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Guidance

Restricting promotions of products high in fat, sugar or salt by location and by volume price: implementation guidance

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Summary

Purpose

This guidance document has been developed to:

- help illustrate how the provisions of the [Food \(Promotion and Placement\) \(England\) Regulations 2021](https://www.legislation.gov.uk/uksi/2021/1368/made) (the regulations) work
- provide assistance to those affected by the regulations in understanding and applying them.

Legal status

The regulations provide for restrictions on the promotions and placement in retail stores and their online equivalents of certain foods and drinks that are high in fat, salt or sugar (HFSS) or 'less healthy'.

While this guidance has been produced to help illustrate how the regulations work, it should be read in conjunction with the regulations themselves. The text should not be taken as an authoritative statement or interpretation of the law, as only the courts have this power.

Every effort has been made to ensure that this guidance is as helpful as possible. However, it is ultimately the responsibility of individual businesses to ensure their compliance with the law.

Intended audience

This guidance is aimed primarily at those affected by the provisions in the regulations, such as:

- businesses implementing the promotion and placement requirements
- enforcement authorities enforcing them

UK nations this guidance applies to

This guidance, and the regulations to which it refers, applies to businesses operating in and selling to England.

Introduction

The government consulted in 2019 on [restricting the promotion of HFSS products](https://www.gov.uk/government/consultations/restricting-promotions-of-food-and-drink-that-is-high-in-fat-sugar-and-salt) (for example, multibuy offers such as 'buy one get one free') and location, both online and in store.

The government then consulted on [technical enforcement of the restrictions](https://www.gov.uk/government/consultations/restricting-promotions-of-products-high-in-fat-sugar-and-salt-enforcement) in 2020.

Following these consultations, the government introduced legislation to restrict the promotion of HFSS products by volume price (for example, 'buy one get one free') and location, both online and in store in England. (HFSS is otherwise known as 'less healthy food and drink' and is referred to as such in the [nutrient profiling technical guidance 2011](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/216094/dh_123492.pdf).) These regulations will come into force on 1 October 2022.

Evidence shows that food retail price promotions are widespread and effective at influencing food preferences and purchases (particularly for children). [Previous reports recommended that reducing and rebalancing promotions towards healthier food and drink is essential to help reduce children's sugar and calorie intakes, and help tackle obesity.](https://www.gov.uk/government/publications/sugar-reduction-from-evidence-into-action)

Furthermore, the shopping environment plays an important part in the way products are marketed to us, with simple factors such as the location of products within stores significantly affecting what we buy. The current retail promotional environment:

- does not always align with government healthy eating guidelines
- makes it harder for families to make healthier choices when shopping

Compliance by industry with the promotion and placement regulations can significantly improve our food environment by ensuring healthier food is more easily accessible and more visible in shops, ultimately supporting people to lead healthier lives.

This guidance helps to illustrate how the regulations restrict promotions of HFSS or 'less healthy' products by:

- volume price – for example, multibuy offers
- key locations (store entrances, aisle ends and checkouts) when retail stores are over 185.8 square metres (m²) (or 2,000 square feet (sq.ft)) and the equivalent key locations online

These restrictions apply to medium and large businesses (with 50 employees or more). Failure to comply with regulations may result in a business being issued with an improvement notice and subsequently a fixed monetary penalty if compliance is not achieved as required.

In addition to our duty under the [Regulatory Enforcement and Sanctions Act 2008](https://www.legislation.gov.uk/ukpga/2008/13/contents) (RESA) to review the regulations, the government is also required to undertake a further post-implementation review of the regulations every 5 years and publish a report setting out the conclusions of the review.

Recommendations and best practice

To help illustrate the regulations as clearly as possible, this guidance provides:

- recommendations
- examples of best practice
- practical examples for businesses to consider

Recommendations and best practice examples outlined in this guidance are not legal requirements of the regulations. Where references are made to [nutrient profiling model](https://www.gov.uk/government/publications/the-nutrient-profiling-model) (N.P.M) calculations and scores, retailers are expected to check the scores for each product they are assessing.

Definitions

Food

For the purposes of these regulations, 'food' includes food and drink. For clarity we have often used 'food and drink' in this guidance but, unless otherwise stated, references to 'food', including where quoting other documents, include food and drink.

Consumer

The regulations use the definition of 'consumer' as given in [section 2\(3\) of the Consumer Rights Act 2015](https://www.legislation.gov.uk/ukpga/2015/15/section/2/enacted) (https://www.legislation.gov.uk/ukpga/2015/15/section/2/enacted). This defines 'consumer' as an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.

Online marketplace

For the purposes of the regulations, 'online marketplace' means any software (including a website, part of a website or an application) that is used to offer the qualifying business's products for sale to consumers. Qualifying business's products can include any product sold by a qualifying business, including own brand and other branded products.

Prepacked food

'Prepacked' is defined as in [article 2\(2\)\(e\) of Regulation \(EU\) No 1169/2011 of the European Parliament and of the Council](https://www.legislation.gov.uk/eur/2011/1169/contents) (https://www.legislation.gov.uk/eur/2011/1169/contents) on the provision of food information to consumers:

'prepacked food' 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

For the purposes of both the retained Regulation (EU) No. 1169/2011 on food information to consumers and the Food (Promotion and Placement) (England) Regulations 2021, 'prepacked food' does not cover foods packed on the sales premises at the consumer's request or prepacked for direct sale.

Schedule 1 food

'Schedule 1 food' means food or drink falling within a category in [schedule 1 of the regulations](https://www.legislation.gov.uk/uksi/2021/1368/schedule/1/made) (https://www.legislation.gov.uk/uksi/2021/1368/schedule/1/made).

Specified food

A prepacked food or drink item that falls in a schedule 1 category and is defined as 'less healthy' in accordance with the nutrient profiling technical guidance 2011. It is not food that is:

- provided by a charity in the course of its charitable activities (whether that be free or for a price that is less than the cost of providing that food)
- offered for sale by or on behalf of a charity, at a single event, to raise funds for its charitable activities

Qualifying business

Businesses that are subject to the regulations.

The regulations

Unless otherwise stated, 'regulations' refers to the [Food \(Promotion and Placement\) \(England\) Regulations 2021](https://www.legislation.gov.uk/uksi/2021/1368/made) (https://www.legislation.gov.uk/uksi/2021/1368/made).

Restaurant

A business whose premises are used mainly for the preparation or sale of food intended for immediate consumption, whether on or off the premises (including a café, coffee shop, fast food or takeaway business). Restaurants are also described as 'out of home' businesses in this guidance.

Which businesses must comply with the promotions restrictions

Businesses will first need to determine whether or not they are a qualifying business as described in the regulations. Businesses in scope of the restrictions are referred to as 'qualifying businesses' and are defined in regulation 4.

The restrictions will apply to medium and large retailers (with 50 or more employees) offering prepacked food for sale in store and online, including franchises and symbol group stores.

The restrictions apply to all businesses that sell food and drink to England, not dependent on whether the business itself is registered in England.

Exempt businesses

Businesses exempt from the location and volume price promotions

The following businesses are exempt from the volume price promotion and location restrictions:

- micro or small businesses (businesses with under 50 employees)
- schools, colleges and other such institutions that provide education to children aged under 18
- the out of home sector, even if they sell prepacked **H.F.S.S** food and drink – however, free refills of sugary drinks in the out of home sector are subject to the volume price promotions restrictions
- care homes that serve food solely to residents without requiring payment per food item. This exemption also includes social care settings such as:
 - residential homes
 - rest homes
 - convalescent homes
 - respite care
 - mental health crisis houses
- military establishments for operational personnel (sea, land and air), prisons, young offenders' institutions and hospitals, and other institutions not operating a business when providing food to residents. A restaurant that offers food to the public in return for payment is within scope of regulation 6 on free refills
- food that is provided by a charity in the course of its charitable activities (whether it is free or for a price that is less than the cost of providing that food), or food offered for sale by or on behalf of a charity to raise funds for its charitable activities at a single event. However, specified food that is sold by a non-charitable retailer with a percentage or set amount of the cost going to charity – for example, '20p from the sale of this product is donated to charity' – is in scope of the promotions restrictions and therefore subject to the location and volume price promotion restrictions

Businesses exempt from the location restrictions

A business that has 50 or more employees and sells prepacked **H.F.S.S** food or drink, but is a specialist retailer, or has a relevant floor area of less than 185.8m² (2,000 sq.ft) will be exempt from the location restrictions. These businesses will still be subject to the volume price promotion restrictions.

Specialist retailers that only or mainly sell food from a single category in schedule 1 (included below under 'What food is in scope'), or a specific type of 'less healthy' product (for example, chocolatiers, confectioners or cake stores) are exempt from location restrictions, but must comply with volume price promotion restrictions.

This exemption is intended to ensure specialist retailers are not captured in the location restrictions. We recognise that the location restrictions would be impractical for them to implement and would likely lead to significant disruption to their business if the majority of the items they sell are **H.F.S.S** or 'less healthy'.

Specialist retailers are not exempt from volume price restrictions. Stores that claim they are a specialist store will need to be assessed on a case-by-case basis by the enforcement authority. Examples of specialist stores may include, but are not limited to:

- a chocolatier selling mainly chocolates, but also some biscuit and cake products
- a sweet shop selling mainly confectionary, but also some biscuit and ice cream products
- a chocolatier selling only chocolates
- a sweet shop selling only confectionary
- an online shop selling only cakes and cupcakes
- an online shop selling mainly cakes
- an online chocolatier selling mainly chocolates

Non-transactional software, such as websites or apps where you cannot purchase a product, are not in scope of the policy as they do not fall under the definition of a qualifying business whereby a business offers prepacked food items for sale – for example, a manufacturer’s brand website, which may contain information about their range of products but a consumer cannot purchase the product on that site. If a non-transactional website includes a link to a transactional website, the non-transactional website itself is still not in scope of the promotions restrictions.

Employee count

A business is a qualifying business if, on the first day of the financial year during which any such sale took place, the business had 50 or more employees.

The number of employees is not restricted to England – it is the total number of employees a business has in its entirety.

The restrictions apply to medium or large businesses with 50 or more employees.

Manufacturers

Manufacturers are not considered qualifying businesses unless they are selling to consumers. Therefore, the promotions restrictions are not dependent on the number of employees that a manufacturer business has, but rather how many employees a retailer, who is selling the products, has.

Franchises

The restrictions will apply to medium and large businesses (which we are defining as 50 or more employees) that sell food or drink in England.

As a result of the initial consultation for this policy, the government decided that the restrictions will apply to franchises or arrangements (like symbol groups) where multiple businesses operate under the same name. For the purpose of determining how many employees a business has, and therefore whether the regulations apply, a franchise agreement is to be treated as part of the business of the franchisor and not as a separate business carried on by the franchisee.

In these circumstances, franchisees trading as a business under a franchise agreement, where the total sum of employees operating under the franchise are at least 50, would be considered a business in scope, and therefore required to meet the volume price and location restrictions, if not part of an exempt business (covered further in ‘Exempt businesses’).

If symbol group retailers operate as part of a franchise arrangement where the total sum of employees operating under the franchise are at least 50, they are therefore in scope of the regulations. Symbol groups are typically a form of a franchise of convenience stores. For the purpose of determining how many employees a business has and therefore whether the promotions restrictions apply, the business of the symbol group retailer will be treated as part of the business of a franchisor with whom it has a franchise arrangement.

Under these regulations, a franchise agreement (however formal or informal, written or oral) is seen to exist where one undertaking (the franchisee) and another undertaking (the franchisor) agree that the franchisee carries on a business activity that includes the sale or distribution of food (the franchise business).

The regulations specify that the following features of a business collectively render it a franchise. Where the following matters are agreed by the franchisor or are similar to other undertakings entered into by the franchisor:

- the food provided by the franchise business
- the internal or external appearance of the premises where the franchise business is carried on
- the business model used for the operation of the franchise business

If these features of the business are agreed by the franchisor or are similar to that of other undertakings in respect of which the franchisor has entered into comparable contractual arrangements, then for the purposes of the regulations a franchise may be a qualifying business. Contractual arrangements can vary from business to business.

If a franchise is deemed a qualifying business as defined in the regulations (it has 50 or more employees) and has stores that are both in and out of scope, the franchise business itself is still deemed to be a qualifying business and is subject to the restrictions.

For example, a franchise could have specialist food stores and general food stores. The specialist food stores would not be in scope under the exemption of these types of stores from the location restrictions, however they would be subject to the volume price promotion restrictions. General food stores would be in scope of volume restrictions and location restrictions if above 185.8m².

Another example would be if a franchise had both restaurants and food retailers. As it is the franchise that is the qualifying business, the food retailers would still be in scope of volume restrictions and location restrictions if above 185.8m², but the restaurants would not be.

Examples of businesses in scope

Retailers in scope include:

- food and drink retailers
- retailers that sell food or drink, even if this is not a primary purpose of their business – for example, DIY stores, pharmacies and clothes stores

Businesses (for example, wholesalers) who only sell food to other businesses and not directly to consumers are not in scope of these restrictions. However, if such businesses also sell directly to consumers, they must comply with the regulations.

The restrictions apply to all businesses that sell food and drink in England, not dependent on whether the business itself is registered in England.

The types of businesses where the promotion and placement regulations apply, if they are selling food or drinks, include but are not limited to retail establishments with 50 or more employees (in store and online) such as:

- supermarkets
- online food retailers
- online retailers who sell any food – for example, gifting websites
- convenience stores
- department stores
- clothing stores
- pharmacies
- petrol forecourts and service stations
- florists
- D.I.Y. stores
- garden centres
- retail at transportation hubs – this includes:
 - airside and landside retailers
 - duty-free retailers at airports
 - retailers at train stations
 - retailers at ferry ports
- retail in visitor attraction or entertainment venues – for example, gift shops that sell prepacked chocolate
- retailers in hospitals

Restrictions on free refills of sugary soft drinks only

If any of the businesses listed above offer free drink refills then they are within scope of the free refill restrictions. However, in the past it has been more common for restaurants and businesses in the out of home sector to offer free drink refill promotions.

Out of home sector

The out of home sector does not need to comply with location and volume price regulations, but must comply with the restrictions on the free refills promotion of certain drinks.

The exemption for the out of home sector from the location and volume price restrictions applies to all foods, including prepacked foods, meaning that if a restaurant sells prepacked food, this food will not be in scope of these regulations.

The out of home sector is defined in the regulations as a 'restaurant', which states that a 'restaurant' means a business whose premises are used mainly for the preparation or sale of food intended for immediate consumption, whether on or off the premises (including a café, coffee shop, fast food or takeaway business).

A restaurant is out of scope of the location and volume price promotions where its premises are used mainly for the sale and immediate consumption of food, including its seating area.

Prepacked food suitable for immediate consumption is only out of scope from the restrictions if it is sold in a restaurant, not by a retailer. Food sold in restaurants is considered suitable for immediate consumption if it is either:

- offered for sale for immediate consumption on the premises on which it is sold
- offered for sale for consumption off the premises and does not require any preparation by the consumer before it is consumed (preparation includes peeling, hulling or washing, cooking, thawing, and heating or reheating pre-cooked food)

Examples of out of home businesses where the promotions restrictions (aside from free refills) do not apply include but are not limited to:

- coffee shops or cafes (including cafes located in department stores, supermarkets, convenience stores and petrol stations)
- sandwich bars or shops
- dessert shops or houses
- bakery stores
- restaurants at travel hubs
- hotel restaurants
- pub restaurants
- chain restaurants or branded casual dining restaurants
- quick service restaurants
- visitor attraction or entertainment venues (such as cinemas and restaurants in theme parks)

- contract catering including:
 - workplace canteens (including staff canteens in hospitals)
 - university or further education canteens
 - event catering in venues such as arenas or stadiums and so on
 - hospital visitor canteens

Out of home businesses located within a retailer are not subject to the promotions restrictions, apart from when free refill restrictions apply. These businesses will not be included as part of a store's relevant floor area.

Concessions

Concessions are separate businesses operating in an area within the store of a qualifying business, which are excluded from the store's relevant floor area, if they operate their own payment facilities.

There are no restrictions on where such concessions and their food products should be located when they are located within a qualifying business's store.

However, a concession located within a qualifying business's store, but not part of its business, is treated as a separate business that must comply with the promotions restrictions if it meets the criteria to be considered a qualifying business in its own right. It must also comply with the location restrictions if the concession's area exceeds the relevant floor area threshold.

Businesses that are not in scope of the restrictions – for example, out of home businesses (see the previous 'Out of home sector' section) – are not included as part of the relevant floor area.

Examples of concessions

Example 1 – retail concessions

A retail concession located inside of a supermarket could be located within the supermarket's prohibited store entrance area.

This retail concession may be a qualifying business in its own right, if it meets the criteria as stated in the regulations, so therefore may be subject to the volume price promotion restrictions and the location restrictions if it is over 185.8m² (2,000 sq ft).

If this retail concession is a qualifying business in its own right, any prepacked food being sold in this business may be subject to the promotions restrictions. Non-prepacked food is not subject to the promotions restrictions.

If this retail concession is not a qualifying business in its own right, it will not be subject to the promotions restrictions.

Example 2 – out of home concessions

Out of home concessions (defined as a 'restaurant' in the regulations) located within a retailer (for example, a café that is a separate business operated in a supermarket), are not subject to the volume price or location promotion restrictions because they are an out of home business.

Example 3 – vending machines

Vending machines that have payment facilities operated by a business other than the business primarily responsible for managing and operating the store that they are placed in are considered a concession, and therefore not part of the calculation of the relevant floor area of the store.

Vending machines operated by a separate business are not subject to the location restrictions that are applicable to the qualifying business they are placed in. However, we would encourage qualifying businesses not to allow vending machines selling specified food to be placed in restricted areas of their stores. Vending machines may be subject to the volume price promotion restrictions if operated by a qualifying business.

Example 4 – areas within retail stores

Areas within retail stores – for example, the bakery section or deli section within a supermarket that are owned and operated by that supermarket – are not concessions as they form part of the same business.

Prepacked food sold in these areas of a qualifying business are subject to the promotions restrictions.

These areas of a store are not exempt from the relevant floor area as these are not concessions.

What food is in scope

For the purposes of this guidance, 'food' includes drink and has the same meaning as given in [section 1\(1\) of the Food Safety Act 1990](https://www.legislation.gov.uk/ukpga/1990/16/section/1) (<https://www.legislation.gov.uk/ukpga/1990/16/section/1>).

Products exempt from the restrictions:

- non-prepacked food and drink – meaning any food presented to the final consumer that does not fall within the definition of 'prepacked food' as defined in [article 2\(2\)\(e\) of Regulation \(EU\) No 1169/2011 of the European Parliament and of the Council](https://www.legislation.gov.uk/eur/2011/1169/contents) (<https://www.legislation.gov.uk/eur/2011/1169/contents>) on the provision of food information to consumers
- prepacked food not sold by a qualifying business
- prepacked products sold by a qualifying business that do not fall into a category listed in schedule 1 of the regulations
- prepacked food products sold by a qualifying business that score less than 4 and prepacked drink products that score less than 1 under the nutrient profiling model 2004 to 2005 in accordance with the nutrient profiling technical guidance 2011

For more exemption examples, see 'Food and drink items not covered' below.

For more information on the nutrient profiling model, see the later section on 'The 2004 to 2005 nutrient profiling model'.

As part of the [2019 consultation on restricting promotions](https://www.gov.uk/government/consultations/restricting-promotions-of-food-and-drink-that-is-high-in-fat-sugar-and-salt) (<https://www.gov.uk/government/consultations/restricting-promotions-of-food-and-drink-that-is-high-in-fat-sugar-and-salt>), the government decided that the volume price and location restrictions should apply to product categories that:

- have been identified as being the biggest contributors to children's sugar and calorie intakes
- are heavily promoted
- are therefore the [categories of most concern for childhood obesity](https://www.gov.uk/government/publications/calorie-reduction-guidelines-for-the-food-industry) (<https://www.gov.uk/government/publications/calorie-reduction-guidelines-for-the-food-industry>)

This is largely aligned with the categories that are included in the [sugar reduction programme](https://www.gov.uk/government/publications/sugar-reduction-from-evidence-into-action) (<https://www.gov.uk/government/publications/sugar-reduction-from-evidence-into-action>) and [calorie reduction programme](https://www.gov.uk/government/publications/calorie-reduction-the-scope-and-ambition-for-action) (<https://www.gov.uk/government/publications/calorie-reduction-the-scope-and-ambition-for-action>), and drinks subject to the [Soft Drinks Industry Levy](https://www.gov.uk/government/publications/soft-drinks-industry-levy) (<https://www.gov.uk/government/publications/soft-drinks-industry-levy>) ([SDIL](https://www.gov.uk/government/publications/soft-drinks-industry-levy)).

Within these categories, the restrictions will only apply to prepacked food that is determined to be HFSS or 'less healthy' as defined by the [nutrient profiling model \(NPM\) 2004 to 2005](https://www.gov.uk/government/publications/the-nutrient-profiling-model) (<https://www.gov.uk/government/publications/the-nutrient-profiling-model>). The [nutrient profiling technical guidance 2011](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/216094/dh_123492.pdf) (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/216094/dh_123492.pdf) provides instructions on how to calculate the NPM score for different products. The restrictions will apply to products, not brands, meaning that a brand's product range may have products in and out of scope of the restrictions.

Products within the categories of prepacked food in scope of the regulations (included in schedule 1) can be seen under 'Product categories in scope' below. These products fall under categories that are considered to be top contributors to the public's sugar and calorie intakes.

Note: although an item may belong to a category listed below, the item will not be in scope of the regulations and will face restrictions on neither volume price nor location if it is not deemed 'less healthy' when applying the NPM.

Products listed under 'key exclusions' are out of scope of the restrictions and are not included in other categories in scope of the restrictions, unless otherwise stated.

The lists of examples and exclusions are not exhaustive, unless otherwise stated.

While the categories of food in the regulations do not overlap, some types of food product may have multiple ingredients or features potentially capable of falling under more than one category. If it should be necessary to determine which category the product falls under, this is done by an objective overall assessment of the ingredients and features of the specific product being offered for sale, in order to determine which category best describes the product in question.

Product categories in scope

Schedule 1: items in scope of the regulations are as follows:

Category 1

As stated in the regulations:

Prepared soft drinks containing added sugar ingredients.

Principle:

Soft drinks covered by the SDIL under the [Soft Drinks Industry Levy Regulations 2018](https://www.legislation.gov.uk/ukxi/2018/41/contents/made) (<https://www.legislation.gov.uk/ukxi/2018/41/contents/made>) but defined as HFSS or 'less healthy' using the NPM.

Powders, syrups, pods and cordials are all in scope as well as ready-to-drink products.

Section 7 details how this category applies to the free refills restrictions.

As stated in the regulations, a soft drink contains 'added sugar ingredients' if any of the following are combined with other ingredients at any stage in the production of the soft drink:

- (a) calorific mono-saccharides or di-saccharides
- (b) a substance containing calorific mono-saccharides or di-saccharides

Examples of category 1 products in scope are:

- soft drinks with added sugar, including lemonades, colas and fruit-based squash drinks
- milk-based drinks with added sugar or sweeteners, and milk substitute drinks with added sugar or sweeteners (for example, soya, almond, oat, hemp, hazelnut or rice and so on)
- juice-based drinks with added sugar
- fruit juices or smoothies (including smoothies with dairy) with added sugar
- fermented (yoghurt) drinks with added sugar, defined as a composite milk product obtained by mixing yoghurt with a liquid (milk, water or fruit juice) with or without other ingredients to create a drink (for example, kefirs, lassis, and pre and probiotic drinks)
- breakfast drinks with added sugar
- ready-to-drink tea and coffee containing added sugar before sale
- coffee or tea powders (sachets, pods or syrups). Note: for powders, the NPM score should be calculated based on 100g of the drink as reconstituted according to the manufacturer's instructions. As with all products, please refer to the NPM technical guidance 2011 for support calculating the NPM scores
- 2 in 1 (coffee and milk powder) or 3 in 1 (coffee, milk powder and sugar) containing added sugar
- hot chocolate powders, pods, syrups and ready-to-drink products containing added sugar
- malt drink powders with added sugar
- milkshake powders and milkshake syrups with added sugar
- flavoured and unflavoured milk substitute drinks with added sugar
- chai latte with added sugar
- kombucha with added sugar
- energy drinks with added sugar
- protein powders with added sugar

Key exclusions of category 1 are:

- drinks without added sugar, including milk (as defined in regulation 7 of SDIL), unsweetened milk-based drinks and unsweetened smoothies
- drinks with no added sugar and sweetened only with natural fruit or vegetable juice, including fruit juices
- alcoholic drinks and alcohol substitute drinks with more than 1.2% alcohol by volume (ABV)
- infant formula and follow-on formula as defined in [retained Regulation \(EU\) No. 609/2013 of the European Parliament and of the Council](https://www.legislation.gov.uk/eur/2013/609) (<https://www.legislation.gov.uk/eur/2013/609>)
- total diet replacements as defined in the [Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997](http://www.legislation.gov.uk/ukxi/1997/2182/contents/made) (<http://www.legislation.gov.uk/ukxi/1997/2182/contents/made>)
- food for special medical purposes as defined in retained Regulation (EU) No. 609/2013 of the European Parliament and of the Council

Category 2

As stated in the regulations:

- 1) Savoury snacks whether intended to be consumed alone or as part of a complete meal including—
 - (a) products made from potato, other vegetables, grain or pulses
 - (b) extruded, sheeted and pelleted products
 - (c) bagged savoury crackers, rice cakes or biscuits such as crisps, pitta bread-based snacks, pretzels, papadums, salted popcorn and prawn crackers (but not raw, roasted, coated, or flavoured nuts)
- 2) Pork rind-based snacks whether intended to be consumed alone or as part of a complete meal.

Principle:

All crisps and products eaten as alternatives or eaten on the same eating occasion as crisps.

All sizes, shapes and types of packets are included (including, for example, grab bags, multipacks and re-sealable, but other formats of the same products are also covered by the regulations).

Examples of category 2 products in scope:

- crisps
- savoury crackers, rice cakes and biscuits sold and eaten as alternatives to crisps
- corn puffs
- potato hoops
- tortilla chips
- chickpea or lentil-based crisps
- fried flavoured or seasoned chickpeas
- seaweed-based snacks
- Bombay mix

Key exclusions of category 2 are:

- raw, coated, roasted or flavoured nuts and seeds (or mixes of these products – for example, a mix of nuts and seeds)
- fruit-based snacks such as dried fruit, fruit crisps or chips (includes both sweetened and unsweetened fruit ingredients)
- trail mix made up of dried fruit and nuts or seeds
- meat jerky

Category 3

As stated in the regulations:

Breakfast cereals including ready-to-eat cereals, granola, muesli, porridge oats and other oat-based cereals.

Principle:

All products predominantly found in the 'breakfast cereal' aisle.

Examples of category 3 products in scope are:

- granola
- muesli
- ready-to-eat cereals
- porridge oats, including instant porridge and other hot oat-based cereals

Category 4

As stated in the regulations:

Confectionery including chocolates and sweets.

Principle:

All products predominantly found in the 'confectionery' aisle, including chocolate and sweets, and 'free from' confectionery products.

Products marketed as 'protein bars' or 'high protein' may fall under this category if they possess the ingredients or other features of a confectionery bar. If their ingredients contain cereal or nuts, they may fall under category 7.

Products that have features and ingredients that indicate they are a type of confectionery will be determined on a case-by-case basis.

Examples of category 4 products in scope are:

- sweet popcorn, and mixed sweet and salty popcorn
- chocolate-coated nuts, peanuts, seeds and fruit
- white, milk and dark chocolate

- cooking chocolate
- chocolate bars and boxed chocolates
- bagged slabs or tubed sweets
- jellied fruit sweets
- chewing gum
- marshmallows
- chocolate-covered products – for example, chocolate-covered pretzels

Key exclusions of category 4 are:

- all dried fruit
- sweet coated nuts (other than chocolate-covered nuts) – for example, honey coated, syrup coated, carob coated, sweet chilli flavours, and mixes of sweet and salty or savoury

Category 5

As stated in the regulations:

Ice cream, ice lollies, frozen yoghurt, water ices and similar frozen products.

Principle:

All dairy and non-dairy ice cream or ice cream alternatives, ice lollies and sorbets.

Examples of category 5 products in scope are:

- ice cream tubs
- handheld ice cream
- ice lollies
- choc ices
- frozen yoghurt
- vegan ice cream
- sorbets
- gelato-style ice cream
- lactose-free ice creams
- ice cream desserts – for example, arctic roll
- alcohol-flavoured products – for example, rum and raisin-flavoured ice cream – that are below 1.2% ABV or alcohol-free

Key exclusions of category 5 are:

- ice cream 'accessories', such as sauces, sprinkles and other similar cake-type decorations or toppings
- ice cream wafers (these are included under category 7)
- alcoholic products
- roulade and gateaux (these are included under category 9)

Category 6

As stated in the regulations:

Cakes and cupcakes.

Principle:

All types of cakes, ambient and chilled, including cake mixes.

Examples of category 6 products in scope are:

- all sponge cakes
- cupcakes
- cake bars and slices
- doughnuts

- American muffins
- flapjacks
- swiss rolls
- brownies
- tray bakes
- cream cakes
- mini rolls
- éclairs
- frozen cakes

Key exclusions of category 6 are:

- cake decorations, including icing and sauces

Category 7

As stated in the regulations:

Sweet biscuits and bars based on one or more of nuts, seeds or cereal.

Principle:

Includes all sweet biscuits (filled and unfilled) and chocolate bar biscuits, including flour-based and 'free from' products. Also includes sweet bars based on one or more of these ingredients: nuts, seeds or cereal.

This includes products that are akin to a 'classic' cereal bar product, whether they are in the shape of a bar or otherwise.

Products marketed as 'protein bars' may be considered under this category if their ingredients contain cereal, nuts or seeds.

All sizes, shapes and types of packets are included (including, for example, tins and trays, multipacks and re-sealable bags, but other formats of the same products are also covered by the regulations).

Examples of category 7 products in scope are:

- cereal bars (cereal bars may be similarly shaped to a chocolate bar, made of cereals and typically other ingredients such as fruits and nuts, but can also include nut and seed-based bars)
- toaster pastries
- sweet flavoured rice or corn cakes
- filled and unfilled sweet biscuits
- breakfast biscuits
- shortbread
- ice cream wafers or cones
- coated chocolate biscuit bars

Category 8

As stated in the regulations:

Morning goods, including croissants, pains au chocolat and similar pastries, crumpets, pancakes, buns, teacakes, scones, waffles, Danish pastries and fruit loaves.

Principle:

Includes sweet pastries and buns, morning goods mixes (for example, pancake mixes and 'ready to bake' or 'bake at home' products) and fruited bread products.

Includes 'free from' products.

Examples of category 8 products in scope are:

- Danish pastries
- croissants
- pains au chocolat and similar pastries

- crumpets
- pancakes
- buns
- teacakes
- scones
- waffles
- English muffins
- bagels (plain and sweet)
- fruit loaves
- hot cross buns
- fruited and sweet non-fruited buns (including iced buns)
- brioche
- malt loaf (both sweetened with sugar or fruit)

Key exclusions of category 8 are:

- all other savoury bread products not mentioned in the examples above

Category 9

As stated in the regulations:

Desserts and puddings, including pies, tarts and flans, cheesecake, gateaux, dairy desserts, sponge puddings, rice pudding, crumbles, fruit fillings, powdered desserts, custards, jellies and meringues.

Principle:

Includes all types of ambient (including canned), chilled and frozen puddings, and dessert mixes. Includes 'free from' products.

Examples of category 9 products in scope are:

- sweet pies – for example apple pie, mince pies and so on
- tarts and flans
- cheesecake
- gateaux
- dairy desserts
- sponge puddings
- rice pudding
- crumbles
- fruit fillings
- roulade
- powdered dessert mixes
- custards
- jellies
- meringue desserts
- choux pastry desserts
- mousses
- Christmas pudding
- trifle
- roly poly
- dessert pizzas

Key exclusions of category 9 are:

- creams such as whipped cream and flavoured or sweetened creams
- syrups
- condensed caramel
- dessert toppings and sauces
- plain, unfilled meringue nests
- sponge fingers sold as a component to make a dessert
- tinned or canned fruit

Category 10

As stated in the regulations:

Sweetened (whether with sugar or otherwise) yoghurt and fromage frais.

Principle:

Includes dairy and non-dairy alternatives (such as soya, oat, goat or sheep products).

Includes yoghurts that are sweetened using sweeteners, sugar or fruit ingredients.

Excludes natural unsweetened yoghurt and unsweetened fromage frais.

Examples of category 10 products in scope are:

- flavoured Greek-style yoghurts
- probiotic yoghurts
- split yoghurts or twin chamber pots
- kids' yoghurts
- fat free and low-fat yoghurts
- dairy-free yoghurts
- fromage frais
- drinking yoghurts – defined as a drinkable product that meets the definition for yoghurt, with no additional liquids (milk, water or fruit juice)

Key exclusions of category 10 are:

- natural yoghurt and unsweetened yoghurt and fromage frais, including plain Greek yoghurt

Category 11

As stated in the regulations:

Pizza (except plain pizza bases).

Principle:

This includes all chilled and frozen varieties of pizzas.

Examples of category 11 products in scope are:

- deep pan, deep dish, thin crust and stuffed crust pizzas
- all topping varieties and all sizes
- flatbread pizzas

Key exclusions of category 11 are:

- plain pizza bases
- garlic bread and cheese garlic bread, and 'loaded' varieties

Category 12

As stated in the regulations:

Roast potatoes, potato and sweet potato chips, fries and wedges, potato waffles, novelty potato shapes (such as smiley faces), hash browns, rostis, crispy potato slices, potato croquettes.

Principle:

Includes potato and sweet potato products.

If a product is not mentioned in the category 12 description of the regulations and it does not fall into one of the other categories, then it is out of scope of the policy.

Examples of category 12 products in scope are:

- as listed above in the category description

Key exclusions of category 12 are:

- plain potatoes or sweet potatoes that are not treated, cooked, cut or shaped
- whole, sliced or mashed potatoes with butter
- potato salads

Category 13

As stated in the regulations:

Any of the following:

1) Products that are marketed as ready for cooking or reheating without requiring further preparation and intended to be consumed as a complete meal.

2) Products, other than products that contain pastry, in or with a sauce (but not a marinade, glaze, dressing, seasoning or similar accompaniment) that are marketed as ready for cooking or reheating without requiring further preparation and intended to be consumed as the main element of a meal.

3) Breaded or battered–

(a) vegetable, fish, shellfish, meat, or poultry products

(b) substitute fish, shellfish, meat or poultry products including fish fingers, fish cakes, chicken nuggets and breaded meat substitute.

Principle:

This category is generally intended to cover those products that are to be consumed as the main meal, including:

- ready meals: products that are marketed as a meal that is ready for cooking or reheating without requiring further preparation and which include a carbohydrate accompaniment or a carbohydrate main element (whether or not it contains a protein element)
- meal centres: the main element or focus of a meal, but not a complete ready meal. It is the sauce and the fact that it does not contain a carbohydrate element that defines these 'meal centre'-type products
- breaded and battered products including fish fingers, fish cakes, chicken nuggets and breaded meat substitutes

Examples of category 13 products in scope are:

- ready meals: prepared meals (often suggested for heating in the microwave or oven), such as Chinese, Thai, Italian, traditional and so on, with carbohydrate accompaniment (potato, rice, noodles, pasta and so on) made from meat, poultry, fish, meat alternatives or vegetables. Includes filled or stuffed pasta (for example, ravioli and tortellini) whether chilled or tinned. Includes dishes such as vegetable curries, dhal and other dishes that can be consumed as a meal. Potato-topped pies are included in this category, as are burgers in a bun, and fries, chips or wedges with toppings (often referred to as 'dirty fries' or 'loaded fries'), and filled jacket potatoes
- fresh pasta, rice or noodles with added ingredients and flavours, including filled or stuffed pasta (for example, ravioli and tortellini)
- meal centres: prepared meal centres (often suggested for heating in the microwave or oven), such as Chinese, Thai, Italian, traditional and so on, without a carbohydrate accompaniment and made from meat, poultry, fish, meat alternatives or vegetables. Includes products served in a sauce or with a sauce as part of the product – for example, in a packet or sachet intended to be poured on during or after heating
- battered or breaded products (fresh, chilled or frozen): includes a number of products that might be consumed as the main element of a meal such as fish fingers, chicken nuggets, battered fish, fish or chicken goujons, breaded meat substitutes, scampi, kiev, breaded chicken fillets, 'lightly dusted' products, cereal-coated products and gluten-free alternatives

Key exclusions of category 13 are:

- retail meal kits – for example fajita or enchilada meal kits or other kits that contain ingredients requiring preparation and combining for cooking a meal
- breaded or battered cheese-based products intended to be consumed as a starter or side
- dried noodles, pasta and rice that require reconstitution prior to consumption
- breaded ham or charcuterie products

- savoury pastry products: this includes all ambient, chilled and frozen processed and ready-to-eat or on-the-go products such as meat, fish, vegetable or meat alternative pastry pies, pasties, sausage rolls, tarts, tartlets, quiches, slices, lattices and plaits. Potato-topped pies are in scope – for example, shepherd’s pie
- meat, poultry, fish, shellfish or meat alternatives, either served plain, smoked or with a marinade (a marinade differs from a sauce as it is intended to be absorbed into the food before or during cooking so that, after cooking or heating the food product, no significant liquid remains to be poured over the food), glaze, dressing, seasoning rub or similar accompaniment. ‘Meat’ includes meat and processed meat products such as ham, salami, chorizo, bacon, gammon, chicken thighs, grills, burgers (without a bun), sausages and steaks
- meats, fish, shellfish or meat alternatives that are plain (for example, raw plain chicken breasts) or have been smoked (for example, smoked meat and fish) or are processed meats (such as ham, salami and bacon)
- savoury pies
- quiches
- sandwiches
- sushi
- foods that are not cooked or reheated before consumption
- party food that is not intended to be consumed as a main meal – for example, mini quiche or mini sausages (this is not an exhaustive list)

Individual products vs composite meals

There may be products that, when sold as a single item, are out of scope of the promotions restrictions, but when they are included within a ready meal or whole product, they are in scope of the restrictions (for example, sausages are out of scope of the promotions restrictions, but a sausages and mash ready meal is in scope).

This is due to evidence showing that product categories such as ‘ready meals’ are a contributor to children’s calorie intake and are heavily promoted.

Seasonal products and seasonal promotions

While we understand the importance of promotions to maximise sales, there are multiple seasonal promotion points running through the year including, but not limited to Christmas, Diwali, Valentine’s day, Easter, Mother’s day, Father’s day and Halloween. This means that seasonal promotions can occur for most of the year. Seasonal products (for example, Christmas chocolate or Easter eggs) have often been found on the shelves and in key prominent locations in stores – such as end of aisle, at checkouts and in store entrances – up to 3 months before Christmas or Easter, for example.

We also know that consumers are more likely to buy these products when they are offered on promotion and placed in these prominent locations. Chocolate and sweet confectionery are among the top sources of sugar in children’s diets and this includes those products that are branded ‘seasonal’ but tend to be offered throughout the year.

Therefore, seasonal products are in scope of the promotions restrictions. However, businesses will be able to promote seasonal products that are in schedule 1 categories if they pass the NPM.

Selections, platters, hampers and gift sets

If an item of prepacked food comprises more than one type of food and contains a specified food within it, the whole item is to be treated as specified food.

This includes examples such as selections or platters, hampers and gift sets that include multiple different items of food.

Food to go

Specified food sold in qualifying businesses will be in scope of the restrictions irrespective of being marked as ‘food to go’.

Food and drink items not covered

Food is not within scope and therefore not restricted by volume price or location restrictions if it is:

- non-prepacked (for example, loose bakery items), except for free refills of sugar-sweetened beverages in the out of home sector
- prepacked for direct sale (as defined in the ‘Definitions’ section of this guidance) such as food packed on the sale’s premises (whether or not at the consumer’s request) – for example, fresh bakery items packed on site
- not included within any of the categories of food and drink in schedule 1 of the regulations as highlighted in the ‘What food is in scope’ section of this guidance. Examples of products not included within these categories are bread, bread rolls or buns, garlic bread, bread with additions, cooking sauces and pastes, table sauces and dressings, prepared dips and composite salads as meal accompaniments, and sweet spreads
- included within the categories of food and drink in schedule 1 but not deemed to be H.F.S.S or ‘less healthy’ according to its NPM score
- sold by businesses exempt from the regulations (see ‘Exempt businesses’)

- total diet replacements and meal replacement drink products, as defined in the [Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997](http://www.legislation.gov.uk/uk/si/1997/2182/contents/made) (<http://www.legislation.gov.uk/uk/si/1997/2182/contents/made>)
- drinks used for medicinal or other specified purposes as defined in [Regulation \(EU\) No. 609/2013](https://www.legislation.gov.uk/eur/2013/609) (<https://www.legislation.gov.uk/eur/2013/609>)
- 'infant formula' and 'follow-on formula', and 'baby foods' for infants and young children as defined in Regulation (EU) No. 609/2013
- vitamins and mineral supplements, and other food supplements, if not in the form of sweets or other products described in the regulations

Best practice

A display of specified food that is not prepacked (such as pick and mix confectionery or loose bakery items) in a restricted location would be permitted, but would not be considered best practice.

The aim of this policy is to shift the balance of promotions towards healthier options – such as minimally processed and nutritious food – and maximise the availability of healthier products that are offered on promotion to make it easier for parents to make healthier choices when shopping for their families by encouraging retailers to use promotions for healthier foods.

The 2004 to 2005 nutrient profiling model

The [nutrient profiling model](https://www.gov.uk/government/publications/the-nutrient-profiling-model) (<https://www.gov.uk/government/publications/the-nutrient-profiling-model>) (NPM) was developed by the Food Standards Agency in 2004 to 2005 to provide Ofcom, the broadcast regulator, with a tool to differentiate foods on the basis of their nutritional composition in the context of television advertising of foods and drinks to children. The [NPM technical guidance 2011](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/216094/dh_123492.pdf) (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/216094/dh_123492.pdf) sets out how to calculate the NPM score for different products.

From July 2017, following public consultation, the Committee of Advertising Practice introduced H.E.S.S. or 'less healthy' rules that aligned non-broadcast advertising (including print, cinema, online and in social media) with broadcast advertising.

The nutrient profiling model uses a simple scoring system where points are allocated on the basis of the nutrient content of 100g of a food or drink. Points are awarded for 'A' nutrients (energy, saturated fat, total sugar and sodium) and for 'C' nutrients (fruit, vegetables and nut content, fibre and protein). The score for 'C' nutrients is then subtracted from the score for 'A' nutrients to give the final nutrient profile score.

[Read further information on the nutrient profiling model 2004 to 2005, including the 2011 nutrient profiling technical guidance on its application.](https://www.gov.uk/government/publications/the-nutrient-profiling-model) (<https://www.gov.uk/government/publications/the-nutrient-profiling-model>)

In most instances, the NPM score will need to be calculated for products 'as sold' rather than as consumed. Where a product needs to be reconstituted before being consumed, the NPM score should be calculated based on 100g of the product reconstituted according to manufacturer instructions. This is particularly relevant for product mixes (for example, cake mixes) and 'ready-to-bake' mixes.

NPM scores for packaged products of multiple items

Example 1 – specified food + non-specified food packed together as one product intended to be eaten together

If a prepacked product contained a scone and jam, the product would be in scope of the regulations as it contains a scone (which is in-scope under the morning goods category, while jam is not) and the NPM score would need to be calculated for the product as a whole.

If the whole prepacked product has an NPM score of 4 and above then it would be subject to the promotions restrictions.

A prepacked product such as a Thai or Indian ready meal may contain a curry dish and rice side dish as a single ready meal falling under schedule 1. If either the curry dish, the rice dish or the ready meal as a whole has an NPM score of higher than 4, then the whole prepacked product would be subject to the promotions restrictions.

Example 2 – schedule 1 food + schedule 1 food packed together as one product intended to be eaten together

In the case where 2 or more schedule 1 foods are prepacked separately but then combined together in a single outer package – for example, granola with yoghurt – there may be a mix of schedule 1 foods.

If either the granola or the yoghurt has an NPM score of 4 or above, then the whole prepacked product would be subject to the promotions restrictions.

Example 3 – hampers and platters containing schedule 1 food + non-schedule 1 food

Products that are composed of multiple prepacked items, all packaged together and sold as one product may be in scope of regulations if at least one item is a specified food.

If any single schedule 1 item in the hamper product has an NPM score of 4 or above, then the whole hamper product would be subject to the promotions restrictions.

Volume price promotions

Businesses in scope of the regulations must not offer volume price promotions on food in scope of the regulations.

'Volume price promotion' means:

- a multibuy promotion, being the express offer of a financial incentive for buying multiple items compared with buying each item separately (including '3 for the price of 2', '3 for £10' or 'buy 6 and save 25%')
- a promotion that indicates that an item – or any part of an item – is free (including '50% extra free' or 'buy one get one free'). Other examples include 'buy 300g and save 10%' and '50% extra free when you buy 500g'

Financial incentives can also include offers, such as if a volume price promotion offered 'buy 3 products and get 1,000 loyalty points' – this would be in scope as the customer is being incentivised to buy more to get the deal.

A multipack sold as a single item is not necessarily the same as a multibuy promotion. However, a multipack sold as a single outer pack containing 6 separate packs of crisps would be in scope of the volume price promotion restrictions if its packaging promoted its price of a single multipack in comparison with separate individual packs as '6 for the price of 4' or '50% extra free'. It would also be subject to the restrictions if a volume price promotion was offered on multiple purchases of the multipacks themselves – for example, 'buy 2 multipacks and get one multipack free' or '20% extra for the same price'.

Any volume price promotion that includes a specified food or drink product as set out in schedule 1 is not permitted, whether or not non-specified food products can be bought or chosen in the same offer. Volume price promotions can only be offered on non-specified foods.

The regulations explain that specified food must not be offered for sale as part of a volume price promotion. This includes a promotion in which non-specified food items or non-food items are also included.

For example, a promotional offer on a newspaper and chocolate such as 'buy a newspaper and get a chocolate bar free' would not be permitted because it indicates that a specified food is being offered for free. One of the definitions of a volume price promotion within the regulations is a promotion that indicates that an item, or any part of an item, is free.

Offers that are not volume price promotions do not fall in scope of the restrictions.

Examples of permitted vs restricted volume price promotions

Example 1 – 2 for 1 on plain water bottles

Permitted.

Example 2 – 2 for 1 on a range of plain water and sugary soft drinks that have an NPM score of ≥ 1

Not permitted. This offer includes specified food products. The NPM score should be calculated on a product-by-product basis and, if at least one product in the offer is considered HFSS or 'less healthy', then the offer is not permitted.

Example 3 – 2 for 1 offer on only sugary soft drinks that have an NPM score of ≥ 1

Not permitted.

Relevant special offer exemption

Offers commonly referred to as 'meal deals' or 'dine in for 2', where foods are promoted as intending to be consumed together, are out of scope of volume price promotion restrictions.

The 'relevant special offer' definition provided in the regulations deals with meal deals (which are generally targeted as lunch options for adults to consume on the go that day) or 'dine in for 2'-type offers (which are reducing the cost of 'complete' meals for multiple people, rather than being stockpiled at home) that aim to reduce the cost of a single meal.

The regulations refer to these offers as a 'relevant special offer', which means an offer of a discounted price is permitted for multiple items promoted as intended to be consumed together as, or as part of, a single meal by one person or by 2 or more people together (as, for example, in 'meal deal' or 'dine in for 2' offers). However, all specified food – whether part of a meal deal or not – cannot be placed in restricted locations.

For example, the 'relevant special offer' definition covers deals including:

- where there is a 'main' included in the deal – for example, sandwich (main) + crisps + drink
- ready meal, meal centre, or breaded or battered dish (main) + side + dessert
- sandwich + side salad + drink
- sandwich + cocktail sausages + drink

Each case will of course be assessed on its individual facts by an enforcement officer to determine whether the deal in question is in scope of the restrictions.

Not in scope under the relevant special offers exemption are:

- platters
- party food (that is not intended to be consumed as a main meal)
- a multibuy promotion on a packet of crisps, a bar of chocolate and a soft drink
- a packet of crisps and a soft drink
- a promotion on a sharing bag of crisps, bag of confectionery and 2-litre soft drink, even if it was marketed as a 'big night in' to be consumed together by 2 or more people (for example, families as a take home sharing occasion)

It is good practice for volume price promotions to only be applied to genuine 'meal deal' offers.

Meal deals online

Examples of meal deals that businesses could promote online:

Qualifying businesses could promote a chocolate bar when a consumer searches for a sandwich if the chocolate bar is part of a relevant special offer.

Qualifying businesses could also promote a dessert when a consumer searches for a ready meal when the dessert is part of a 'dine in for 2' offer (or similar relevant special offer). In other words, if a customer part-buys into a meal deal (for example, a sandwich), it would be permitted to prompt a customer with other items sold with the sandwich as part of a relevant special offer (for example, a snack or a drink).

However, it is not permitted for a qualifying business to promote a specified food that is part of a relevant special offer on a homepage, favourites page or a checkout page to ensure a consistent approach between locations promotions in qualifying stores and online.

Other means of communicating volume price promotions

Volume price promotions are also restricted on the packaging of food (for example, packages marked with '50% extra free' or 'twice as much'). Promotions that are communicated to a consumer via other means (for example, vouchers or signage) are also restricted.

Transition period for promotions on packaging

There is a transition period until 2023, which allows retailers to sell existing stock that was produced before October 2022 with volume price promotions (such as 'x% extra') on the packaging that they cannot remove.

To comply with the spirit of the new legislation, retailers who sell existing stock with a volume promotional offer on the packaging from October 2022 to October 2023 may choose to invalidate those offers by way of a clear marker added to the packaging. Any approach taken should clearly:

- explain that the on-packaging promotion does not apply
- confirm the revised price of the products

Any retailer who chooses to invalidate an on-pack volume promotional offer should ensure their method chosen for doing so is sufficiently clear so as not to mislead consumers. Retailers should assess how to clearly invalidate on-packaging promotional offers on a product-by-product basis, to ensure that they comply with relevant consumer protection legislation.

After October 2023, if a volume price promotion is marked on the packaging for sales in other parts of the [UK](#) where such promotions are permitted, the packaging must state clearly and prominently that the promotion does not apply in England.

Price promotions not in scope

Discount promotions such as '50% off', 'half off' or 'save £1' are out of scope of this policy. Vouchers for these deals are also not in scope of the regulations.

Free samples or vouchers for free products are also not in scope of the volume price promotion restrictions.

A multipack is considered a single item for the purposes of volume price promotion restrictions. If the packaging does not promote the item in comparison with individual packs (such as '6 for the price of 4' or '50% extra free'), then it does not fall within the scope of the regulations. Similarly, multiple multipacks would fall into scope if, for example, a '2 for 1' promotion was offered on multiple multipacks.

Free refills

Restrictions apply to free refills of sugar-sweetened beverages, defined as **H.F.S.S.** or 'less healthy' by the **N.P.M.**, in any qualifying business, including the restaurant and out of home sector. Businesses in scope of regulations must not offer a free refill promotion on drinks in scope of regulations.

Drinks in scope of the restrictions on free refills would be:

- drinks sold from businesses in scope (included above in 'Which businesses must comply with the promotions restrictions')
- non-prepacked drinks within category 1 of schedule 1 (included above in 'Product categories in scope')
- drinks that are **H.F.S.S.** or 'less healthy' (as defined by the **N.P.M.**)

A 'free refill promotion' means a promotion that offers the consumer the same drink or another drink to which this regulation applies (including free top-ups of any part of such a drink) for free after consumption of all or part of a first drink.

Consumer-operated drinks machines are in scope of these restrictions if they offer free refills and are placed within a qualifying business – for example, coffee machines within a convenience store or a forecourt offering sweetened coffee. However, they are out of scope of the volume price promotion and location restrictions as the drinks are not pre-packed.

Examples of drinks in and out of scope of the restrictions of free refills can be seen below.

Drinks in scope

Drinks in scope of the restrictions on free refills are:

- non-prepacked or open cup soft drinks that are in scope of the **S.D.I.L.** with an **N.P.M.** score of ≥ 1
- all other drinks under category 1 of schedule 1 with an **N.P.M.** score of up ≥ 1 , including tea or coffee that is pre-sweetened before sale

Drinks out of scope

Drinks out of scope of the restrictions on free refills are:

- drinks with a content of more than 1.2% **ABV**
- drinks in category 1 but not considered **H.F.S.S.** or 'less healthy' (with an **N.P.M.** score under 1)
- plain water and other drinks with no added sugar

Location promotions

In store restrictions on location promotions

The regulations describe where qualifying businesses must not place specified food inside a physical store. Businesses in scope of the regulations with stores that have 185.8m² (2,000 sq.ft) or greater of 'relevant floor area' will be in scope of the location promotion restrictions.

The relevant floor area excludes areas:

- not used for displaying goods or for serving customers in connection with the sale of goods (for example, storage areas or back of store). Areas behind counters are not excluded from relevant floor areas
- used mainly for the preparation or sale of food intended for immediate consumption, whether on or off the premises (including, for example, a coffee shop or a canteen). Such seating areas do not count towards the relevant floor area. Many seating areas of, for example, a café (run either by the business or a business other than the business primarily responsible for managing and operating the store) may not count towards the relevant floor space of an area, but this will need to be assessed by the enforcement authority when assessing the premises
- used for consultation with customers in connection with any medical services (such as a pharmacy or opticians' services) offered in the store
- occupied by a business ('a concession') other than the business primarily responsible for managing and operating the store, but only where the concession operates its own payment facilities. The definition of a concession is not dependent on whether staff working for the primary businesses run or work at the concession. Concessions can be automated machines (for example, photobooths and vending machines) that take their own payments, and are not operated by the business primarily responsible for managing and operating the store. See 'Concessions' below for more details

Diagrams of examples of the location restrictions can be found in [annex C](#).

Concessions

Concessions are defined in the regulations as being an area that is occupied by a business other than the business primarily responsible for managing and operating the store, but only where this concession operates its own payment facilities.

Concessions in stores do not contribute towards the calculation of the 185.8m² (2,000 sq ft) necessary for application of location promotion restrictions.

Concessions can be out of home businesses or retail businesses.

Example 1 – on-site cafés

If a store has a total floor area of 2,500 sq ft, but had a café on site that is run by a separate out of home franchise that is 550 sq ft, this would take the relevant floor area to under the 185.8m² (2,000 sq ft) threshold and therefore the store would not be subject to the location restrictions.

The square footage of a store, however, does not determine its exemption from volume price promotions. Any business in scope of the policy, regardless of physical size, will be restricted from offering volume price promotions.

Example 2 – retail concession counters

If a convenience store has a retail concession counter (for example, a counter selling prepacked food or a counter selling clothing with separate payment facilities), this retail concession counter will be exempt from the relevant floor area of that convenience store.

If said concession counter is a qualifying business but under 185.8m² (2,000 sq ft) it would be exempt from the location restrictions, but not the volume price promotion restrictions.

If a store has a concession which is a qualifying business and over 185.8m² (2,000 sq ft), the concession itself it would be subject to both the price and location restrictions because it becomes a qualifying business in its own right.

Restricted areas in store

Businesses in scope must not place specified food in store at:

- any area within 2m of the checkout facility – this being the point in the store intended to be used by consumers to pay for products. This includes any point 2m away from a counter at which a cash register is used (including the area behind the counter) and any point 2m away from the external surface of a till point, electronic point of sale or self-service checkout machine. Specified food is permitted to be placed in an aisle (but not at the end of an aisle) even if it is within 2m of the checkout. Specified food is not permitted to be placed in kiosk gantries behind a checkout if it is within 2m of the checkout
- any area within 2m of a designated queuing area or a queue management system – this being an area, structure or demarcation built or outlined with the intention for consumers to queue when waiting to complete a purchase. For example, it could be formed or marked by signs, floor markings, barriers, units or shelving designed to guide customers in a queue to the point of purchase. This does not prevent food in scope of the regulations being placed in (but not at the end of) a shopping aisle within 2m of the designated queuing area
- the ends of aisles – these are defined as a display at the end of (but not in) an aisle, where the aisle end is adjacent to a main customer route through the store, or a separate structure (for example, an island bin, free-standing unit such as fridge or freezer, side stack or clip strip) connected to, adjacent to or within 50cm of such an aisle end. The end-of-aisle display includes all end-of-aisle displays including those facing the checkout, into the store or the store perimeter. A 'main customer route' takes its natural meaning as one of the main routes a customer is expected to take when moving around the store. This differs from island-type structures that can be dotted around the store, which are not in scope of the restrictions as they are not aisles. An 'end-of-aisle display' is not the last section of an aisle but instead the perpendicular end of the aisle
- store entrances – meaning at any point within the prohibited distance of the midpoint of any public entrance to the store's main shopping area. Specified food should not be placed at any point within the prohibited store entrance area. This is irrespective of whether it can be seen from the store entrance. Diagrams can be found in [annex C](#)
- a covered external area – meaning a covered area outside and connected to a store's main shopping area, through which the public passes to enter the main shopping area (for example, the foyer, lobby or vestibule). Individual cases will of course be considered and assessed individually by an enforcement officer to determine whether the aisle in question is in scope of the restrictions

Aisle ends

The 'aisle end' definition in the regulations captures promotion of products placed at the ends (front or back) of aisle shelf rows in stores, connected to or on separate units adjacent to ends of the aisle shelf rows – for example, island bin displays, side stacks or clip strips. An end-of-an-aisle display is not the last section of an aisle, but instead the perpendicular end of the aisle.

Displays such as dump bins, alcoves and off-fixtured displays are out of scope of the promotion restrictions unless they display specified food and are within 50cm of an aisle end display. If freestanding equipment runs consistently alongside main aisle shelves or cabinets and is attached or placed in a way that it becomes part of the main aisle but is not given prominence – being placed, say, facing perpendicular to the main aisle shelves or cabinets – then it is not in scope of the location promotion restrictions as an ‘aisle end’.

If an aisle ends in a wall, by definition there is no aisle end at that point upon which food can be displayed.

A ‘main customer route’ takes its natural meaning whereby a customer is directed through the store by passages between aisles. The purpose of this definition is to try not to capture island-type displays as islands typically do not have an ‘aisle-end’ (meaning no one side displays prominence in the same way that a typical long and rectangular aisle does). In most cases, an aisle ends on an aisle cut-through, such as access points along an aisle, are considered aisle ends and are in scope of this policy.

The regulations make it clear that specified food can be placed within an aisle, even if it is within 2m of a checkout facility or a designated queuing area. However, specified food cannot be placed on an end of an aisle and or on an island-type structure within 2m of a checkout facility or a designated queuing area. Diagrams are provided in [annex C](#) showing examples of aisle ends in scope.

Store entrances

No specified food is permitted to be displayed within 15m of the midpoint of the entrance or within the distance described by the formula below, whichever is smaller. The midpoint is the point halfway from the left side of the store entrance to the right side.

Formula – prohibited distance from the store entrance

$$\sqrt{(0.03 \times a)}$$

In the equation above, a is the ‘relevant floor area’ of the store. A distance is determined using this equation by multiplying the ‘relevant floor area’ by 0.03 and finding the square root of that figure.

For example, a store of 185.8m^2 would be prohibited from displaying a restricted product within 2.4m, or just over 7.7 feet, of the entrance. This can be seen in the equation below:

$$\sqrt{(0.03 \times 185.8)} = \sqrt{(5.574)} = 2.4\text{m}$$

In the equation above, the store's relevant floor area of 185.8m² is multiplied by 0.03. This equals 5.574. The prohibited floor area is therefore calculated by finding the square root of 5.574. This equals 2.4m.

The table below illustrates the prohibited entrance areas, as a measure of 'relevant floor area'.

Relevant floor area	Prohibited distance
185.8m ² (2,000 sq ft)	2.4m
278.7m ² (3,000 sq ft)	2.9m
371.6m ² (4,000 sq ft)	3.3m
464.5m ² (5,000 sq ft)	3.7m
557.4m ² (6,000 sq ft)	4.1m
650.3m ² (7,000 sq ft)	4.4m
743.2m ² (8,000 sq ft)	4.7m
836.1m ² (9,000 sq ft)	5.0m
929.0m ² (10,000 sq ft)	5.3m

Prohibited distances measured in metres can be calculated to one decimal place.

Examples of application of the prohibited distance from the store entrance

1. If the main store entrance area is a lift, the store entrance area should be calculated from the midpoint of the external lift door entrance.
2. If the main store entrance is by escalators or stairs, the midpoint should be calculated from the top of the last step into the store.

3. If part of the original store entrance is now used as an exit, the midpoint is considered to be from the 'new' part of the entrance used for entry into the store.

In cases where the store's main shopping area is predominantly used for the sale or display of non-food and drink products, and there is an external public entrance to any standalone section of a store dedicated to food and drink products, when considering the prohibited distance for the entrance area, enforcement officers – in determining a proportionate enforcement response – may consider:

- the size of the area of the sales floor dedicated to food and drink products
- whether the sales floor dedicated to food and drink products has specific till points within it

This is intended to help the enforcement officer to take a proportionate approach when considering dedicated food areas with public entrances in larger stores.

Aisles within a restricted store entrance area

In instances where an aisle is within the restricted store entrance area, specified food cannot be placed in this area.

The restricted store entrance area must be free of all specified food, however it is displayed, whether it be on an aisle within the restricted area (not necessarily the whole aisle if only part of the aisle is within the restricted area), chiller, temporary stand and so on.

The regulations make it clear that specified food should not be placed at any point within the prohibited distance of the midpoint of any public entrance to the store's main shopping area.

Covered external areas

Specified food must not be placed in a 'covered external area', which means a covered area, outside and connected to a store's main shopping area or store entrance, through which the public passes to enter the main shopping area (such as a foyer, lobby or vestibule).

This is a separate restricted area to the prohibited store entrance area.

Example 1 – petrol forecourts

Specified food should not be placed in the covered external area of a petrol forecourt (if the petrol station store is considered a qualifying business).

Example 2 – shop awnings

Specified food should not be placed underneath a shop awning (if that shop is considered a qualifying business).

This applies to various structures and is not an exhaustive list.

Internal entrances to food halls within a department store (or similar)

Internal entrance areas to different sections or departments within stores do not each count as a restricted area. For example, a food hall within a department store may only be accessible internally with the store and therefore the prohibited store entrance area applies from the first public entrance into the department store's main shopping area, and not the point where the food hall begins.

If a concession is a qualifying business and over 185.8m² (2,000 sq.ft) in size then the entrance to the concession would be within scope of the restrictions.

Multiple store entrances

If a store has multiple entrances, the store entrance calculation must be applied to every entrance to the main shopping area. Prohibited distances may overlap for store entrances that are close to each other.

The entrance restrictions do not apply to an 'exit only' exit from which customers cannot or should not enter the store.

Sampling in store

Vouchers do not necessarily fall under the definition of a volume price promotion if they do not involve offering the food for sale. Similarly, free samples are outside of scope if they:

- are not in a prepacked item
- do not involve offering the food for sale

However, if specified food associated with such vouchers or free samples is prepacked and offered in the store as part of a volume price promotion or placed within the restricted area, this is prohibited by the regulations.

Online restrictions for location promotions

Businesses in scope of the regulations must not promote food in scope online (including in apps), in locations equivalent to those in stores, where location promotion restrictions apply.

These restrictions do not apply to specialist stores that would otherwise be considered a qualifying business, but which only or mainly sell food from a single category in schedule 1 – for example, an online cake shop or specialist shops for chocolate or sweets.

The restrictions only apply to qualifying businesses selling food online in England.

Restricted locations online

A qualifying business must not offer for sale specified food on an online marketplace in the following 'locations':

- the homepage of a website (whether or not the consumer enters the online marketplace via the homepage). An image of a specified food that a consumer could add to their shopping basket from that point on a homepage – for example, via an 'add to basket' icon – would not be permitted as this would be the equivalent of the placement of a product in the store entrance area of a physical store. However, an image of a specified food signposting to a taxonomy page that may have specified food on or not (including category pages that are 'offers' pages) is permitted on a homepage
- when a consumer is searching or browsing for products other than schedule 1 food, unless certain instances apply (see examples below)
- while a consumer is searching for or browsing schedule 1 food, unless the specified food falls within the same schedule 1 category or certain instances apply (see examples below)
- on a page not opened intentionally by the consumer, such as a pop-up page or a brand burst – for example, when customers are proceeding to payment, there must not be a promotion (pop-up or under, or otherwise) of a **HFSS** or 'less healthy' food, even if the customer purchased this item on their last shop or it is a favourite item. This restriction also covers pop-ups that may appear when a consumer is browsing a schedule 1 category page, even if the pop-up is promoting the same schedule 1 food – for example, a pop-up promotion of a biscuit cannot appear while a consumer is browsing the 'biscuits' page
- on a 'favourite products' page, including 'recommended for you' pages, unless the consumer has previously purchased the specified food (whether in store or online) or intentionally identified it as a favourite product. However, specified food must not, in any event, be given greater prominence than other products on a 'favourite products' page – for example, within the list or grid of favourites, a specified food cannot be made bigger, 'flashier' or given special prominence in other ways over other products. Specified food flavour variants, different pack sizes, other products within the same category, or any other products that have not been previously purchased or identified by the consumer are not permitted to be promoted within the 'favourites' page because they have not been previously purchased or intentionally identified as favourite products. If a favourite product is out of stock, a substitution can only be made if the product suggested as a substitute is a homogenous product and not a variation. (A homogeneous product is one that cannot be distinguished from competing products from different suppliers. The product has essentially the same physical characteristics and is the same quality as similar products from other suppliers on a checkout page.) This covers all checkout pages when the customer views their basket, either on a dedicated page, as a trolley bar on the side of the screen, mini trolley pages or hover icons, or any pages while a consumer proceeds to make a payment. If a 'favourites' page is part of the checkout flow, the 'favourites' page restrictions apply to this page

Volume price promotions of specified food must not be offered anywhere on a retailer's site.

The regulations prevent specified food being offered for sale online while a consumer is searching or browsing products other than schedule 1 food. The examples below outline some exemptions to this restriction.

Examples of searching restrictions

Example 1 – Searching for a specified food

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, chocolate-flavoured confectionery or chocolate ice cream.

Example 2 – Searching for a non-specified food

If a consumer intentionally searches for a product, specified food must not appear in the search items list unless:

- another specified food matches by name, in whole or in part, with the search term – for example, 'prawn cocktail crisps' would be permitted to show on the search listings (in whatever form – for example banners or featured products and so on) if 'prawn' was the search term, as they share part of the name under which the specified food is marketed. This also includes search terms for brand names and merchandising categories
- another food matches, in whole or in part, with an ingredient listed on the packaging of the specified food – for example, a prawn-based ready meal could be shown in the search listing as they contain the same ingredient as the search term

Example 3 – Relevant special offers and exempt categories

If a consumer intentionally searches for a product, specified food must not appear in the search items list unless:

- a specified food is offered as part of a 'relevant special offer' – for example, a retailer could promote a dessert product when a consumer searches for a ready meal if the dessert is part of a 'dine in for 2' offer
- a general category is used as a search term by the consumer. Any products that feasibly fall under a general category would then be permitted on the search listings page – for example, if a customer searched for 'vegan food' then vegan cakes and vegan pizzas could show up in the search results. This also applies to seasonal search terms such as 'Christmas' (where Christmas confectionery, Christmas cake and other Christmas-related products could be shown) and browsing categories such as 'low-calorie meals', 'BBQ' and so on

Example 4 – Hampers

If a consumer searches for 'chocolate' and a chocolate product was part of a hamper or kit containing other products that included specified food items from different schedule 1 categories, the hamper product itself would be able to be shown on the search listings.

However, other such hampers not including chocolate or including specified food items from different schedule 1 categories are not permitted to be shown on the search listings page, unless the specified food items within the hamper:

- match, in whole or in part, with the search term – for example, a hamper containing chocolate fudge brownies would be permitted to show on the search listings if 'chocolate' was the search term, as they share part of the name under which the specified food is marketed
- include another food that matches, in whole or in part, with an ingredient that is searched for – for example, a chocolate and salted caramel tray bake hamper could be shown in the search listing as it contains the same ingredient as the search term 'chocolate'

Examples of browsing restrictions

Example 1 – Browsing for a specified food

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 – for example, banners leading to category pages other than the one the consumer has browsed for).

Exceptions to this are if:

- a specified food is offered as part of a 'relevant special offer' – for example, if chocolate was in a meal deal with crisps, sandwich and a soft drink. These items could be shown on the taxonomy tab page
- another specified food matches, in whole or in part, with the schedule 1 products in the taxonomy tab page – for example, a chocolate ice cream could be shown on the chocolate taxonomy tab page as they share part of the name under which the specified food is marketed. This also includes search terms for brand names and merchandising categories
- another specified food matches, in whole or in part, with an ingredient listed on the packaging of the specified food – for example, chocolate biscuits could be shown on the chocolate taxonomy tab page as they both contain chocolate ingredients

Example 2 – Relevant special offers and exempt taxonomy categories

If a consumer intentionally browses a taxonomy category page – for example, ‘ready meals’ or ‘vegan food’, specified food must not appear on the taxonomy page unless:

- the product feasibly falls under this general category. For example, if a consumer browses a taxonomy page such as ‘vegan food’, any products which feasibly fall under this general category could show up on this taxonomy page, such as vegan cakes and vegan pizzas. This also applies to seasonal search terms such as ‘Christmas’ (where Christmas confectionery, Christmas cake and other Christmas-related products can appear on the taxonomy page) and browsing categories such as ‘low-calorie meals’, ‘BBQ’ and so on
- a specified food is offered as part of a ‘relevant special offer’ – for example, a retailer could promote a dessert product when a consumer browses ready meals if the dessert is part of a ‘dine in for 2’ offer

Example 3 – Hampers

If a consumer browses a ‘chocolate’ taxonomy page and a chocolate product was part of a hamper containing other products that included specified food items from different schedule 1 categories, the hamper product itself would be able to be shown on the browsing page.

However, other such hampers not including chocolate or including specified food items from different schedule 1 categories are not permitted to be shown on the browsing page unless the specified food items within the hamper:

- match, in whole or in part, with the product name – for example, another hamper containing chocolate biscuits could be shown on the ‘chocolate’ taxonomy page
- include another food that matches, in whole or in part, with an ingredient listed on the packaging of the specified food – for example, a hamper containing chocolate cake could be shown on the taxonomy page as they contain the same ingredient as the ‘chocolate’ taxonomy page

There is no exemption for retail online marketplaces that mainly sell non-food items, but offer food in scope in restricted locations. These businesses are in scope of the regulations.

The aim of our policy is to make the healthier choice the easier choice for families and reduce the constant promotion of less healthy foods.

To ensure a level playing field and reflect the trend of people shopping online, the location restrictions should be reflected in online locations. As a result, gifting is not exempt from the regulations.

Gifting retailers, who are qualifying businesses, such as a flower website, will be subject to the same restrictions and will not be allowed to promote a specified food gifting item in restricted locations or by volume price promotions. All qualifying businesses will be subject to the in-store restrictions, so the equivalent is true for all online gifting retailers too.

Special offers pages

Some taxonomy tabs on a retailer’s website that are dedicated offer pages – for example, ‘special offers’ or ‘deals of the week’ and so on – are not a restricted location under the regulations. Therefore, products under such a taxonomy tab can contain a mix of specified food and non-specified food belonging to different categories.

Offers on these pages will still need to comply with the restrictions on volume price promotions.

Banners or headers

If a header on a website is owned and controlled by the qualifying business, and does not show specified foods within a different schedule 1 category to the one the consumer is searching for or browsing, then the header is permitted. For example, if a customer is on a cakes page, banners of other cakes or indeed fresh fruit and vegetables (non-specified foods) on that page are allowed.

However, headers or banners are not permitted to show specified foods from other categories – such as yoghurts or pizzas – on that page, unless they are not offered for sale but merely advertisements linking through to third-party websites.

A banner on a home page can feature images of specified food if the banner is not offering the food for sale but only signposting to a taxonomy page. The taxonomy page can feature a mix of specified and non-specified food if the consumer is searching or browsing the category of specified food that is shown.

Online advertising restrictions

The UK government has announced that it will be introducing a [9pm watershed for HFSS or ‘less healthy’ food and drink advertising on TV, and a restriction of paid for advertising online](https://www.gov.uk/government/consultations/further-advertising-restrictions-for-products-high-in-fat-salt-and-sugar) (<https://www.gov.uk/government/consultations/further-advertising-restrictions-for-products-high-in-fat-salt-and-sugar>).

Restrictions on H.F.S.S or 'less healthy' food and drink advertising are subject to Parliamentary approval of the [Health and Care Bill \(https://bills.parliament.uk/bills/3022\)](https://bills.parliament.uk/bills/3022).

We are working with regulators to:

- put in place the enforcement structures needed for the proposed advertising restrictions
- ensure detailed guidance is available for businesses to understand the new restrictions, while of course not pre-empting any decisions that may be made by Parliament during the passage of the bill

The government is committed to working closely with industry to ensure businesses are supported to implement the new requirements ahead of them coming into force.

We have aligned the product categories in scope of both restrictions as much as possible. However, unlike the promotions restrictions, the advertising policy applies to all sectors (retailer, manufacturer and out of home) equally, with the advertiser being liable for any breaches online.

Conversely, promotions restrictions apply to the retail sector and the products they sell, with the retailer being liable for breaches in store, and retailer and online aggregators being responsible for sales online.

As a result of these differences, advertising has additional product categories in scope pertaining to the out of home sector.

We understand that there are some instances where both the new online advertising and promotions restrictions may overlap.

In areas of overlap – such as if a company has paid for advertising of an identifiable H.F.S.S product displayed in an area restricted under the promotions regulations (for example, on a retail homepage, checkout page or page not intentionally opened by the consumer) – the retailer or aggregator will be liable for the breach of promotions regulations. It is also possible that the frontline regulator of the advertising restrictions may also find the advertiser liable in breach of advertising regulations.

However, as liability differs between the restrictions, we do not anticipate a scenario where an individual will be sanctioned twice for a single breach.

Liability

Businesses in scope of the regulations that promote food in scope in a way that does not meet the requirements of the legislation will be liable to enforcement action, unless an exemption applies.

It is expected that retailers will need to assess whether the products they sell fall within the categories in scope of the restrictions. If they do, retailers will need to assess whether these products are in scope by calculating the N.P.M score. If a product is deemed in scope, then it will be the responsibility of the retailer to ensure that they comply with the restrictions on promotions as set out in the regulations.

Retailers are responsible for ensuring the products they are promoting are compliant. Most of the necessary information to calculate N.P.M scores (for example, the amount of energy, kilojoules (kJ), sugars, saturated fat and so on in 100g of the food or drink) is already provided on packaging.

If retailers require further information from manufacturers (for example fibre, fruit, vegetable and nut content), then manufacturers can provide it and we would expect manufacturers to do so (if it is not already publicly shared). Manufacturers may choose to provide N.P.M scores to retailers if they wish for retailers to promote a product that is in a schedule 1 product category but that is not H.F.S.S or 'less healthy' due to its N.P.M score.

Nutrition or ingredient information provided by a manufacturer to a retailer should be accurate and not misleading. If information provided by a manufacturer is considered misleading, an enforcement authority may take enforcement action against the manufacturer under separate legislation. Manufacturers already have certain obligations about nutrition information with which they need to comply and it is an offence to put misleading nutrition information on the packaging.

We are seeking ways to provide support to businesses on compliance with the new restrictions.

We appreciate that, while the N.P.M has been used by businesses for many years for the advertising restrictions, the promotions policy requires more frequent use of the N.P.M for more products.

Online apps or delivery platforms

If retailers are offering food in scope on a website or other online platform, they will have to comply with location and volume price promotions restrictions in respect of the products they are selling. The out of home food sector is out of scope of promotions restrictions (except for free drink refills), but retailers are in scope and liable to enforcement action.

Parts of online aggregator sites or apps may be captured by promotions restrictions, such as checkout pages or pop-ups on retailers' sections of the app or site.

The homepage of the online aggregator app or site is considered the 'homepage' and is therefore an area where aggregators or retailers cannot promote specified food that a consumer could directly add to their shopping basket – for example, via an 'add to basket' icon. However, an image of a specified food that is not being offered for sale but instead signposting to a category page (including category pages that are 'offers' pages) is permitted on a homepage.

As online aggregators or apps may also have restaurant or out of home partners, promotions by these partners are not restricted under these regulations.

Retailers who are qualifying businesses are responsible for ensuring any contracts in place with the online delivery platform make clear that the law must be followed. They must also ensure that the products they sell are compliant with the location and volume price promotions restrictions on these types of platforms, where they remain responsible for this food being offered for sale.

Although retailers are responsible for the sale of their products online, online aggregators may also have such a responsibility. This could arise, for example, when aggregators advertise, promote or facilitate the sale of products on behalf of a trader.

A court will consider the facts of each case when deciding if the actions of online delivery platforms and aggregators have led or contributed to a breach of the regulations. Enforcement officers may contact all relevant parties when considering compliance and may consider other mechanisms for enforcement.

Enforcement

We would encourage enforcement authorities to:

- be pragmatic in their enforcement approach
- discuss areas where businesses may not be compliant with the regulations, issuing improvement notices where necessary
- focus on supporting compliance rather than penalising non-compliance

Enforcement authorities have a number of tools at their disposal to enforce the regulations, as set out below. In the first instance, they will work with businesses informally or by way of an improvement notice to support and encourage compliance, before pursuing the option of fining a business.

Enforcement of the regulations

The regulations will be enforced by food authorities. In practice, this will be your local authority (for example, county, borough or district council). The regulations may be enforced by trading standards or environmental health officers depending on local arrangements. Officers will be authorised to carry out their functions to enforce these regulations. Each council will have a publicly available investigations and enforcement policy in accordance with the [Regulators' Code \(https://www.gov.uk/government/publications/regulators-code\)](https://www.gov.uk/government/publications/regulators-code).

Businesses may work with their primary authorities to ascertain whether their businesses fall in scope of the regulations. Enforcement authorities may wish to liaise with primary authorities when a partnership exists to establish any advice that may have been given to the business.

Enforcement authorities are likely to check:

- whether a store is part of a medium or large business (where the total number of employees operating under that business name is 50 or more) – if not, the business is out of scope of the regulations
- whether a store is a specialist store selling one type of product (exempt from location restrictions)
- whether a store size is less than 185.8m² (2,000 square feet) (exempt from location restrictions)
- the presence of any products that are part of the food in scope categories in a restricted volume price or location promotion, in store and online
- if there are products in these categories on volume price or location promotions, to ascertain from the retailer how they have ensured that these are not **H.F.S.S** or 'less healthy' as defined by the **N.P.M** score

Enforcement officers have discretion in choosing how to conduct initial or further investigations. In deciding whether to investigate a matter, or investigate it further, factors that they may take into account include information from the retailer, or evidence obtained from wholesalers or manufacturers on the content of food products. We would encourage enforcement officers to be pragmatic in their enforcement response.

To assess compliance with the restriction on free refills of sugar-sweetened drinks in scope of the regulations, enforcement authorities are likely to check:

- whether the business (for example, restaurant) is part of a medium or large business (where the total number of employees operating under that business name is 50 or more) – if not, the business is out of scope of the regulations
- the presence of any 'free refill' offers on drinks that are in scope of the regulations
- if there are free refills offered on drinks, to ascertain from the business how they have ensured that these are not **H.F.S.S** or 'less healthy' as defined by the **N.P.M** score

Penalties for non-compliance

Enforcement officers will work with businesses to support their compliance with the law. If an officer has reasonable grounds to believe that the proprietor of a qualifying business is failing to comply with promotion and placement regulations, an authorised officer could serve an improvement notice to the proprietor.

However, improvement notices are discretionary and need not be the first action taken when an enforcement officer uncovers a potential infraction. Enforcement officers are permitted and encouraged to have initial conversations with businesses to resolve potential non-compliance and advise on how to comply before issuing formal notices.

Serving an improvement notice may be a means of escalation following continued non-compliance.

Further information and a flowchart outlining the processes for enforcement of the regulations have been included in [annex A](#) and [annex B](#).

Online enforcement

Businesses in scope of the policy that may have a primary authority relationship are encouraged to discuss compliance matters with them. Enforcement teams responsible for compliance issues can also be contacted for support.

ASA's role in enforcement of online promotions restrictions

The Advertising Standards Authority (ASA) is the UK's independent advertising regulator.

They have been administering the [UK Code of Non-broadcast Advertising and Direct and Promotional Marketing](https://www.asa.org.uk/codes-and-rulings/advertising-codes/non-broadcast-code.html) (written and maintained by the Committee of Advertising Practice (CAP)) for over 50 years and the [UK Code of Broadcast Advertising](https://www.asa.org.uk/codes-and-rulings/advertising-codes/broadcast-code.html) (written and maintained by Broadcast Committee of Advertising Practice) for over 15 years, with their remit further extended in 2011 to include advertising claims on companies' own websites and in social media spaces under their control.

The ASA might be made aware of a relevant promotion through its complaint handling or otherwise identify one in the course of its proactive monitoring activities.

The promotions regulations only apply to volume price promotions and location restrictions pertaining to specified food sold in qualifying businesses. The promotions regulations act independently of the existing CAP Code.

If a piece of content that is in scope of the promotions restrictions and potentially in breach of the UK advertising codes, and this comes to the attention of the ASA, then it will refer the matter to the relevant enforcement authorities. Compliance with the promotions regulations takes precedence over the non-statutory UK advertising codes.

The ASA will refer cases it identifies to the relevant enforcement authorities for action. Only authorised officers have the power to issue improvement notices and fixed monetary penalties.

Annex A – enforcement process

Improvement notices

The [Food Law Code of Practice](https://www.food.gov.uk/about-us/food-and-feed-codes-of-practice) outlines the appropriate use of improvement notices and emergency prohibition notices for use under the [Food Safety and Hygiene \(England\) Regulations 2013](https://www.legislation.gov.uk/uksi/2013/2996/contents/made) and the [Food Information Regulations 2014](https://www.legislation.gov.uk/uksi/2014/1855/contents/made).

Improvement notices provide businesses with the ability to take corrective steps before any penalty is levied. Improvement notices should provide a roadmap to compliance. The regulations require these notices to specify details such as the:

- matters which constitute the failure to comply
- time period within which measures must be taken to secure compliance

The period given for a business to secure compliance under an improvement notice will be for enforcement authorities to consider on a case-by-case basis, when exercising their functions.

There will be an appeal process available if an improvement notice is contested (appeals will be made to a Magistrates' Court), which will effectively 'stop the clock' for the time allowed to comply until the appeal has been heard.

Any person who fails to comply with an improvement notice may be guilty of an offence.

There are 2 options following an offence committed:

1. The offending business is criminally prosecuted, which may result in an unlimited fine per offence
2. 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](https://www.legislation.gov.uk/ukpga/2008/13/contents) (RESA), enforcement authorities will exercise their powers to impose an FMP in a way which is proportionate, consistent and targeted only at cases in which action is needed.

Enforcement actions will be taken in accordance with the authorities' enforcement policy.

Process for issuing fixed monetary penalties

When an enforcement officer proposes to impose an FMP on a person who has failed to comply with an improvement notice, the officer must serve a notice of intent to the recipient. The notice of intent will:

- set out the rationale behind the provisional decision to impose an FMP
- state that the FMP will be £2,500

Information that must be included on a notice of intent is included in the regulations.

The FMP proposed can be discharged if a person who receives a notice of intent pays 50% of the amount of the penalty within 28 days (starting from the day upon which the notice was received).

Additionally, a person on whom a notice of intent is served may, within 28 days (starting from the day upon which the notice was received), make written representations and objections to an enforcement authority in relation to the proposed imposition of the FMP, setting out why they feel an FMP would not be appropriate, which an enforcement authority will consider before coming to a final decision.

Final notice

If the person who has received a notice of intent does not discharge liability within 28 days, an enforcement officer may serve a final notice imposing an FMP of £2,500.

The information that must be included on a final notice is included in the regulations – this will include:

- information on the grounds for imposing the FMP.
- how payment may be made
- the consequences of non-payment

The enforcement officer may not serve a final notice on a person where the officer is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates. Where an enforcement officer serves a final notice relating to an FMP, they may not serve any other notice under these regulations in relation to the offence.

If a person who is served with a notice of intent makes representations or objections concerning that notice within the time limit, that person may discharge the final notice by paying 50% of the penalty within 14 days (starting from the day upon which the final notice was received).

A person receiving the final notice may appeal against it. Persons will have a period of 28 days after a final notice is served to appeal the notice. Rights of appeal will be made clear in any final notice served and appeals will be dealt with by a First-tier Tribunal in the General Regulatory Chamber.

The grounds for appeal are that the decision was:

- based on an error of fact
- wrong in law
- unreasonable
- wrong for any other reason

Non-payment after 28 days

The FMP must be paid within 28 days of receipt of the final notice. If the FMP is not paid within 56 days of the final notice, the amount payable is increased by 50%.

In the case of an appeal, it is payable within 14 days of the determination of the appeal (if the appeal is unsuccessful) and, if it is not paid within 14 days, the amount of the FMP is increased by 50%.

Criminal proceedings

If a notice of intent for an FMP is served on any person:

1. No criminal proceedings for the offence may be instituted against that person before the expiry of the period of 28 days (starting from the date upon which the notice of intent is received).
2. If that person discharges liability, that person may not at any time be convicted of the offence.

If an FMP is imposed on a person, that person may not at any time be convicted of the offence in respect of the act or omission giving rise to the penalty.

As mentioned previously, FMPs provide a means to respond to non-compliance of the regulations with a civil sanction as an alternative to prosecution.

However, it is in the discretion of an enforcement officer to criminally prosecute an offence committed after not meeting the terms of an improvement notice. Each case will be assessed on its own merits. For example, an enforcement officer may consider a prosecution is more appropriate if they consider that the business has committed a serious, deliberate or repeated breach of the regulations.

Guidance

Under the terms of the RESA, enforcement authorities will be required to produce guidance about the new penalties and how they will be used to enforce an offence. This will include:

- information on the circumstances in which a penalty is likely to be imposed or not
- how liability for the penalty may be discharged
- rights to make representations and objections or to appeal

This can be done as part of the usual consultation, development and publication of an enforcement authority's policy. Enforcement authorities must consult with such organisations as appear to them to be representative of interests likely to be substantially affected by the guidance before publishing or revising guidance.

For example, this will include business that fall in the scope of the regulations, and they may also wish to consult smaller business (with under 50 employees) and local partners.

Publication of enforcement action

The RESA requires each enforcement authority to publish reports from time to time. These reports must specify the cases in which:

- an FMP has been imposed, except where it has been overturned on appeal
- liability to the FMP has been discharged

In line with the regulations that also use powers in the RESA, enforcement authorities will consider case sensitivity and refrain from publication of information where they consider that publication would be inappropriate.

Annex B – enforcement flowchart

[Download a PDF of the enforcement flowchart.](#)

(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1052918/Annex-B-enforcement-flowchart.pdf)

Text alternative to the flow chart

Enforcement officer finds a business non-compliant with regulations

Conversations between enforcement authority and business explaining breach and how to remedy it.

Does the business comply after conversation?

- yes: no further action
- no: Improvement notice issued

Does the business dispute the improvement notice?

- yes: appeal
- no: see next section

Does the business comply with the improvement notice?

- yes: there is no further action
- no:
 - prosecution
 - enforcement authority serves notice of intent for a fixed monetary penalty

Does the business dispute the enforcement authority notice of an intent for a fixed monetary penalty?

- yes: appeal
- no: see next section

Does the business pay the fine within 28 days?

- yes: they pay 50% of the fixed monetary penalty
- no: enforcement authority will issue a final notice

Does the business dispute the enforcement authority notice of an intent for a fixed monetary penalty?

- yes: appeal
- no: see next section

Does the business pay within 28 days?

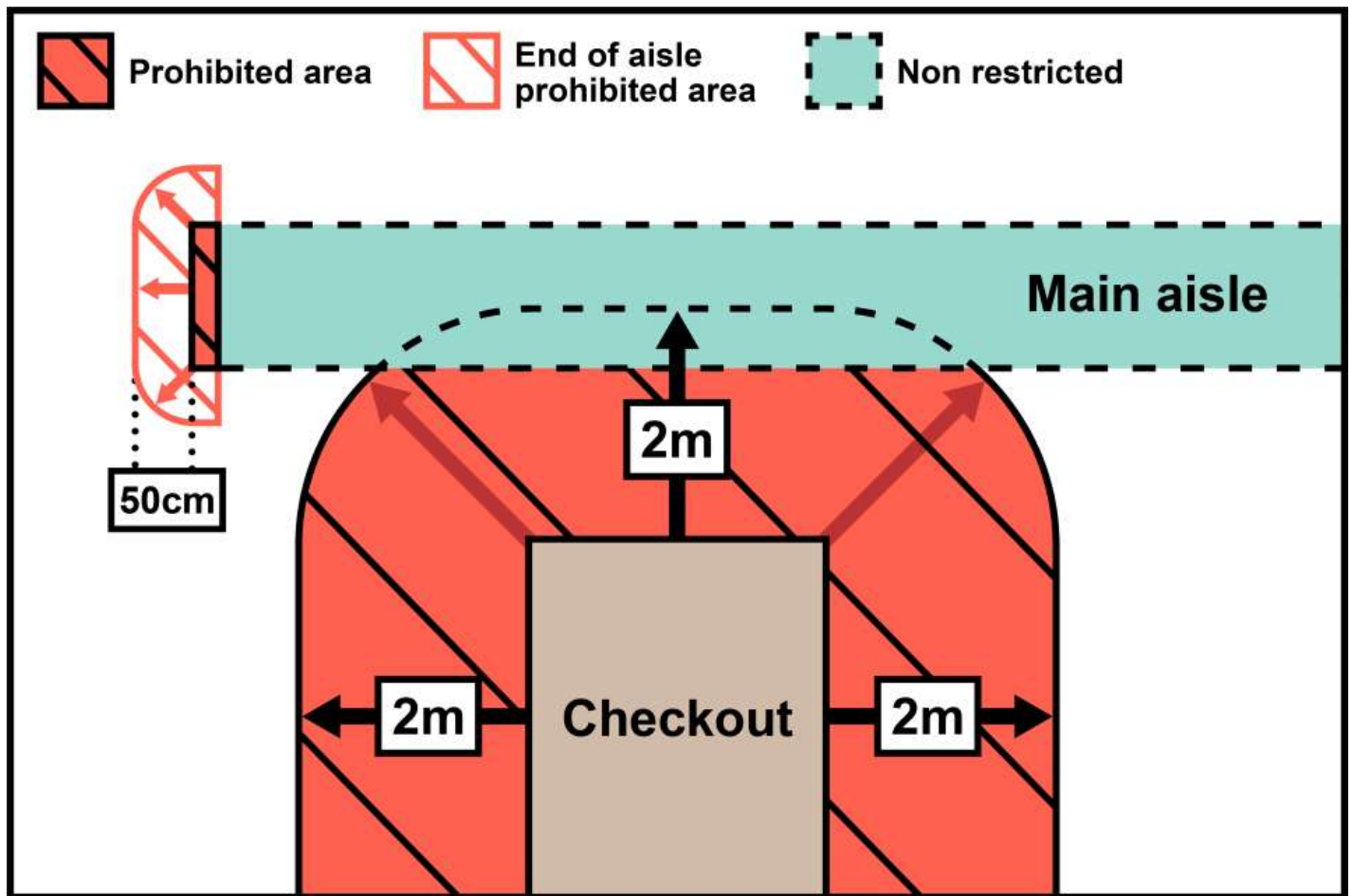
- yes: they pay the original fixed monetary penalty
- no: business pays a 50% increased fixed monetary penalty

Annex C – diagrams of location restrictions

These images provide examples of how the regulations may apply but are not exhaustive illustrations.

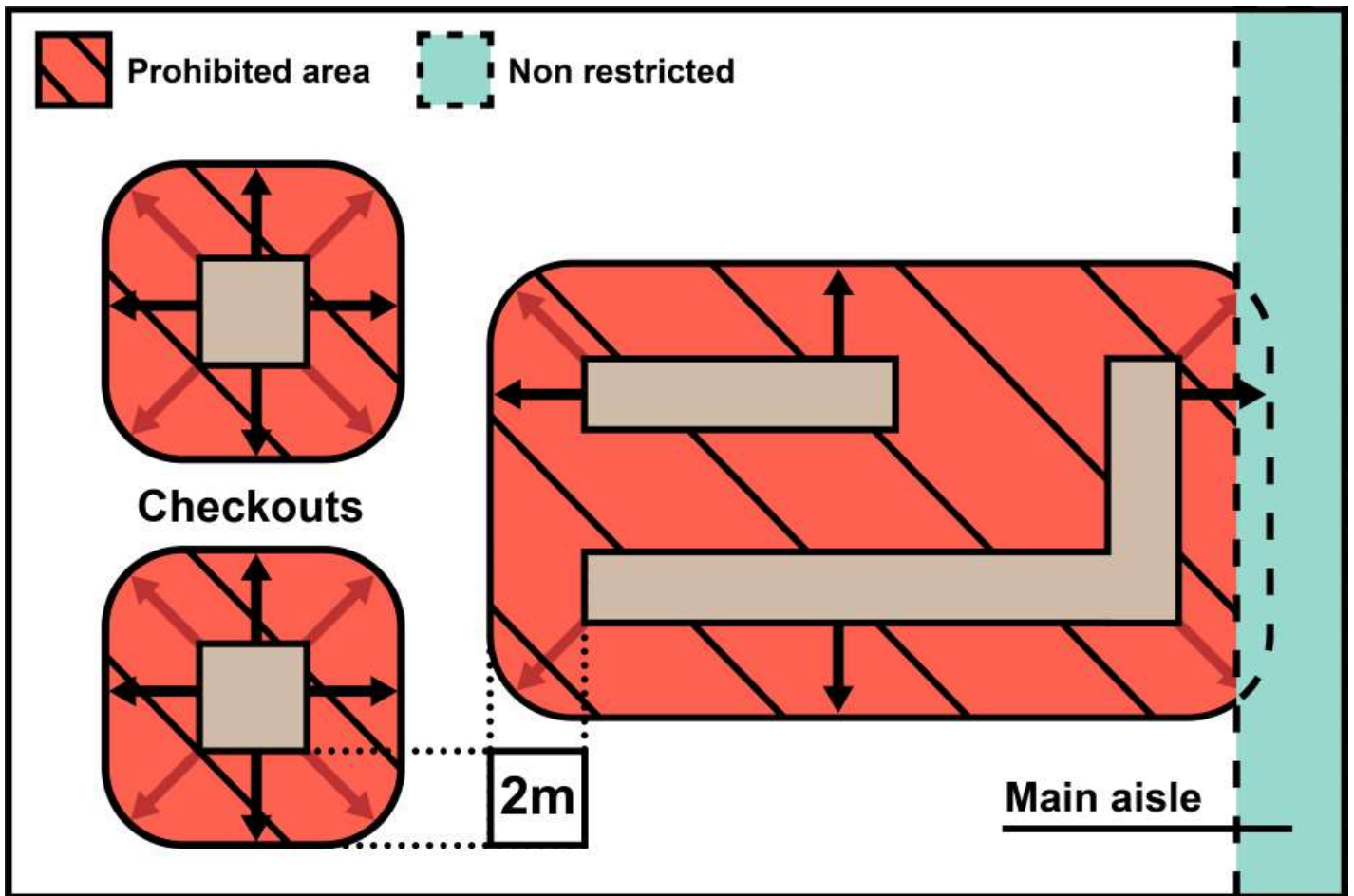
In-store restrictions

Image 1 – In-store checkout area



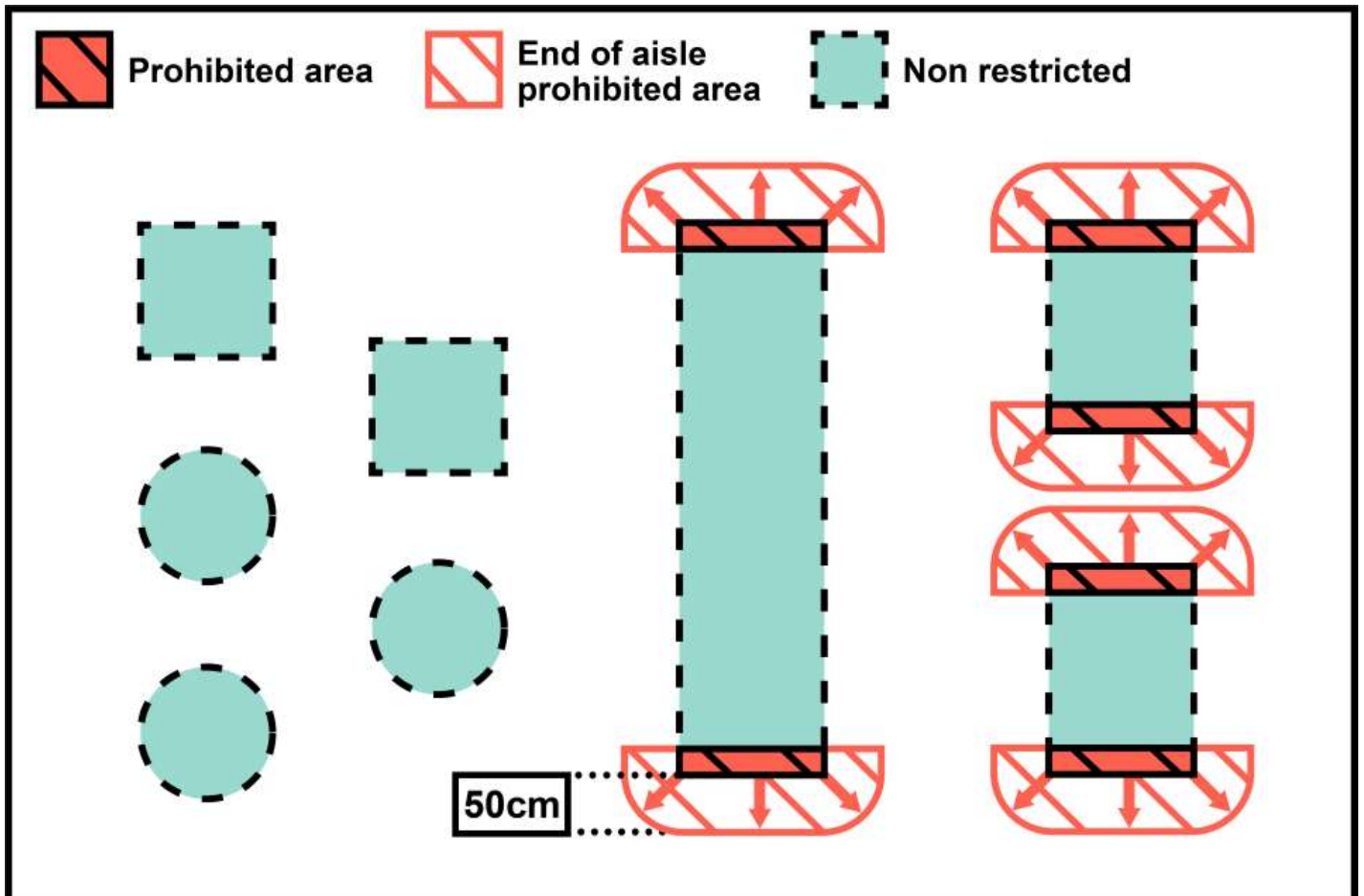
In the image above, the restricted area is within 2m of the checkout facility and specified foods cannot be placed here. This includes any point within 2m from a counter at which a cash register is used, including the area behind the counter and any point within 2m of the external surface of a till point, electronic point of sale or self-service checkout machine. This does not prevent specified food being placed in an aisle, even if it is within 2m of the checkout, but specified food should not be placed at the end of an aisle or within 50cm of the end of the aisle.

Image 2 – Designated queuing area



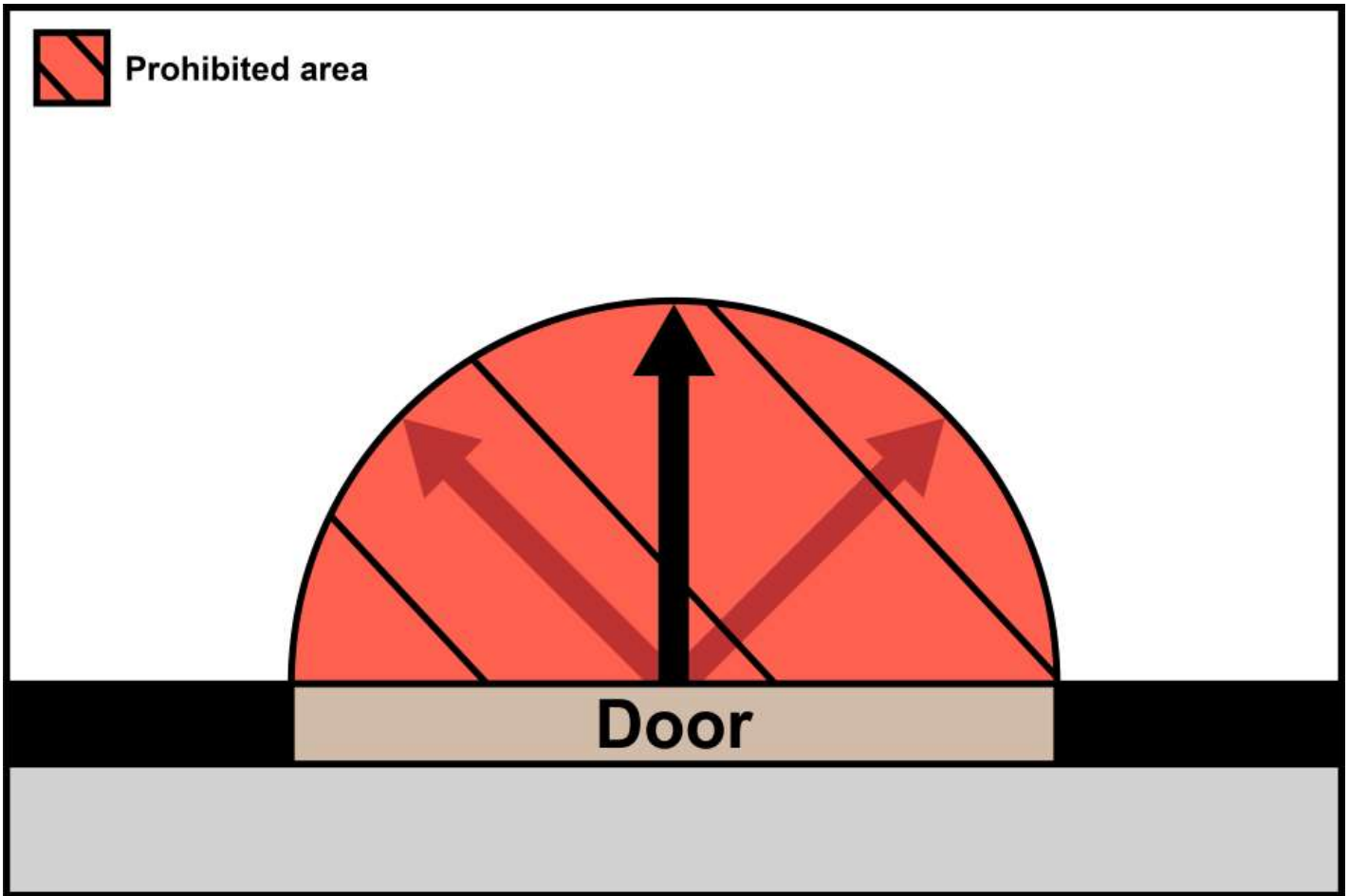
In the image above, the restricted area is within 2m of a designated queuing area or a queue management system and specified foods cannot be placed here. There is also a 2m prohibited area around the checkouts and specified foods cannot be placed here. This does not prevent specified food being placed in an aisle (but not at the end of an aisle) even if it is within 2m of the designated queuing area.

Image 3 – Ends of aisles and islands



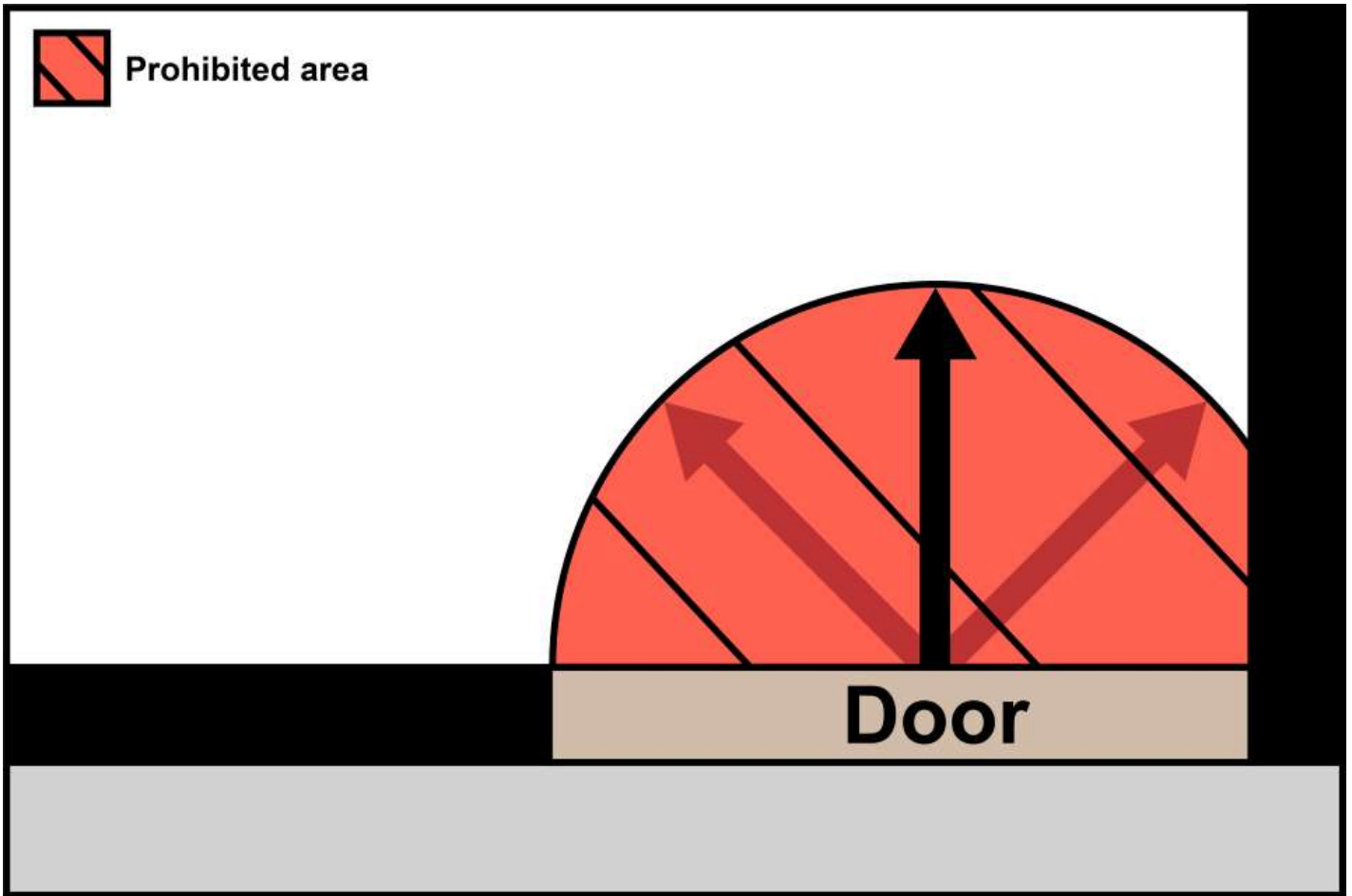
In the image above, the ends of aisles and within 50cm of the aisle end (but not in the main aisle) are restricted and specified foods cannot be placed here. Specified food can be placed on island-type structures that can be dotted around the store, which are not in scope of the restrictions as they are not aisles.

Image 4 – Single door entrance



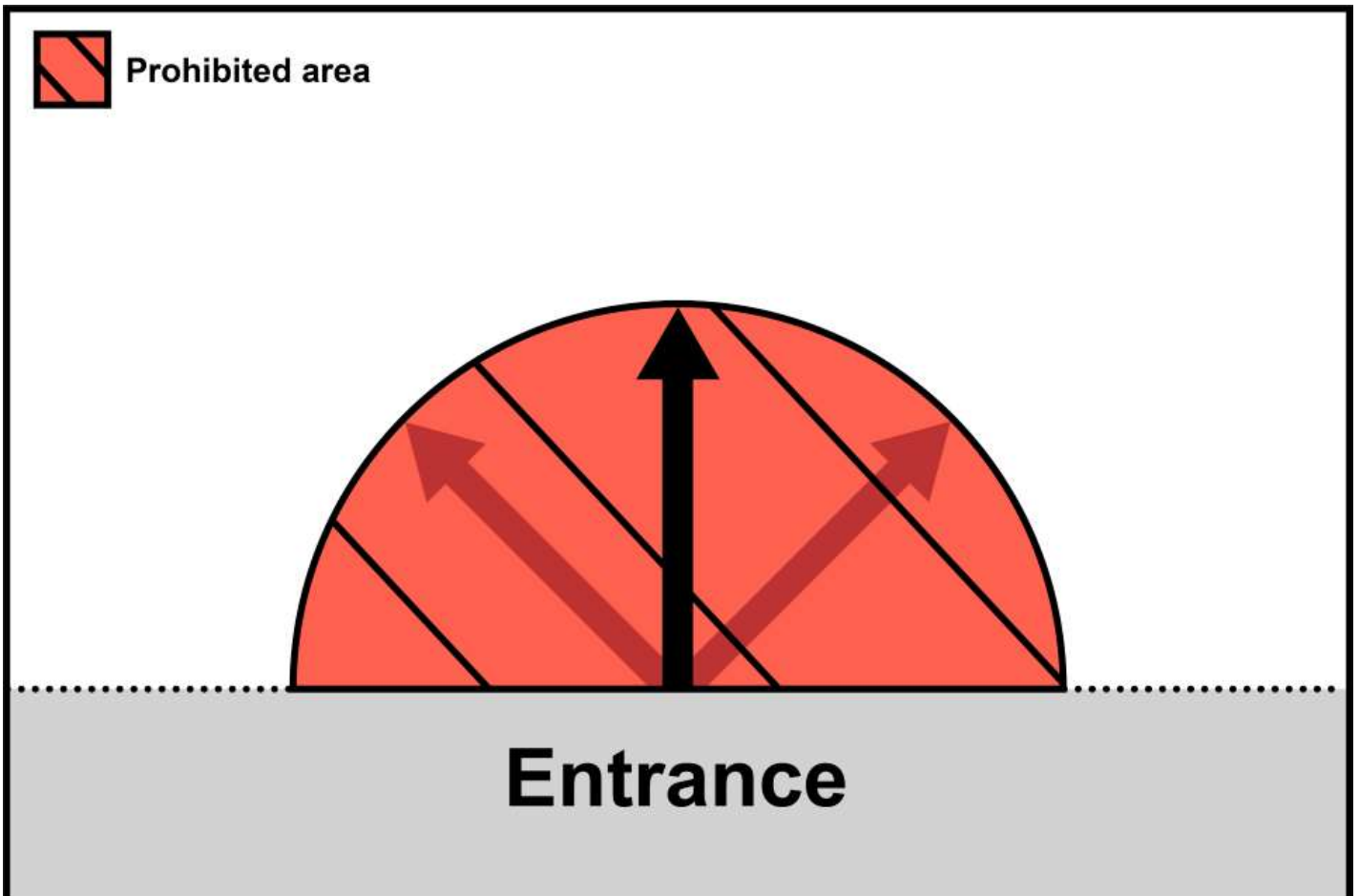
In the image above, there is a single door entrance with the prohibited distance from the midpoint of the entrance within the store.

Image 5 – Single door entrance on a corner



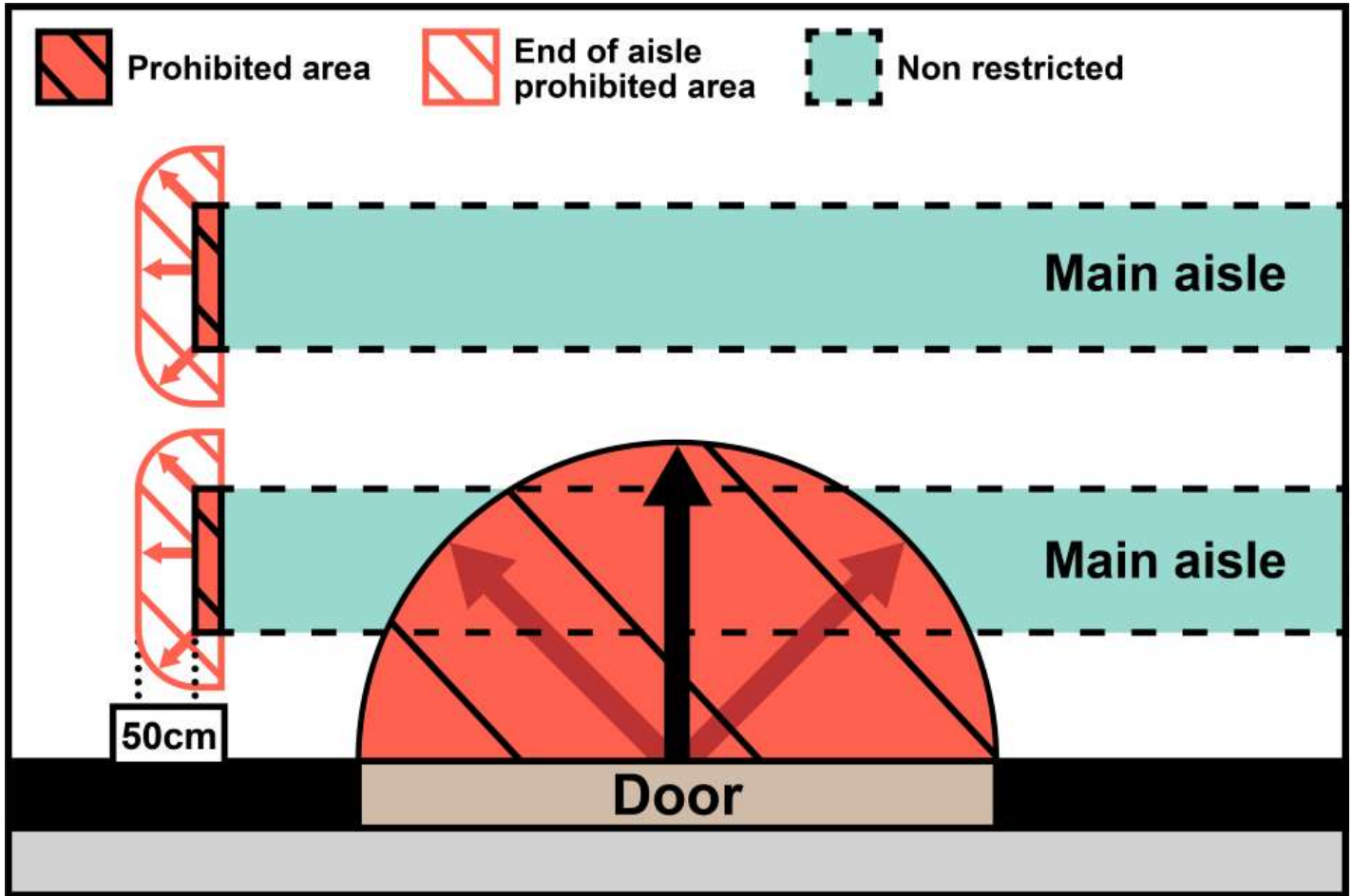
In the image above is a single door entrance on a corner with the prohibited distance from the midpoint of the entrance within the store, even when intersected with a wall.

Image 6 – Open plan entrance



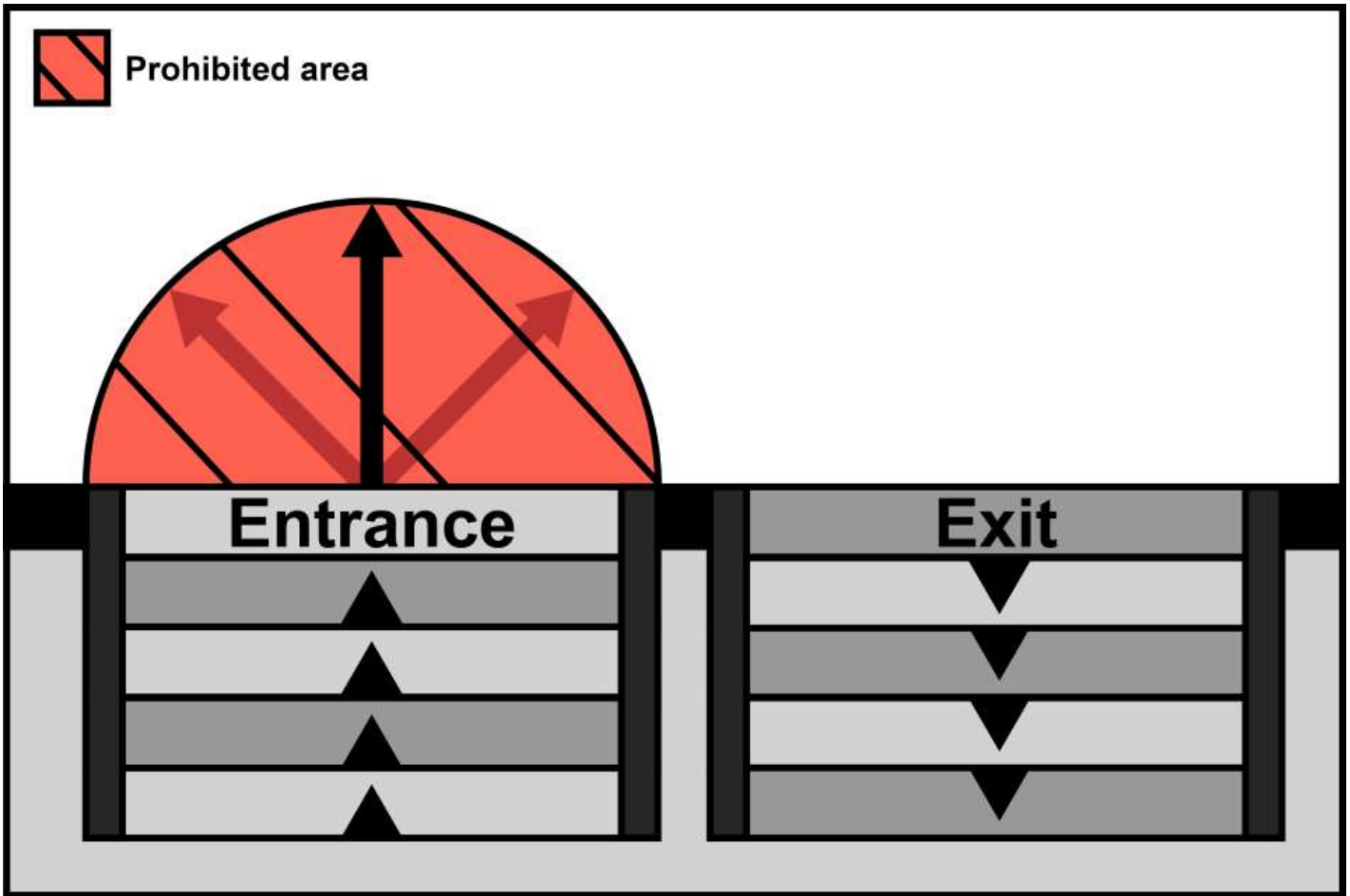
In the image above, there is an open plan entrance without walls on either side of the entrance with the prohibited distance from the midpoint of the entrance within the store.

Image 7 – Single door entrance near an aisle



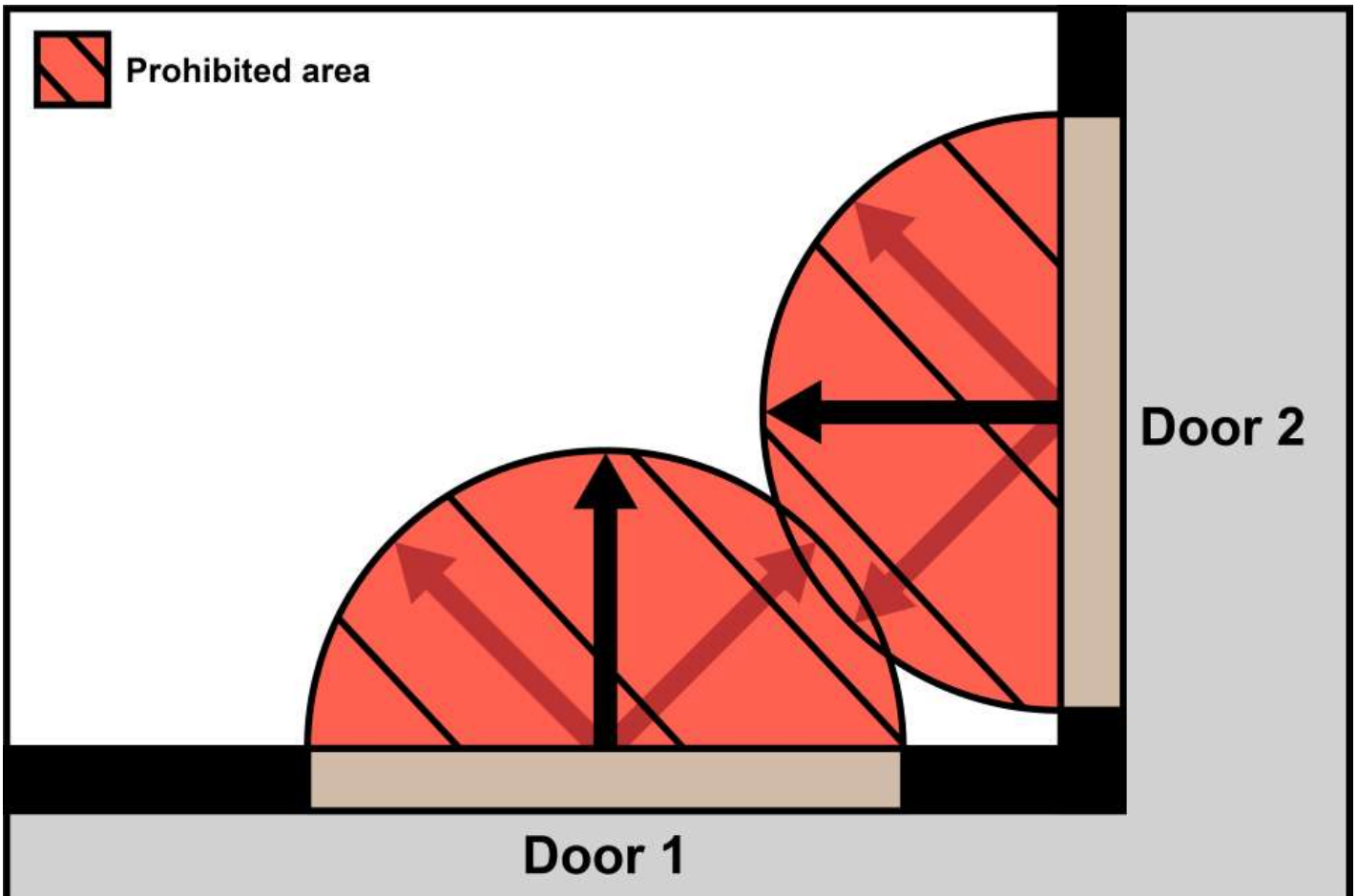
In the image above, there is a single door entrance with the prohibited distance from the midpoint of the entrance within the store. There is a main aisle within the prohibited distance of the door. The main aisle area that is within the prohibited area of the door shows that specified food should not be placed at any point within the prohibited store entrance area, irrespective of whether it can be seen from the store entrance.

Image 8 – Stairs or escalators leading to a single door entrance



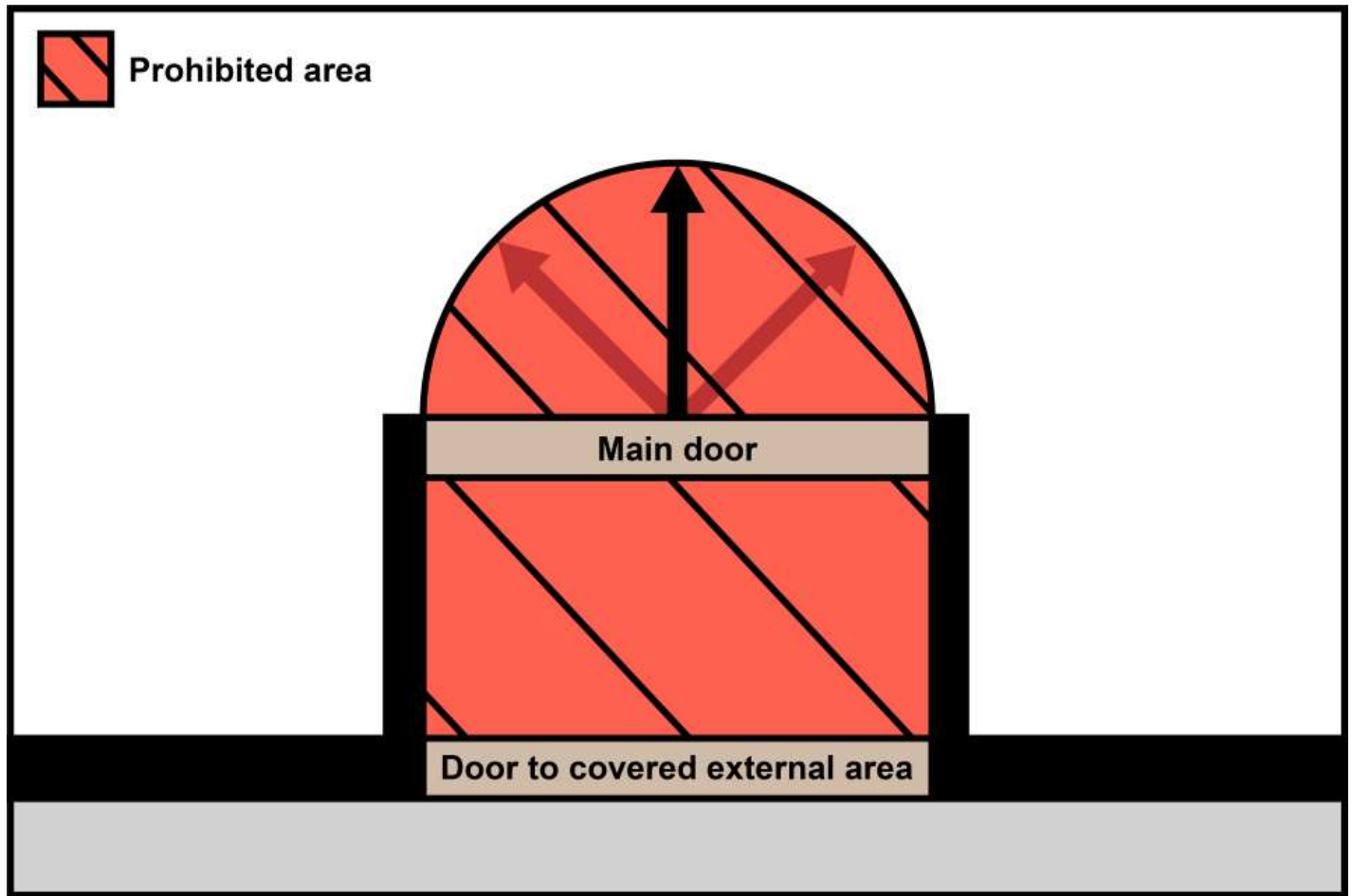
In the image above, stairs or escalators lead up to a single door entrance. The prohibited distance is from the midpoint of the entrance within the store.

Image 9 – Multiple door entrances



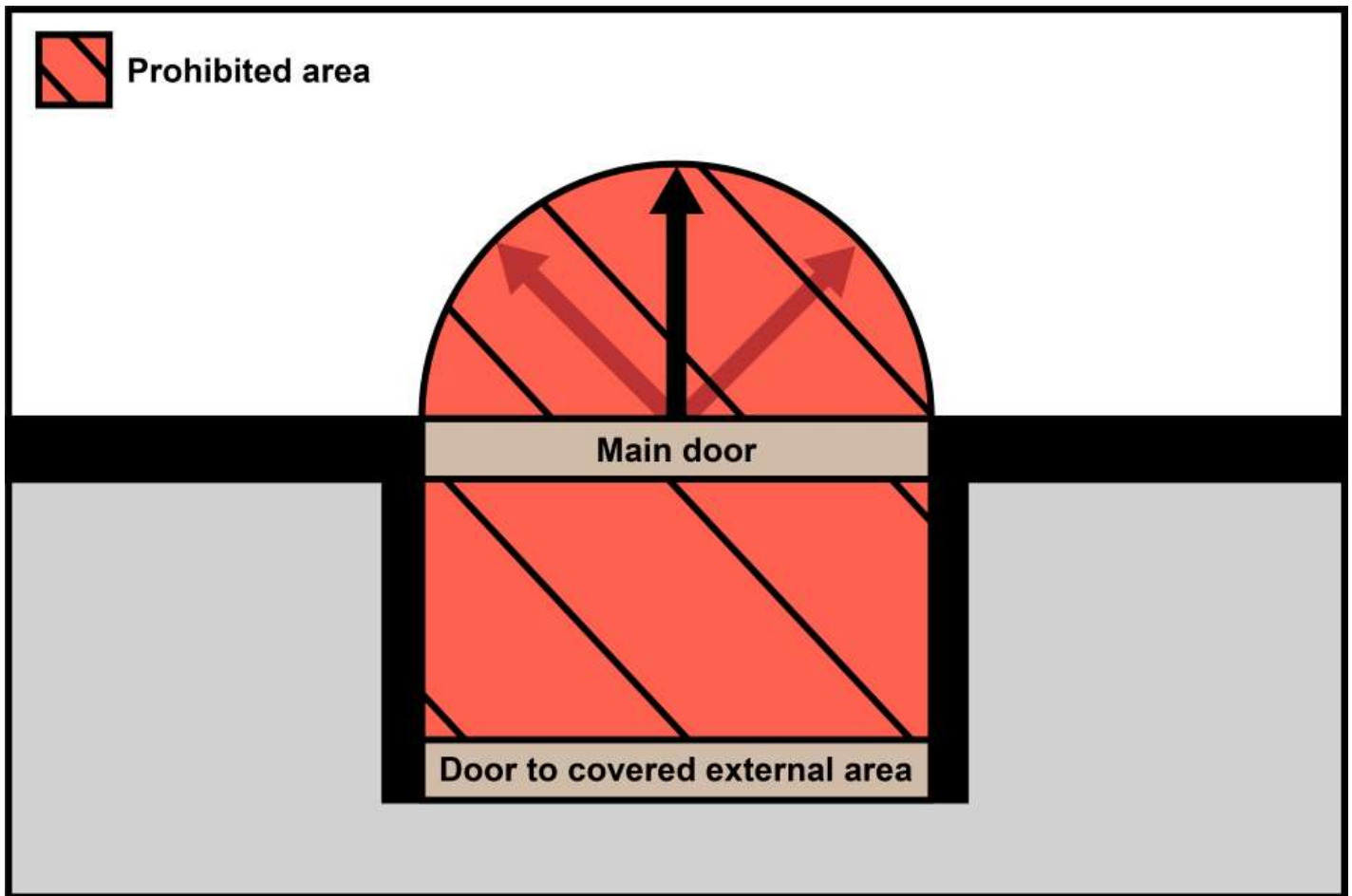
In the image above, there are multiple door entrances with the prohibited distance from the midpoint of each of the entrances within the store.

Image 10 – Entrance in a covered area inside the store



In the image above, there is an entrance with a covered area inside the store through which the public passes to enter the main shopping area (for example, the foyer, lobby or vestibule). This area is restricted, as is the prohibited distance from the midpoint of the entrance within the store.

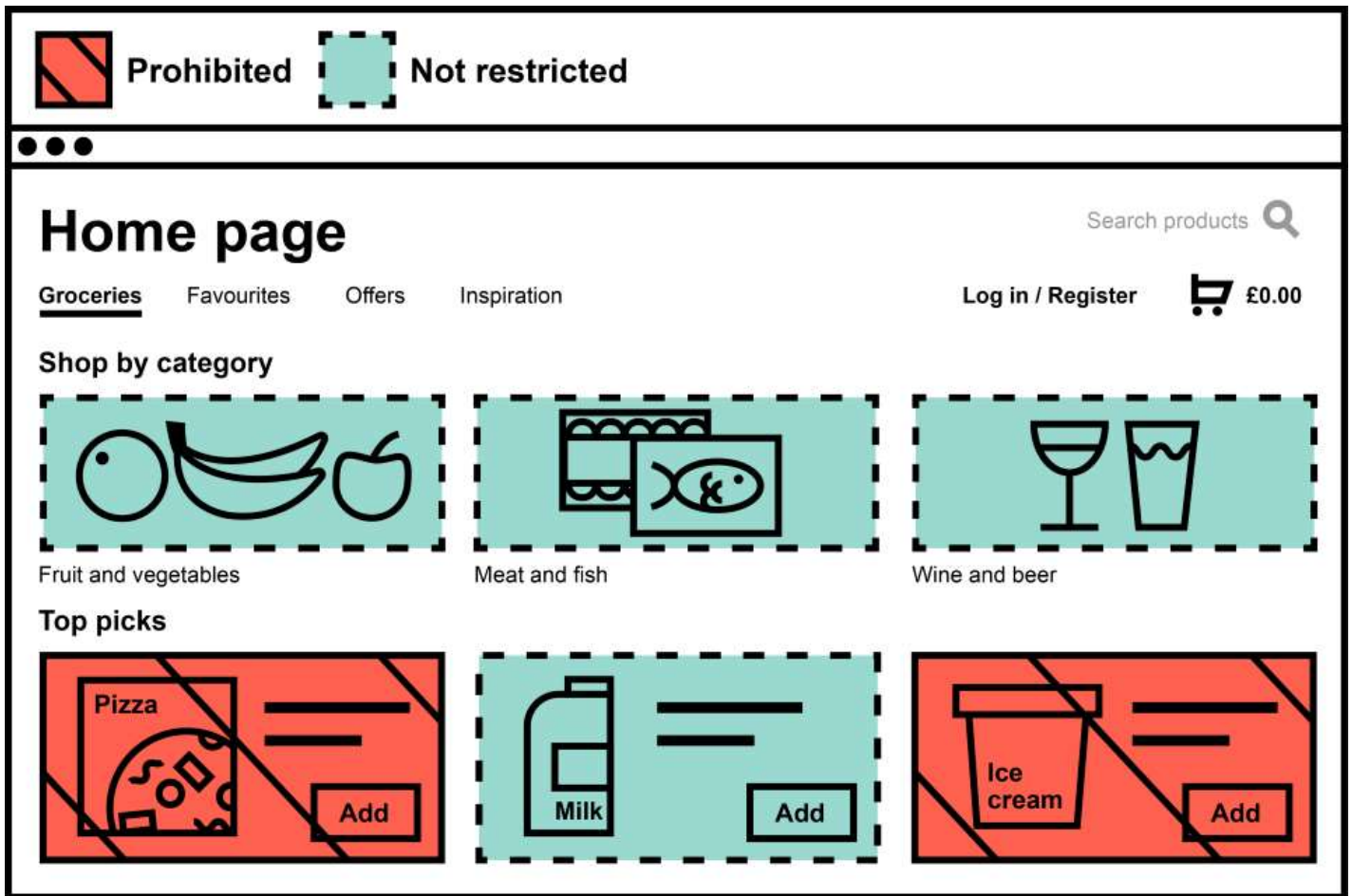
Image 11 – Entrance in a covered area outside the store



In the image above, there is an entrance with a covered area outside of the store through which the public passes to enter the main shopping area (for example, the foyer, lobby or vestibule). This area is restricted, as is the prohibited distance from the midpoint of the entrance within the store.

Online restrictions

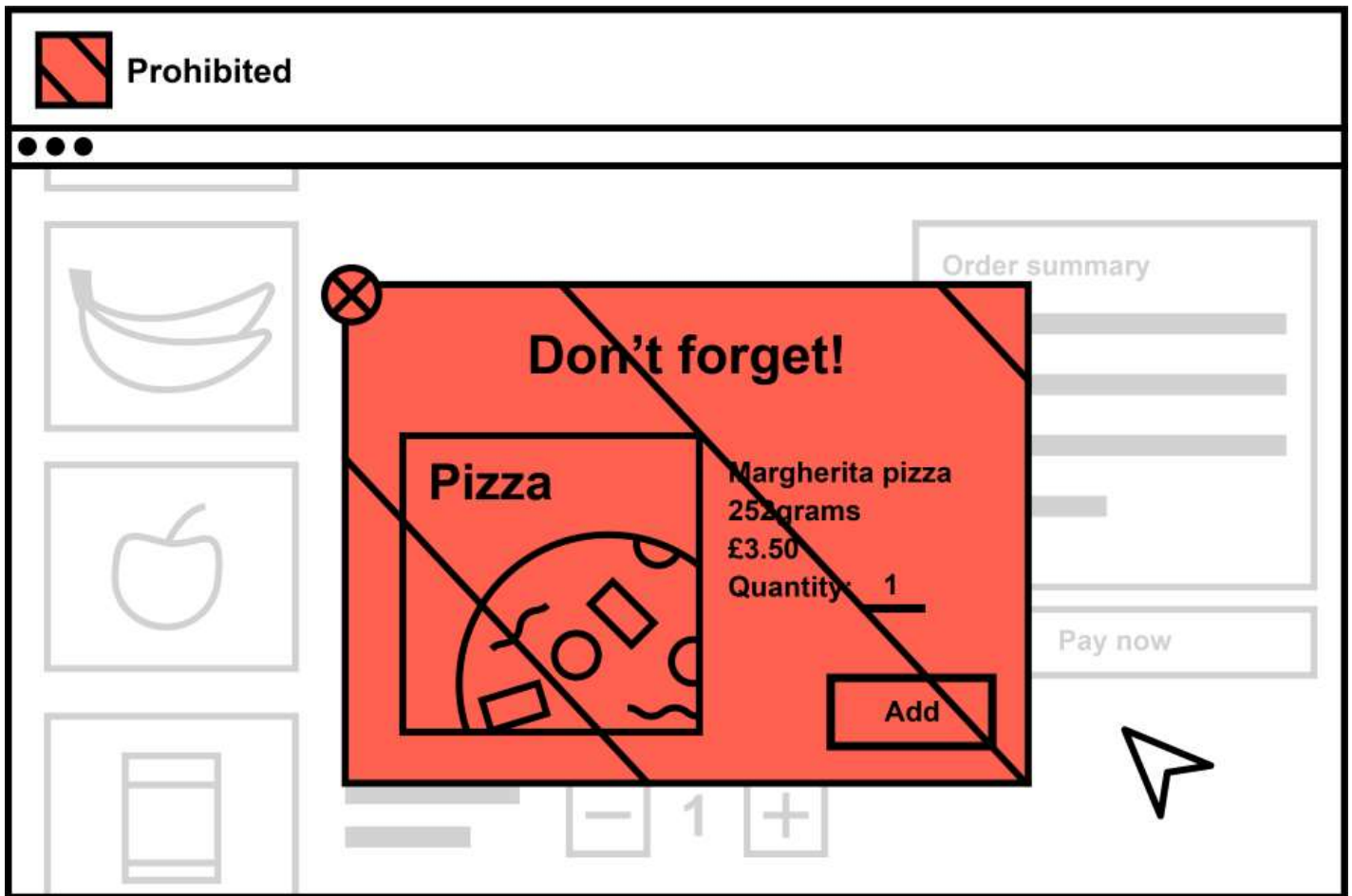
Image 12 – Homepage



In the image above, the homepage of a website shows a list of categories (fruit and vegetables, meat and fish, and wine and beer), which are not restricted. The page also shows 'top picks', including:

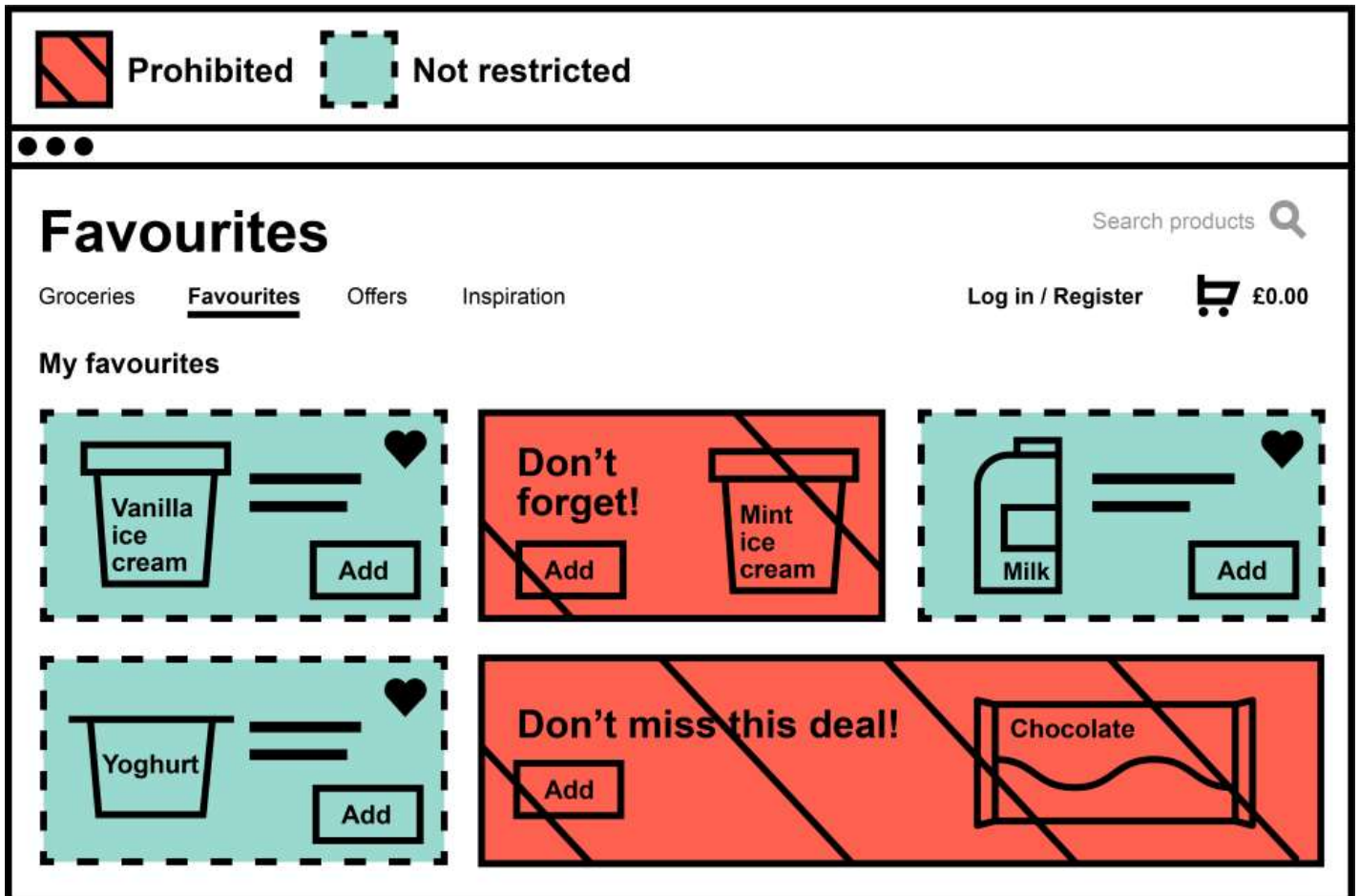
- a H.E.S.S. pizza, which is restricted
- milk, which is not restricted
- a H.E.S.S. ice cream tub, which is restricted

Image 13 – Pop-ups



In the image above, a pop-up that reads 'don't forget' promotes a H.F.S.S pizza, which is restricted.

Image 14 – Favourites



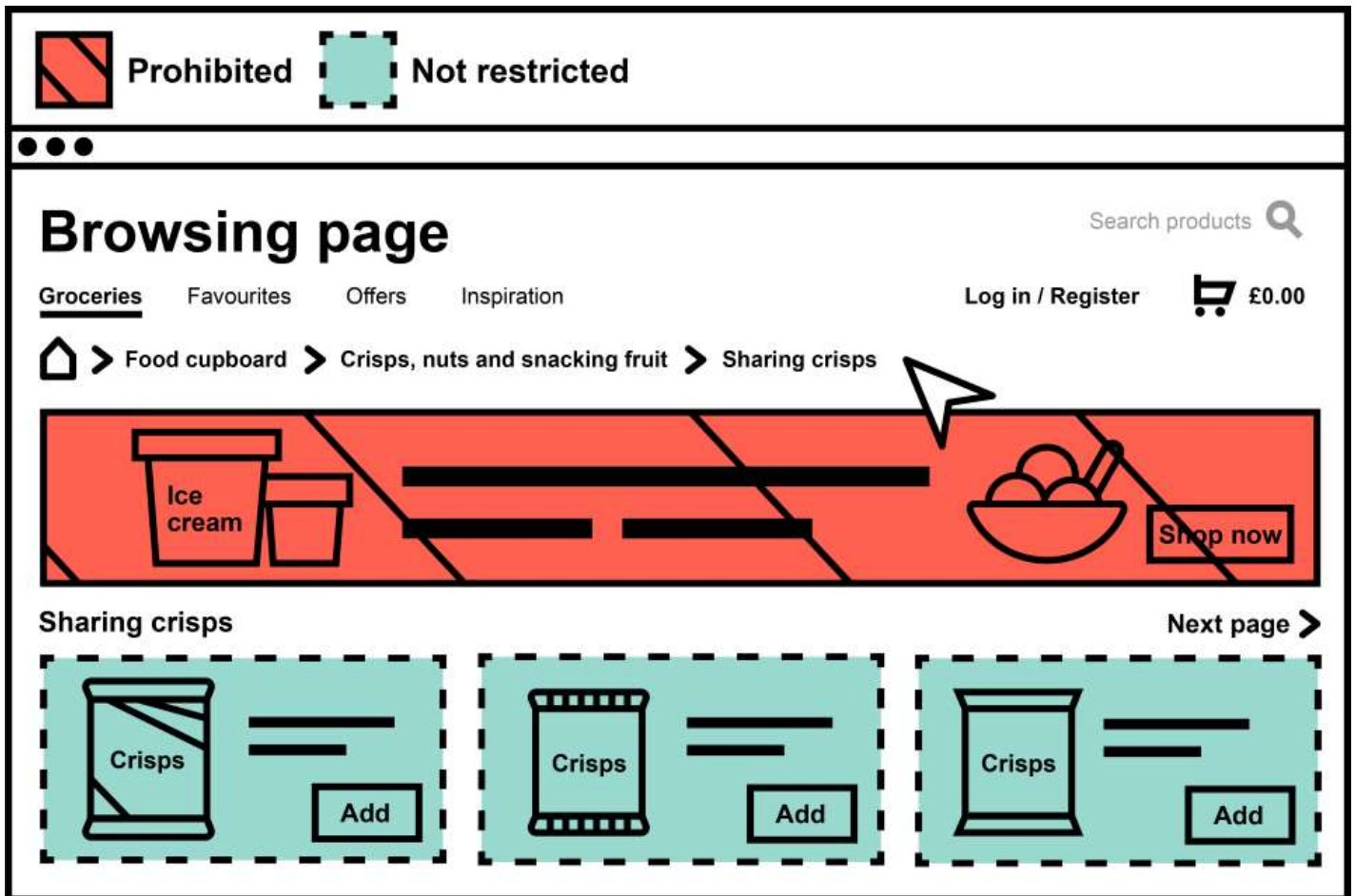
In the image above, a 'favourites' page shows items that have been marked as favourites by the consumer. All the items that have been marked as favourites by the consumer are not restricted, including H.F.S.S. ice cream, milk and yoghurt. On this page, there are also 'don't forget' offers for H.F.S.S. ice cream and chocolate, which have not been favoured by consumer – these are prohibited.

Image 15 – Checkout



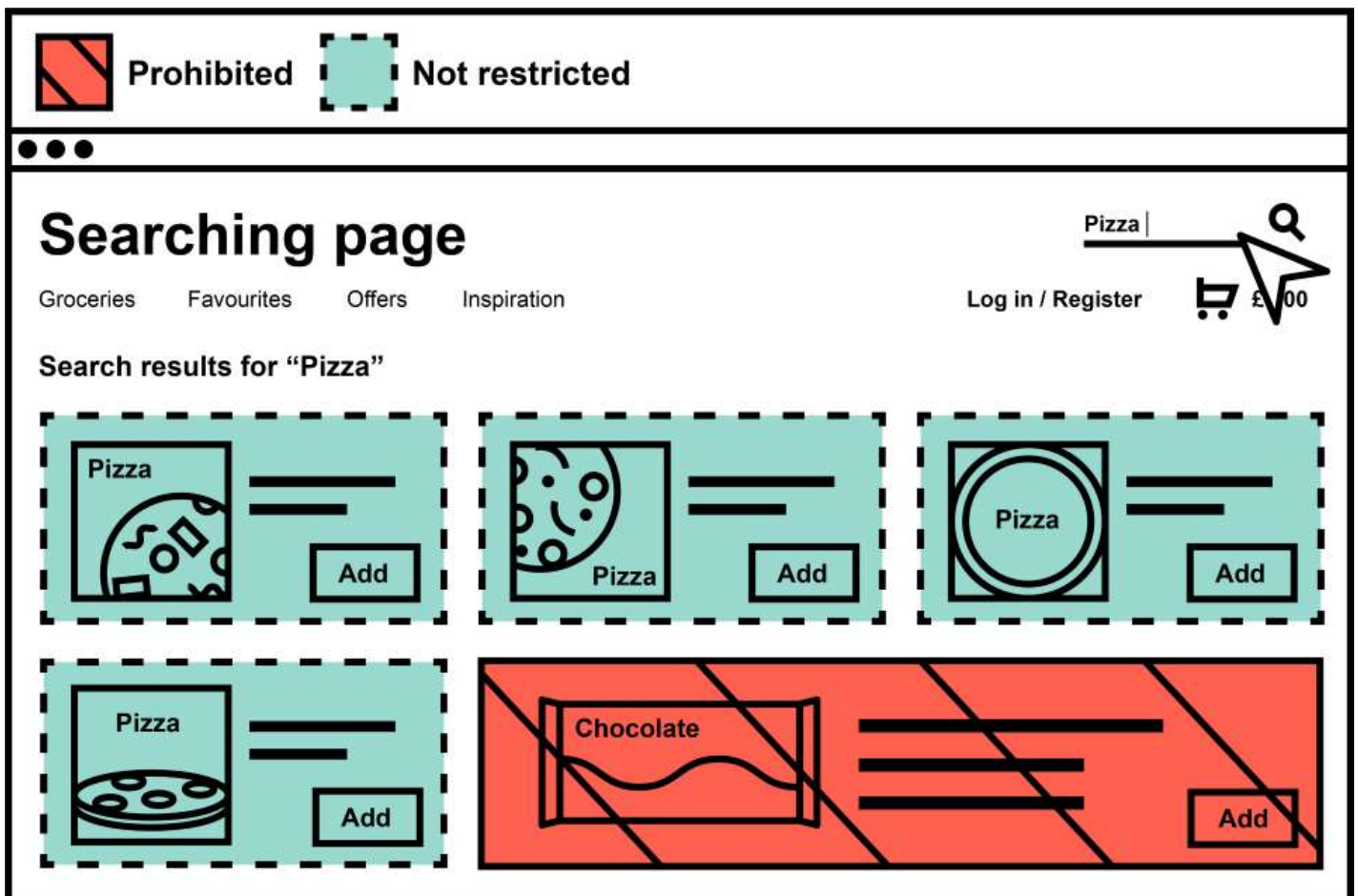
In the image above, a checkout page shows items that are in the trolley. All foods that the consumer has chosen to put in their trolley are not restricted. There is a message saying: 'Don't miss out on this deal' showing a H.F.S.S. chocolate bar, which is prohibited.

Image 16 – Browsing



In the image above, there is a browsing page where the customer has opened the 'crisps' page. On this page, crisps are not prohibited even if they are H.E.S.S. as the consumer has navigated to this page. There is a banner for ice cream that is H.E.S.S., which is restricted.

Image 17 – Searching



In the image above, there is a search page where the consumer has searched for 'pizza'. All pizzas are not restricted even if they are H.F.S.S as the customer has searched for pizzas. A H.F.S.S chocolate is also shown on the page, which is restricted.

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