

Consultation on Mandatory Calorie Labelling in the Out of Home Sector in Scotland

April 2022

Ministerial foreword



These past two years have been extremely challenging for Scotland. Together, we have faced a very difficult COVID-19 pandemic and for many, the virus has highlighted and exacerbated a legacy of long-standing health inequalities. The COVID-19 pandemic continues to impact public health as well as causing disruption to our health, social care and other services.

We face another national health emergency. Obesity and poor diet continue to be one of the biggest and most complex public health challenges. Creating a Scotland where we all eat well, have as healthy a weight as we can, and are more physically active remains a priority.

The COVID-19 pandemic and associated risk factors presented by poor dietary health and obesity shows us just how important these matters are. The fact that socio-economic disadvantage, disability or being part of a certain minority ethnic community creates additional barriers for people is not acceptable. Reducing diet-related health inequalities must be central to our action.

There is no single solution to addressing our diet and obesity challenges. However, we know that a key factor is improving our food environment, making it easy for everyone to buy healthier foods and supporting business to offer healthier options.

Before the pandemic, people living in Scotland were consuming more and more food and drink out of home (OOH). Whether it's breakfast at a roadside café, grabbing a lunchtime soup and sandwich from a local convenience store or ordering food online from a restaurant, most of us were increasingly buying food outside the home or ordering it in. I expect that trend to resume as we build a fairer, greener and healthier Scotland as we recover from the pandemic.

It's for this reason that I launched our [Out of Home Action Plan](#) on 10 September last year. With two-thirds of the population living in Scotland recorded as living with overweight or obesity¹, we must look at all evidence based practical solutions. The Plan covers those that I consider will be the most effective public health measures for the OOH sector while addressing diet-related inequalities. A key proposal within the Plan is calorie labelling.

The introduction of mandatory calorie labelling at the point of choice in the OOH sector would be a significant step forward and level the playing field with the retail sector. This consultation is an opportunity to inform the development of policy proposals and the decision on the introduction of calorie labelling. And if we do proceed to legislate, a further consultation may likely be required on more detailed proposals which would inform how we implement the policy and who would need to comply.

¹ According to the 2019 Scottish Health Survey, 66% of the Scottish population have a body mass index (BMI) over 25, which is considered overweight by the World Health Organisation. A BMI of over 30 is classed as obese.

We know that giving people more information, such as the number of calories in meals will enable people to make healthier choices when eating out, or ordering in. It has also been shown to stimulate businesses to review their offerings and encourage reformulation. This is not novel practice – calories are already required on retail food purchases and calorie labelling for OOH sites is mandated in many other countries. Legislation has been laid in England to come into force from 6 April 2022. The Welsh Government is also considering such a policy.

Many food companies in Scotland have already taken this significant step voluntarily. We want to learn from those experiences and I would urge those companies to share their learning in this consultation.

In setting out this consultation, we have used the considerable expertise of Food Standards Scotland and Public Health Scotland to set questions that will help us establish the benefits, opportunities and impacts of mandating calorie labelling in OOH settings.

Thank you for your continued assistance as we embark on our journey to enable consumers to make informed, healthier choices. We consult because we want better policy – and better, fairer outcomes as a result. We want to ensure the steps we propose taking are proportionate and are most likely to deliver beneficial outcomes. Your responses will inform the consideration of legislation and impact assessments. I thank you in advance for your response.

Maree Todd MSP
Minister for Public Health, Women's Health and Sport

1. Context

1.1 This consultation fulfils a pledge made in our 2021 [Out of Home Action Plan](#). The Plan builds on the commitments made in the 2018 [Diet and Healthy Weight Delivery Plan](#) and recommendations made by [Food Standards Scotland](#) (FSS) to Scottish Ministers in 2019. Mandating calorie labelling at the point of choice is one potential way to support our Out of Home (OOH) sector to make a key contribution in improving our dietary health.

1.2 For the purpose of this proposal, the OOH sector is defined as including:

- Cafes, all types of restaurants, takeaways, pubs/bars, bakeries, sweet and dessert shops, vending machines, workplace canteens, hotels, mobile caterers, leisure and entertainment venues.
- Supermarkets, delicatessens and convenience stores who provide “food on the go”.
- Places where we purchase food and non-alcoholic drinks (see 1.3 below) when commuting or travelling.
- Manufacturers and suppliers of food to the OOH sector.
- Food delivery services, including online services.
- OOH businesses in the public sector, including food provided for staff and visitors in prisons, military settings, and adult care and health care settings (for food for those residing in prisons, adult care settings and in military settings and patient food see paragraph 1.7).
- Any other venue or outlet that sells non-prepacked food ready for immediate consumption.

1.3 Food referred to hereafter within this consultation includes both food and non-alcoholic drinks.

1.4 Pre-packed food is not within the scope of these proposals as there are already requirements to provide nutrition information for pre-packed food. Pre-packed food for direct sale (PPDS) is within the scope of these proposals (see section 5 and glossary for definition).

1.5 We estimate that there are around [41,000 outlets in Scotland that fall within our Out of Home definition](#).

Table 1: Number of food business outlets by category in Scotland

Category of food business	Number of outlets (as at 21 February 2022)
Restaurant/café/canteen	11,297
Takeaway/sandwich shop	5,835
Mobile caterers	1,950
Pub/bar/nightclub	4,064
Other catering premises	5,413
Retailers – supermarkets/hypermarkets	1,245
Retailers – other	8,502
Hotels/bed & breakfast/guest houses	2,991
Total	41,297

Categories excluded are: caring premises, distributors/transporters, farmers/growers, importers/exporters, manufacturers/packers and school/college/university

1.6 These proposals do not include schools or early learning and childcare settings as these already have regulatory standards for food in place.

1.7 We are considering including meals served for those residing within prisons, military settings, adult care settings and for patients in hospitals. We are seeking responses to this consultation in relation to meals served in those settings to inform policy development. However, food sold to staff and visitors within these settings falls within the definition of OOH (see paragraph 1.2) and is included within the scope of the policy proposals.

1.8 Public sector organisations have the opportunity, scale of operations and reach to normalise the provision of calorie information in the places where people eat. However, we need to identify where particular issues may make the introduction of calorie information more challenging in certain parts of the public sector, for instance where food needs to meet other sector-specific standards.

1.9 We are considering exempting OOH food provided by a charity, in the course of its charitable activities, and provided for free, or for a price which is less than or equal to the cost of providing that food. This would likely include food offered for sale by or on behalf of a charity, at a single event, to raise funds for its charitable activities. We are not considering exempting commercial businesses run on behalf or in support of a charity.

1.10 The pandemic disrupted our eating OOH behaviours as a result of closures and restrictions on OOH business operations and changes to working patterns which persisted for much of 2020 and well into 2021. Therefore, most data presented below is pre-pandemic, as it relates to a more stable period. FSS will continue to monitor our OOH behaviours to understand how the pandemic has changed these trends. Previous FSS publications can be found on the [FSS nutrition hub](#).

1.11 In 2019, [98% of the population living in Scotland purchased food and drink OOH](#) at some point, accounting for an estimated spend of £4.6 billion. At that time, the average person in Scotland visited OOH four times per week spending around £20. Those who live in [rural areas visit OOH more frequently](#) than those living in urban areas, with 281 trips per year vs 198 trips per year respectively in 2019.

1.12 [People living in the most deprived areas](#) (SIMD 1 & 2) purchase food and drink OOH as frequently as those living in the least deprived areas (SIMD 4 & 5).

1.13 The [most popular OOH venues are convenience stores, bakery and sandwich shops, supermarket cafés, quick service restaurants and workplace and education canteens](#) which collectively make up over 75% of all visits. Full service restaurants make up only 3% of all visits.

1.14 Public Health England (PHE) (whose health improvement functions are now part of the [Office for Health Improvement and Disparities](#)) estimated in 2017 that on average 25% of the calories we consume in the UK comes from food eaten OOH. Lunch and snacks are the most frequent eating out occasions, and the most popular foods purchased from the OOH sector are [often less healthy options, higher in fat, sugar or salt \(HFSS\)](#).

1.15 In 2019, [the top OOH food and drink purchased](#) were coffee, regular soft drinks, sandwiches, confectionery, tea, cakes, biscuits and pastries, chips, water, diet cold drinks, crisps, snacks and popcorn. Among [the most popular types of main meals](#) purchased in 2018 were burger meals, fish meals and pizza meals. [Top takeaways](#) included burgers, Chinese and Thai meals, fish, pizza, and chicken meals.

1.16 Discretionary products such as sugary drinks, confectionery, savoury snacks, cakes, biscuits and pastries, which provide few, if any, [essential nutrients](#), were purchased in 37% of all [OOH visits](#) in 2019 (equates to 353 million visits).

1.17 For the purposes of this proposal, OOH is not considered to be just about eating when away from home. It includes takeaways brought into the home, and home delivered ready to consume foods. [These increased in use during the COVID-19 pandemic](#) with a doubling of the proportion of OOH trips being takeaway, and an additional 1.2 million consumers using home delivery in Scotland in 2020 compared to 2019.

1.18 [Eating OOH has been associated with obesity](#) and there is evidence [that food obtained from fast-food outlets or takeaways is associated with higher calorie intakes](#). [Available data](#) shows that the food we eat OOH contains more calories per 100g than the food we eat within the home (205 kcals per 100g vs 169 kcal per 100g).

1.19 At present, the provision of calorie information on OOH foods (or non-prepacked foods ready for immediate consumption) is provided by some businesses on a voluntary basis. Where voluntary information is provided, provision of the information is regulated by the [Food Information for Consumers Regulations](#) which

sets out the requirements for voluntary information, for example, the energy (calorie and kilojoule) value of food should be calculated and presented in a particular way set out in the Regulation.

1.20 In a recent study by FSS, [analysis of calorie information](#) provided online by a sample of larger chain OOH restaurants and takeaways operating in Scotland showed considerable variation in the calorie content of main meals. Calorie contents of similar dishes had a wide range as shown below. This demonstrates that it is difficult for the consumer to know the calorie content of the food they are buying without the business providing this information.

Table 2: Range of reported calorie contents of menu items provided by OOH businesses in Scotland

Category	Number of items recorded	Average (kcal)	Lowest	Highest
Starters and small plates	296	386	15	1317
Main meal	716	812	172	5070
Pizza	477	970	171	3080
Sides	332	248	11	1334
Desserts	514	392	46	1426
Popcorn	22	366	139	1180
Milkshake	48	357	127	641
Coffee	112	111	5	588

1.21 There is currently no way of determining the prevalence of calorie labelling already in place in OOH businesses in Scotland as this data is not collected. In 2018, [researchers undertook visits to major restaurant](#) (fast-food and full service) and takeaway chains operating in the UK to assess the presence of calorie information and how this was displayed. Of the 104 chains visited, a minority (18 chains, 17%) provided in store calorie labelling. Furthermore, those that did provide calorie information tended not to adhere to [recommended labelling practices](#) for example, displaying calorie information clearly and prominently at point of choice. In a [similar study](#) also conducted in 2018, 13 out of 97 (13%) branded outlets in the UK were found to include calorie information on menus in premises.

1.22 [FSS conducted research](#) on 81 larger chain OOH restaurants and takeaways operating in Scotland in summer 2021 collecting data from both a survey and their websites. Of the 81 businesses included in the research, 64% provided calorie information of their dishes online. Less than half of the 14 businesses who responded to the survey provided calorie information in their premises.

2. Purpose of consultation

2.1 We are consulting to inform Scottish Government policy, impact assessments and consideration of legislation. This will help us assess whether the proposed measures are proportionate and would deliver beneficial outcomes. Information on the Scottish Government consultation process and how to respond to this consultation is set out in Annex A. We are consulting on:

1. whether the provision of calorie information in OOH settings at the point of choice should be mandatory

And if so:

2. the manner in which calorie information would be presented so that it is easily and equitably accessible and understood
3. the advice and guidance that OOH businesses may require to ensure that there is parity in provision of calorie information across the sector
4. identifying any unintended consequences and impact on health and other inequalities that may arise from mandating calorie information at the point of choice in OOH settings and measures potentially required to mitigate the unintended consequences and impacts
5. whether there should be any exemptions to the application of requirements for the provision of calorie information in OOH settings.

2.2 The intended impact of the policy is to:

- provide calorie information for consumers at the point of choice
- facilitate informed choices
- reduce overall calories purchased and consumed OOH at a Scotland population level
- support businesses to reformulate their offerings to healthier options
- improve our ability to monitor population diet.

2.3 We will consider the Scottish Ministers' options to proceed to implement proposals once we have received responses to this consultation. Primary legislation may be required to allow Scottish Ministers to make regulations to introduce mandatory calorie labelling in OOH. This consultation will inform whether and on what basis the Scottish Government will proceed with mandatory calorie labelling and we will keep the position under review as the policy develops. We anticipate that a further consultation may likely be required to inform any regulations for implementing mandatory calorie labelling in OOH, as well as the scope of the requirements and any exemptions.

3. Rationale for intervention

3.1 The COVID-19 pandemic reaffirms the need to reduce levels of excess weight, given the associated health risks, including the risk of severe COVID-19 outcomes. In 2020 [PHE estimated](#) that having a BMI of 35 to 40 could increase a person's chances of dying from COVID-19 by 40%, while a BMI greater than 40 could increase the risk by 90%.

3.2 Approximately two out of three adults in Scotland are [living with overweight or obesity](#)¹. In 2019, 70% of adults in the most deprived areas of Scotland were living with overweight or obesity, compared to 60% of adults in the least [deprived areas](#). A higher prevalence of excess weight is also seen in [some minority ethnic groups, with the health risks of obesity arising at a lower BMI](#). These variations in the prevalence of obesity overlap with the disproportionate burden of COVID-19 amongst people living in more deprived areas and [minority ethnic](#) groups.

3.3 Calories are not the only criterion for whether a diet might be considered healthy but they are an important piece of information for any consumer looking to inform their purchase. While some calorific food items may yield other beneficial properties such as fibre, vitamin or mineral content, [the Scottish diet](#) as a whole contains too many calories. Scotland therefore has a [dietary goal](#) to reduce calorie consumption by around 120 calories per person per day.

3.4 The proposal within this consultation is for calorie information only rather than including additional nutrition information about protein, fats and carbohydrates. This is due to the simplicity of calorie information and for practicality.

3.5 In its published [recommendations to Ministers](#), FSS advised that nutrition information, in addition to calories, is provided online or on printed materials [by a number of larger OOH providers voluntarily](#). However, this information is often incomplete, and can be misleading in the way it is presented. This lack of consistency can lead to confusion for consumers. FSS recognised that full nutritional labelling is more complex to provide than basic calorie labelling. However, FSS believed it is important that the industry agrees to an acceptable voluntary standard for the presentation of full nutrition information (other than calorie information) for businesses that voluntarily provide this level of information.

3.6 That is why, as we set out in our OOH Action Plan, FSS will review work to date and engage with industry partners to recommend a voluntary standardised format for OOH businesses who provide full nutrition information (other than calorie information) online and/or on printed materials. This review by FSS is not subject to consultation within this consultation paper, which concerns calorie information only.

3.7 Food information, whether mandatory or provided voluntarily must be accurate and not mislead consumers, regardless of where the food is purchased. In the retail environment, consumers have easy access to accurate calorie and nutrient information on the labels of prepacked food. This information is required by law², and businesses are required to comply with it.

3.8 However, calorie information on non-prepacked food OOH is not mandatory, and as described in section 1 above, there is currently a very low prevalence of calorie information for non-prepacked foods ready for immediate consumption sold OOH. [Research by FSS](#) demonstrates that consumers find it difficult to make healthier choices when eating away from home, with 57% agreeing there are not enough healthy choices when ordering takeaway/delivery.

3.9 Furthermore, [the presentation of calorie information](#), even where available, is inconsistent and sometimes hard for consumers to find or see at the point of choice. Clear requirements on calorie information provision would make it easier for consumers to find, and support business on how and where to make it available.

3.10 FSS has reviewed the global evidence of the [impact of calorie labelling on the number of calories purchased or consumed](#). Whilst the evidence base is mixed, overall it shows a reduction in the number of calories purchased or consumed when calorie information is present.

3.11 We expect that businesses will use the calorie information that they generate for their offerings to reformulate some of these offerings. [Research on businesses outwith the UK](#) found that, on average, businesses reduced the calorie content of items they serve after the implementation of calorie labelling. This could be as simple as a reduction of portion size, on-site changes to recipes or preparation or a change to a lower calorie option through the item's supplier. This reformulation will have a positive effect on reducing calories across the population without the need for consumers to make a conscious choice. This is particularly important as [there is increasing evidence](#) that population wide measures such as reformulation are more likely to be equally or more effective among those experiencing health inequalities, thereby contributing to addressing this. Furthermore, evidence suggests that reduction in portion size can lead to a reduction in daily energy intake, and that over time this results in lower body weight.

3.12 While we believe that the provision of calorie information would be beneficial to consumers to make informed choices, we recognise that this may pose difficulties for others such as those who are impacted by an eating disorder. This consultation provides a way to identify these potential difficulties and an opportunity to propose potential solutions. We would carefully consider these in relation to how we might implement the policy.

² Regulation (EU) No 1169/2011 (Retained EU Legislation) (the Food Information to Consumers Regulation) applies. Under Article 30 and subject to the exemptions in Annex V, nutrition information for prepacked food is mandatory. This means that energy plus the amounts of fat, saturated fat, carbohydrates, sugars, protein and salt need to be shown on the labelling.

3.13 Overall, there is strong consumer support for calorie labelling in the OOH sector; [79% of respondents to a PHE survey](#) thought that menus should include the number of calories in food and drinks. Furthermore, [in response to the consultation held by FSS in 2018](#), 68% of respondents were in favour of mandatory calorie labelling in the OOH sector. [FSS research](#) also shows consumers would like more help in making healthier choices, with 44% saying they find it difficult to know which options are healthy and which are not healthy when ordering takeaway/delivery.

Question 1 – Should mandatory calorie labelling at point of choice, for example, menus, menu boards or digital ordering apps in the OOH sector (as listed in paragraph 1.2) in Scotland be implemented?

Yes

No

Don't know

Please explain your answer

Question 2 - Should any of the sectors listed in paragraph 1.2 be exempt from mandatory calorie labelling? If yes please explain why.

Yes (please explain why)

No

Don't know

4. Who we expect it to apply to

4.1 As described in section 2, the OOH sector is diverse, including a wide range of types and sizes of businesses³ (as listed in paragraph 1.2). We estimate around 41,000 OOH outlets fall under our definition. For some businesses (including public sector operations), selling food ready for immediate consumption is their primary operation, but for others, such as a convenience store selling hot drinks and filled rolls, it might be a small part of their business.

4.2 A split of the number of outlets by business size band is displayed in the table below.

Number of employees ⁴	% of outlets	Number of outlets ⁵
< 10 (micro)	60%	24,778
Between 10-49 (small)	16%	6,608
Between 50-249 (medium)	4%	1,652
250 or more (large)	20%	8,259

4.3 To have the greatest impact, mandatory calorie labelling would need to apply to all outlets selling foods within scope of the policy. This would mean that at all eating occasions, consumers would have the information needed to make an informed choice, and the food environment would have a consistent approach to the provision of this information. It would also enable all businesses to have the information they require to assess the range of food and drinks on offer and review portion size or meal composition to ensure healthy offerings.

4.4 [Responses to the FSS consultation in 2019](#) showed there was desire for a level playing field between businesses, and with the retail environment where all foods are required by law to have nutrition information provided.

4.5 That said, we are aware of the work required to calculate calorie contents of foods sold, both during the initial implementation phase, and any subsequent changes to menus, and that this may be challenging. We will carefully review the responses to this consultation to inform the consideration of possible exemptions. In considering any exemptions, we must also consider the impact they could have on widening health inequalities. For example, excluding small and micro businesses from the policy has the possibility of excluding rural areas and areas of social economic disadvantage, thereby potentially widening inequalities further.

³ Includes private, public and third sector outlets providing Out Of Home food and drink.

⁴ For the purposes of the consultation, an employee is someone who has a contract for full-time or part-time employment. Part-time employees should therefore be included as part of the headcount.

⁵ The number of outlets is sourced from Food Standards Scotland's FHIS database. The split by business size band is taken from the proportion of businesses in Scotland in each sector (Food and Beverage Service Activities, Accommodation, and Food and Drink Retail) taken from the Inter-Departmental Business Register, March 2020 (unpublished data).

4.6 We know that many food businesses operate on a franchise basis. In these situations, we would propose classifying the size of the business by the total employees of the franchisor and not as separate businesses. Convenience stores operating under a Symbol Group are classed as individual businesses for the purpose of size classification. See the glossary for a definition of both terms.

Question 3 – To which size of business in scope of the policy, should mandatory calorie labelling apply:

1. All businesses
2. All except businesses with fewer than 10 employees (micro)
3. All except businesses with fewer than 50 employees (small and micro)
4. All except businesses with fewer than 250 employees (medium, small and micro)
5. None
6. Other

Don't know

Please explain your answer

Question 4 – We are considering including food provided for residents and/or patients within the following public sector institutions within the scope of the policy.⁶ Should food in these settings be included within the scope of the policy?

- 1 Hospitals
- 2 Prisons
- 3 Adult care settings
- 4 Military settings

For each: Yes/No/Don't Know

Please explain your answer

5. Types of food and drink and possible exemptions

5.1 All food and non-alcoholic drinks that can be consumed immediately upon purchase without any further preparation is within the potential scope of the policy. We envisage it would apply to standard offerings only. This means it would not apply to items that are made at specific request of the consumer such as a chicken burger without mayonnaise.

5.2 Calorie information would be required to be provided for each menu item on a per portion as served basis. Where an item is a sharing dish, or contains multiple portions, the calorie information per portion would be displayed, along with the total number of portions within the dish e.g. a sharing nachos contains two portions.

⁶ Staff and visitor food in hospital and adult care settings are already considered in scope

5.3 Where foods are served as part of a self-service buffet or made to order sandwich bar, calorie information would be displayed for an appropriate serving of each item e.g. a scoop of mashed potatoes or a slice of cold meat.

5.4 We know that [alcoholic drinks can be a significant source of calories](#). For those who drink alcohol, it has been estimated that this provides nearly 7% and 8% of women's and men's calorie intakes respectively. In the UK, each year around 3.4 million adults consume an additional day's worth of calories each week from alcohol: the equivalent of an additional two months of food every year. This will be referenced in a forthcoming consultation on Alcohol labelling: health information for consumers, which is likely to include mandatory alcohol calorie labelling. As mandatory calorie labelling for alcohol is subject to separate consultation, alcoholic drinks do not fall within the scope of this consultation.

5.5 Foods that are prepacked **off premises** such as confectionery, crisps or bottled soft drinks would be exempt from these new proposals. This is because pre-packed foods are already required to provide nutrition information (including calories per 100g/ml) through the [Food Information to Consumers Regulation](#).

5.6 Foods that are prepacked **on premises** and offered or sold to consumers are also known as Pre-packed For Direct Sale (PPDS) (see glossary for definition), for example a freshly-made, filled baguette, packaged and made available for sale in a chiller cabinet. PPDS foods would be within scope of the policy if meeting the criteria set out in 5.1. This is because people could be choosing these types of foods for immediate consumption.

Question 5 – The intention is that PPDS foods would fall within the scope of the policy. Do you agree with that proposal?

Yes/No/Don't Know

Please explain your answer

5.7 We understand that for businesses who very regularly change their menu options, or provide specials for a short period, calorie labelling these menu items may be more difficult. Similar regulations adopted by the UK Government for England allow menu options that are available for 30 days or less (either in total or consecutively) in a calendar year to be exempt from calorie labelling. We would consider a similar provision for any Scottish legislation. This would ensure that businesses can use seasonal ingredients, reduce food waste and continue to be creative with their dishes.

5.8 We envisage that promotional menus and marketing materials that can be used to make a specific choice of purchase would be required to display calorie information. This would include, for example, takeaway menus with phone numbers that are received through the post or online.

5.9 Calorie information would not be required to be displayed on advertising and promotional materials, for example television adverts, billboards, and promotional posters because these are not where consumers make their choice of specific food or drink.

5.10 In summary, we envisage the following food and drink would be exempt from the scope of this policy:

- Non-standard menu items prepared at the specific request of the consumer
- Alcoholic drinks (alcoholic content greater than 1.2% ABV) (this is subject to a separate consultation)
- Menu items for sale 30 days or less (either consecutively or in a 12 month period)
- Condiments added by the consumer after food preparation is complete.

Question 6 - Should the foods and drinks listed above be exempt from calorie labelling? (please state your view for each of the above)

Item	Exempt? Yes/ No	Comment
Non-standard menu items prepared on request		
Alcoholic drinks		
Menu items for sale 30 days or less		
Condiments added by consumer		

5.11 Outlets that provide children’s menus usually provide these for people aged 12 or under. We propose that calories are not displayed on menus specifically marketed to children. However, we do want to seek views on whether businesses should be required to calculate the calorie content of children’s menus, and whether this should be made available to parents and carers. This would enable parents and carers to understand more about the options available for their child/ren, and also ensure businesses take responsibility for ensuring their options and portion sizes are suitable.

5.12 We are working with FSS, PHS and industry to develop a code of practice for children’s menus with the aim of improving the options available for children when eating OOH.

Question 7 - Should menus marketed specifically at children be exempt from calorie labelling?

Yes

No

Don't know

Comment

Question 8 - Should businesses⁷ be required to provide calorie information about options on children's menus to parents and carers on request?

Yes

No

Don't know

Comment

6. How and where we expect information to be displayed, including contextual information

6.1 In order for consumers to make use of calorie information, we would suggest it needs to be clearly visible at the point they are making their choice of food or drink. This means that the information may need to be in multiple places within an outlet, depending on the type of food and drink offered. For example, in a buffet restaurant this would mean that calorie information would be next to where consumers self-serve each food item, or in a fast food restaurant the calorie information would be available on an automated ordering screen.

6.2 We know where calorie information is currently provided on a voluntary basis there is an inconsistency in how and where it is displayed. [Research has shown](#), the number of chain outlets providing calorie information was very variable, with a high proportion not providing information for all items, or prominently. In addition, very few provided reference intake information (see section 6.8). Therefore, the policy aims to introduce a consistent approach to the display of calorie information so that consumers recognise this, and to have the greatest impact on health outcomes.

6.3 There has been a [big increase](#) in use of restaurant apps and third party apps to order home delivered food, particularly since the pandemic, with an increase of 103% (for use of restaurant apps) and 69% (for use of third party apps) respectively in 2020 compared to 2019. Therefore, online ordering platforms are included within the scope of this consultation. We envisage it would be the responsibility of the business selling the food to supply this information to be displayed on the online platform used by the consumer to make their choice of food, and to ensure that it is displayed appropriately⁸.

6.4 We propose that the calorie value for each menu item is displayed clearly and prominently, in the same size and font as the price, and ideally to the right hand side of the price. Where the menu information is displayed in more than one location, for example, a pre-order terminal or drive through menu board, it is proposed that the calorie information would be required to be displayed at each location to ensure that this is at every place a choice could be made.

⁷ Includes private, public and third sector outlets providing Out Of Home food and drink.

⁸ The Food Information to Consumers Regulation (Article 44 paragraph 2) covers national measures for non-prepacked food and gives scope to set regulations about how mandatory information is made available and where appropriate how this can be expressed and presented.

6.5 Currently, businesses may voluntarily provide calorie information. If they do, that information must be provided in accordance with the [Food Information to Consumers Regulation](#); they need to display both calories (kcal) and kilojoules (kJ). Kilojoule content can be calculated by multiplying the kcal value by 4.2.

6.6 We are proposing that only calorie (kcal) information is provided under the policy. This is the most commonly used measurement of energy in Scotland. In the [responses to the consultation](#) on mandatory calorie labelling in England, a significant majority responded that provision of kilojoule information alongside calorie information was not helpful. The approach of only including the kcal information has the added benefit of reducing the amount of numerical information presented on menus and other display information.

6.7 [Consumer research](#) in Scotland shows that only a quarter of adults know the correct reference intake values for adults, with a quarter of adults saying they don't know this, and a third underestimating it.

6.8 In order to help consumers understand the choice they are making in the context of their daily energy needs, a statement setting out the reference intakes for energy should be clearly displayed on menus and on menu boards. [Reference intakes \(RIs\) are benchmarks for the amount of energy that can be consumed on a daily basis in order to maintain a healthy diet](#). They are based on an average-sized man or woman, doing an average amount of physical activity. The reference intake for women is already used on nutrition labelling which state "adults need around 2,000kcal a day". [Evidence shows](#) that including reference intake statements for calories on menus may increase how effective calorie labelling is. Using this approach would keep the reference statement displayed consistent with that already used on front of pack labelling.

Question 9 – What are your views on the proposed requirements shown below for display of calorie information required at each point of choice?

- All points of choice
- In same font and size as the price
- State kcal info only and not also kJ
- Include reference statement of "adults need around 2,000 calories a day"

Comment

6.9 We understand there may be some people who may find calorie information upsetting, for example, people with disordered eating, eating disorders, distress around eating or people with a higher weight. We would like to hear what mitigations could be put in place to reduce any potential difficulty the presence of calorie information in the OOH sector may cause. For example, in England, the regulations permit businesses to provide a menu without calories on request, but they are not required to provide this so it is at the discretion of each business if they choose to have this available.

Question 10 - Should businesses be **required** or **have the option** to have menus without calorie information available on request of the consumer?

It should be a requirement for businesses

It should be an option for businesses

Don't know

Comment

Question 11 – If businesses are required to have menus without calorie information available on request of the consumer, what practical implications would this have for businesses?

Comment

Question 12 – What other mitigating measures could be adopted for consumers who may find calorie information upsetting?

Comment

7. How calories would be calculated

7.1 If mandatory calorie labelling were to be introduced, we intend to apply the current guidance for the provision of nutrition information under the [Food Information for the Consumer Regulation](#) on acceptable methods for calculating calorie values. This states that declared values must be average values based on the following methodologies:

- the manufacturer's analysis of the food;
- a calculation from the known or actual average values of the ingredients used; or
- a calculation from generally established and accepted data.

7.2 In the UK, "generally established and accepted data" is The Composition of Foods Integrated Dataset (COFIDS) and can be found online via a [searchable website](#).

7.3 There are many software packages available that can assist in calculating calories of food and drinks. FSS offers an online calorie calculator tool, [MenuCal](#), free of charge to all business in Scotland. MenuCal also supports businesses with managing requirements for the provision of allergen information of their menu items.

8. Expected costs to business

8.1 We understand there would be costs for businesses in preparing for, implementing and complying with the legislation. We anticipate costs to include:

- Time for businesses to familiarise themselves and understand the new requirements
- Time required to calculate calories of each menu item
- Costs of reprinting menus and other signage
- Time to upload calorie content of menu items to any digital platform.

8.2 As a free calorie calculator tool, MenuCal is already available for all businesses in Scotland to use, we do not anticipate a cost for use of software to calculate calories of menu items. However, other software is available for businesses to use if they wish.

8.3 Consultation responses will be used to inform, among other things, the development of a Business and Regulatory Impact Assessment.

8.4 We will use the following factors to calculate the overall costs to businesses:

- The number of items on their menus
- How frequently they change their menu
- How many new menu items are included in a change of menu
- How many copies of menus are printed
- The quantity and nature of other display information that would require to be updated to adhere to the display requirements set out in section 6.

Question 13 - Please list any costs to businesses in addition to those listed above that you think need to be considered in our economic evaluation.

9. Timescale and support for implementation

9.1 To ensure effective implementation of the policy, we would work with industry to develop and publish detailed guidance, setting out clearly the requirements and suggestions to ensure good practice. However, we anticipate that some businesses may require more time and support to ensure they can meet the requirements.

Question 14 – What support, in addition to detailed written guidance, would businesses need to implement calorie labelling effectively?

Comment

9.2 We also understand that the time needed to prepare for implementation of the requirements may vary depending on the nature and size of business. Therefore, we would like to seek views on what a reasonable timeframe for implementation for calorie labelling would be.

Question 15 – From the publication of relevant guidance, what length of time would businesses need to prepare to implement calorie labelling effectively ahead of legislation coming into force?

- 6 months
- 12 months
- 18 months
- 2 years
- Other
- Don't know

Please give a reason for your answer.

10. Enforcement

10.1 As set out in the [Scottish Regulators' Strategic Code of Practice](#), enforcement functions should be delivered in a way that is transparent, accountable, proportionate, consistent, and targeted only where necessary.

10.2 We will work closely with businesses, regulatory bodies and local authorities (LAs) to ensure compliance with any calorie labelling requirements are monitored and enforced in a way that is fair and not overly burdensome. Enforcement approaches may include advice, guidance, inspections, monitoring and enforcement.

10.3 LAs are responsible for enforcing existing food law in the businesses captured in the scope of the mandatory calorie labelling proposals. We acknowledge that LAs are well placed to support with the delivery and enforcement of this policy proposal and welcome views through the consultation on possible approaches to enforcement.

10.4 We recognise the importance of clarity in ensuring the effective implementation of this policy. To support this, we would plan to work with local authorities and industry in developing guidance to local authorities on matters for which they should have regard when discharging their functions.

10.5 We would plan to work closely with the Convention of Scottish Local Authorities, FSS and others to assess resource implications.

Question 16 - Please comment on our proposals for enforcement and implementation outlined in section 10.

Question 17 - How could any requirements be enforced, in a way that is fair and not overly burdensome?

11. Impact Assessments

11.1 In order to inform our equality and fairer Scotland impact assessments, and to give due consideration to potential unintended consequences, we would welcome your views on the following questions:

Question 18 - What impacts, if any, do you think the proposed policy would have on people on the basis of their: age, sex, race, religion, sexual orientation, pregnancy and maternity, disability, gender reassignment and marriage/civil partnership?

Please consider both potentially positive and negative impacts and provide evidence where available. Comment on each characteristic individually.

Comment

Question 19 - What impacts, if any, do you think the proposed policy would have on people living with socio-economic disadvantage? Please consider both potentially positive and negative impacts and provide evidence where available.

Comment

Question 20 – Please use this space to identify other communities or population groups who you consider may be differentially impacted by this policy proposal. Please consider both potentially positive and negative impacts and provide evidence where available.

Comment

Question 21 - Please tell us about any other potential unintended consequences (positive or negative) to businesses, consumers or others you consider may arise from the proposals set out in this consultation.

Comment

12. Monitoring and evaluation

It is proposed that FSS and the Scottish Government would review and monitor the implementation and impacts of the policy to ensure it produces the intended outcomes.

13. Other comments

Question 22 - Please outline any other comments you wish to make on this consultation.

Glossary of Terms

Calorie labelling: displaying the calorie value for non-prepacked food and non-alcoholic drinks at the point of choice, for example, on menus, display boards, digital ordering terminals and online ordering apps.

Franchise: An authorisation granted or sold, such as to use a name or to sell products or services. In its simplest terms, a franchise is an authorisation from one undertaking or business permitting another undertaking or business to sell a product or service under a particular name or trademark. For the purposes of this consultation, a franchisee is obliged to provide a food or drink service within parameters established by the franchisor company.

Point of choice: the most influential point in the consumer decision-making process, defined to be close to the price, description or image of the product e.g. menus, menu boards.

Prepacked: means any [single item for presentation as such to the final consumer and to mass caterers](#), consisting of a food and the packaging into which it was put before being offered for sale, whether such packaging encloses the food completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging

Prepacked for direct sale (PPDS): any single food item for presentation to final consumers and to mass caterers⁹, which consists of the food item and packaging which may enclose the food item completely or partially but in such a way that the contents of the food item cannot be altered and where the food item is put into packaging before being offered for sale to the customer by the same food business:
i) on the same premises; or
ii) on the same site¹⁰; or
iii) on other premises if the food is offered for sale from a moveable and/or temporary premises (such as marquees, market stalls, mobile sales vehicles) and the food is offered for sale by the same food business who packed it.

Symbol Group: a form of franchise of convenience shops. The group does not own or operate shops, but act as suppliers to independent shops which then trade under a common banner. For the purposes of this consultation, the franchisor company does not set parameters for the preparation or sale of food and non-alcoholic drinks that can be consumed immediately upon purchase without any further preparation.

⁹ 'mass caterer' means any establishment (including a vehicle or a fixed or mobile stall), such as restaurants, canteens, schools, hospitals and catering enterprises in which, in the course of a business, food is prepared to be ready for consumption by the final consumer;

¹⁰ In this instance 'site' refers to a building complex such as a shopping centre or airport terminal in which the same food business operates from more than one unit within the building complex

Consultation Process

Responding to this Consultation

We are inviting responses to this consultation by 1st of July 2022.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/population-health/mandatory-calorie-labelling>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 1st of July 2022.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Calorie Labelling Consultation
Diet and Healthy Weight Team
Scottish Government
3E, St Andrews House
Regent Road
Edinburgh
EH1 3DG.

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our [privacy policy](#).

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at [Scottish Government consultations](#). If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at DietPolicy@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online at [Scottish Government consultations](#). Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Mandatory Calorie Labelling in the Out of Home Sector in Scotland



Scottish Government
Riaghaltas na h-Alba
gov.scot

Respondent Information Form

This form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://beta.gov.scot/privacy/>

Are you responding as an individual or on behalf of an organisation?

- Individual
- Organisation

Full name of individual or organisation

If you are responding on behalf of an organisation, what type of organisation is it?

- Industry representative body
- Manufacturer
- Retailer
- Out of home provider (e.g. fast food outlet, coffee shop, restaurant)
- Public sector
- Third Sector

Other (please specify)

If you are responding on behalf of a retailer or out of home provide, please state the size of this business:

- Micro (less than 10 employees)
- Small (between 10 and 49 employees)
- Medium (between 50 and 249 employees)
- Large (more than 249 employees)

Phone number

Address

Postcode

Email

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report

The Scottish Government would like your permission to publish your consultation response.

Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

We will share your response with other Scottish Government teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No



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