and mainly welcomed the decision.
- 12.5 A full Impact Assessments for the Regulations has been produced and is published on the gov.uk website.<sup>2</sup> The Regulations are estimated to have a significant value of associated health benefits. The Net Present Value over a 25-year period from both the volume price promotion restrictions and the location restrictions is fuelled by the reduction in calories consumed. Current estimates show that while the combined costs might be £5.6bn over 25 years, the monetised benefits greatly outweigh the costs on a ratio of around 14:1, such that over a 25 year period the net present value of the Regulations is £71.1bn. The costs of obesity to individuals, society and the NHS are huge and the benefits from reducing calorie intakes across the population are therefore substantial.
- 12.6 This instrument will enact a twelve-month delay to the volume price promotions restrictions. As a result, the full impact of benefits and costs of the restrictions will

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<sup>1</sup> <https://www.gov.uk/government/publications/restricting-promotions-of-products-high-in-fat-sugar-or-salt-by-location-and-by-volume-price/restricting-promotions-of-products-high-in-fat-sugar-or-salt-by-location-and-by-volume-price-implementation-guidance>

<sup>2</sup> <https://www.gov.uk/government/consultations/restricting-promotions-of-food-and-drink-that-is-high-in-fat-sugar-and-salt>

take an additional year to start accruing. This includes the health benefits associated with the policy. Businesses may benefit from the additional time to plan and implement the volume price promotion restrictions and the delay to the costs associated with the implementation of the restrictions. Costs to the public sector of enforcing the policy will also be delayed by a year. Only the costs of enforcing the location restrictions will occur in year one.

### **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses. The legislation applies to businesses which have 50 or more employees, so does not apply to small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is the restrictions will apply to medium and large retailers (with 50 or more employees), including symbol group stores. However, for the purpose of determining how many employees a business has, and therefore whether a business will be subject to the Regulations, a franchisee's business may be treated as part of the franchisor's business. This means that franchisees trading as a business under a franchise agreement, where the sum of the employees operating under the franchise are 50+, are considered qualifying businesses for the purpose of the Regulations and therefore required to abide by the restrictions. This only applies, however, where the franchisee and franchisor agree that the franchisee carries on a business activity which includes the sale or distribution of food and the food, appearance of the premises and business model are agreed by the franchisor and are similar across its franchise network.

### **14. Monitoring & review**

- 14.1 This instrument does not include a statutory review clause because this instrument only changes the implementation date of the volume price promotion restrictions. A statutory review clause is included in the Regulations, and this remains unchanged as a result of this instrument. The clause requires that a review of the regulatory provisions in the regulations is conducted from time to time and a report published setting out the conclusions of the review. The conclusions of the review must be set out in a report to be published within five years of the implementation. Reviews must be carried out and reports published within every five years after that.
- 14.2 In addition, under section 67 of the Regulatory Enforcement and Sanctions Act 2008 a review will be carried out to determine whether enforcement of the Regulations has been proportionate and effective. The conclusion of the review must be set out in a report to be published within three years from when the Regulations come into effect.

### **15. Contact**

- 15.1 Caitlin Hyde at the Department of Health and Social Care Telephone: 02079725139 or email: [Caitlin.Hyde@dhsc.gov.uk](mailto:Caitlin.Hyde@dhsc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Kevin Dodds, Deputy Director for Healthy Weight and Nutrition, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Will Quince MP at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.