

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Public Protection Committee
<b>DATE</b>	5 December 2018
<b>REPORT TITLE</b>	Response in relation to enforcement elements of the Scottish Government Consultation on Reducing Health Harms of Foods High in Fat, Sugar or Salt
<b>REPORT NUMBER</b>	OPE/18/298
<b>DIRECTOR</b>	Rob Polkinghorne, Chief Operating Officer
<b>CHIEF OFFICER</b>	Mark Reilly
<b>REPORT AUTHOR</b>	Andrea Carson
<b>TERMS OF REFERENCE</b>	3.3 Approve statutory plans aimed at protecting the public and delivered by or in partnership with Environmental Health and Trading Standards Services

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### 1. PURPOSE OF REPORT

- 1.1 To seek approval to provide the attached response in relation to the enforcement elements of the consultation. A consultation response regarding the wider principles of reducing health harms of foods high in fat, sugar or salt is being provided by officers from the Health & Social Care Partnership.

### 2. RECOMMENDATIONS

That the Committee:

- 2.1 Approves the consultation response at Appendix A;
- 2.2 Instructs the Chief Officer Operations to submit the consultation response on behalf of Aberdeen City Council; and
- 2.3 Acknowledges that additional financial resources may be required in order to deliver this proposal to address the potential impact on other public health controls currently delivered by the Environmental Health Service.

### **3. BACKGROUND**

- 3.01 Scottish Government is focussed on improving the nation's health by improving diet and has an aspiration to become a Good Food Nation which is renowned for not only the food that it produces but also the food that is consumed. Tackling Scotland's serious diet and weight problems requires actions on several fronts.
- 3.02 Certain foods have been identified as being "discretionary foods" that are high in calories, fat, sugar and salt but with little nutritional value. These foods include confectionary, sweet biscuits, crisps, savoury snacks, puddings, pastries, cakes and soft drinks with added sugar.
- 3.03 The Reducing Health Harms of foods High in Fat, Sugar or Salt Consultation Paper suggests that one of the ways that the consumption of these "discretionary foods" can be reduced is by introducing a policy restricting their promotion and marketing.
- 3.04 The primary aim of the policy is to reduce the public health harm associated with the excessive consumption of calories, fat sugar and salt, including the risks of developing type 2 diabetes, various types of cancer and other conditions such as cardiovascular disease.
- 3.05 By restricting the promotion and marketing, which may include price promotions, and other forms of promotion and marketing such as placement in the premises, promotion of value, in-store advertising and upselling of foods that have limited beneficial nutritional value, less of these foods will be purchased, thus improving diet related health over time.
- 3.06 The Scottish Government are proposing that Local Authorities, in particular Environmental Health Services, would be best placed to enforce this policy, due to already having similar powers of entry, powers to obtain information and powers to issue compliance notices and fixed penalty notices in relation to other food safety legislation.
- 3.07 The response contained in Appendix 1 relates only to section 8 of the consultation that deals with enforcement and implementation as this has potential impact on the Environmental Health Service. Colleagues from the Aberdeen City Health and Social Care Partnership will respond directly to the consultation on the policy's aim and scope.
- 3.08 The primary role of Environmental Health Services in local authorities is public health protection. Authorities therefore have a significant role to play in resolving diet related ill health which is the biggest public health issue facing the nation.

#### 4. FINANCIAL IMPLICATIONS

4.01 There is no indication within the consultation documents whether additional funding will be made available to implement this proposed policy. Therefore, it may be expected that this additional function if ratified would be delivered within existing resources.

#### 5. LEGAL IMPLICATIONS

5.01 There are no direct legal implications arising from the recommendations of this report

#### 6. MANAGEMENT OF RISK

	Risk	Low (L), Medium (M), High (H)	Mitigation
<b>Financial</b>	Cost of extending inspection time potentially met by Authority	M	Resource adjusted accordingly. Work programme altered to match available resource
<b>Legal</b>	Policy if implemented may place statutory duties on the authority.	L	Duties can be addressed during inspections already undertaken
<b>Employee</b>	Competency in enforcing proposed policy	L	Ministerial Guidance to be provided
<b>Customer</b>	Customer relationship management relating to new policy	L	Guidance to be provided for industry to support effective implementation
<b>Environment</b>	Negligible	L	
<b>Technology</b>	Negligible	L	
<b>Reputational</b>	Negligible	L	

## 7. OUTCOMES

<b>Local Outcome Improvement Plan Themes</b>	
	<b>Impact of Report</b>
<b>Prosperous People</b>	By supporting the introduction of a policy that restricts, at the point of purchase, the promotion and marketing of foods that have little nutritional value it is reasonable to expect less of these foods will be bought, improving, over time, the diet related health of the city's population.

<b>Design Principles of Target Operating Model</b>	
	<b>Impact of Report</b>
<b>Governance</b>	Delivering public protection provides assurance to both the organisation and the public in terms of meeting the council's statutory duties

## 8. IMPACT ASSESSMENTS

<b>Assessment</b>	<b>Outcome</b>
<b>Equality &amp; Human Rights Impact Assessment</b>	EHRIA not required
<b>Data Protection Impact Assessment</b>	Not Required
<b>Duty of Due Regard / Fairer Scotland Duty</b>	Not Applicable

## 9. BACKGROUND PAPERS

Reducing Health Harms of Foods High in Fat Sugar or Salt Consultation Paper  
October 2018

<https://consult.gov.scot/health-and-social-care/reducing-health-harms-of-foods/>

## 10. APPENDICES

Appendix A: Extract from Consultation Document with proposed response

## **11. REPORT AUTHOR CONTACT DETAILS**

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# Appendix A: Extract from the Consultation Document

## 8. ENFORCEMENT AND IMPLEMENTATION

We are considering giving local authorities the role of enforcing the proposed policy.

We do not anticipate a need for a new register.

We are considering giving Ministers powers to issue guidance to local authorities.

We are considering a guide to industry to support effective implementation.

### Related Information

#### Enforcement and implementation

1. Those selling, manufacturing or distributing discretionary foods in Scotland are required under EU Food Hygiene Legislation to register as a "food business" which is generally enforced by local authorities. Local authorities are also responsible for related matters, including enforcing trading standards and environmental health legislation. We want to minimise demands on (a) existing enforcing authorities and (b) those subject to the restrictions. We therefore consider local authorities would be best placed to enforce the policy outlined in this consultation paper. Given food businesses must already register with their local authority, we do not anticipate a need for a new register for this policy.
2. Local authorities would have relevant powers to them, including in relation to powers of entry and powers to obtain information. Similar to food safety legislation, we are considering local authorities would also have powers to issue (a) compliance notices and (b) fixed penalty notices.<sup>[1]</sup> Relevant offences would be created.

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

### **Guidance**

4. We recognise the importance of clarity in ensuring the effective implementation of this policy. To support this, we plan to work with local authorities and industry in developing Ministerial guidance to local authorities on matters for which they should have regard when discharging their functions. This could include, for example, guidance on placement restrictions (e.g. at checkouts, end-of-aisle etc.).

### **Support to industry for implementation**

5. We are considering the publication of a guide to industry, co-designed by industry representative bodies, to support effective implementation.

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[1] Provisions for compliance notices and fixed penalty notices are contained in the Food (Scotland) Act 2015. They have yet to be brought into use.

12. Please comment on our proposals for enforcement and implementation outlined in section 8.

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Proposed comments:

Local Authority Environmental Health departments are primarily focused on delivering controls in relation to Public Health. The purpose of the proposal within the consultation is to deliver enhanced public health impacts in relation to diet.

Local Authorities are designated as the local competent authorities in relation to the enforcement of food law and maintain a register of food businesses that manufacture, sell and distribute food and implement a comprehensive inspection programme of food businesses. It is agreed that they are best placed to enforce the proposed restrictions on the promotion and marketing of foods

that should be consumed less frequently, especially where this can be combined within existing planned interventions.

Food business establishments are routinely inspected by enforcement staff who have powers of entry and powers to obtain information. In addition, staff are familiar with the process for issuing statutory and fixed penalty notices through the application of other legislative provisions. It would therefore be appropriate for enforcement powers to be extended to fulfil the requirements of this proposed policy. Unless additional resources are provided, there is the potential that this could impact on other public health controls delivered by Environmental Health as it could extend the length of time that a food law inspection currently takes and therefore may ultimately reduce the number of inspections that could be conducted annually.

The enforcement of this policy has the potential to divert resources from higher risk catering businesses which need concentrated intervention visits to ensure that they are complying with the law.

Ministerial Guidance to ensure consistency and support the effective implementation of this policy would be welcomed. It would appear appropriate for such guidance to be incorporated within the Food Law Code of Practice (Scotland) or the associated Practice Guidance.