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ACS | advice

HFSS PRODUCTS: PROMOTION AND LOCATION REGULATIONS

The intention of The Food (Promotion and Placement) (England) Regulations 2021 is to a) reduce the availability of products high in fat, salt and sugar (HFSS) bought through “volume promotions” like ‘buy one get one free’ offers, and b) to restrict the placement of HFSS product categories in high footfall areas of an affected store, like checkouts, end-of-aisle units, store entrances, and designated queueing areas.

Convenience retailers' obligations under these regulations depend on the number of employees in their business and the size of their selling space in store(s). ACS' Assured Advice guide will help convenience retailers to understand:

- Which convenience retailers are impacted by the regulations.
- What volume promotions you can and cannot run on HFSS products.
- Where in your store you can and cannot display HFSS products.
- What area of your website and online platforms are affected.
- How you can determine if a product is HFSS.
- How the regulations will be enforced.

What is a HFSS product?

The regulations apply to the categories of prepacked goods set out in the list below. However, this does not mean every product within each category will be impacted.

Products must be assessed on an individual basis to determine their 'nutritional profiling score' (NPS).

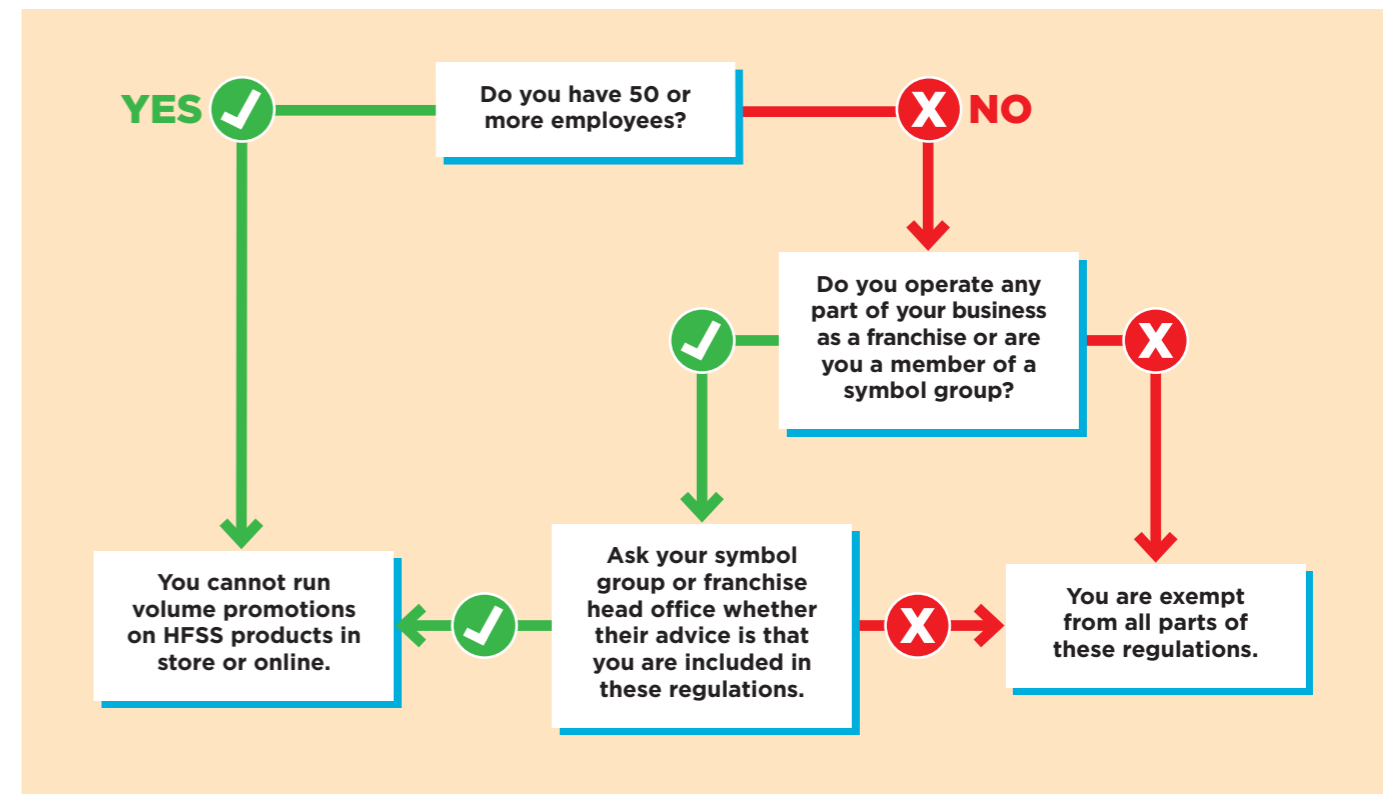
Retailers should work with suppliers to establish what products are HFSS. The majority of suppliers will be clearly communicating what products are HFSS.

				
Soft drinks with added sugar	Confectionery	Cakes	Ice cream	Crisps and savoury snacks
				
Morning goods (eg pastries)	Puddings and dairy desserts	Sweet biscuits	Breakfast cereals	Ready meals
				
Yoghurts	Milk drinks with added sugar	Juices with added sugar	Pizza	Chips and similar potato products

1. IS MY BUSINESS IMPACTED BY THE REGULATIONS?

STEP 1/3: Restrictions on volume promotions

Convenience retailers with more than 50 employees must not offer volume promotions on HFSS products. The calculation of your employee numbers could be impacted by your participation in a 'franchise agreement', including membership of symbol groups.



Franchise agreements and symbol groups

Convenience retailers that are deemed to have a 'franchise agreement' will have to calculate their employee numbers based on **all employees within the whole franchise business or symbol group they are part of**, not just the people directly employed in store(s).

Convenience retailers will need to consult their symbol group supplier or franchise partner to discuss whether their agreement is considered to be a 'franchise agreement' as defined in the regulations. The regulations¹ define a 'franchise agreement' based on the following criteria:

1. You agree with another party to the sale or distribution of food.
2. You agree with another party to the supply of particular food products specified in an agreement.
3. You agree with another party to comparable contractual arrangements as other businesses to:
 - a) products provided by the franchisor.
 - b) the internal or external appearance of the premise.
 - c) the business model used for the operation of the business.

Retailers should gain access to legal advice on the status of their contracts, either:

- a) advice provided by their symbol or franchise head office, or,
- b) advice the retailer has sourced themselves.

¹ Source: The Food (Promotion and Placement) (England) Regulations 2021: Section 4 Qualifying Business

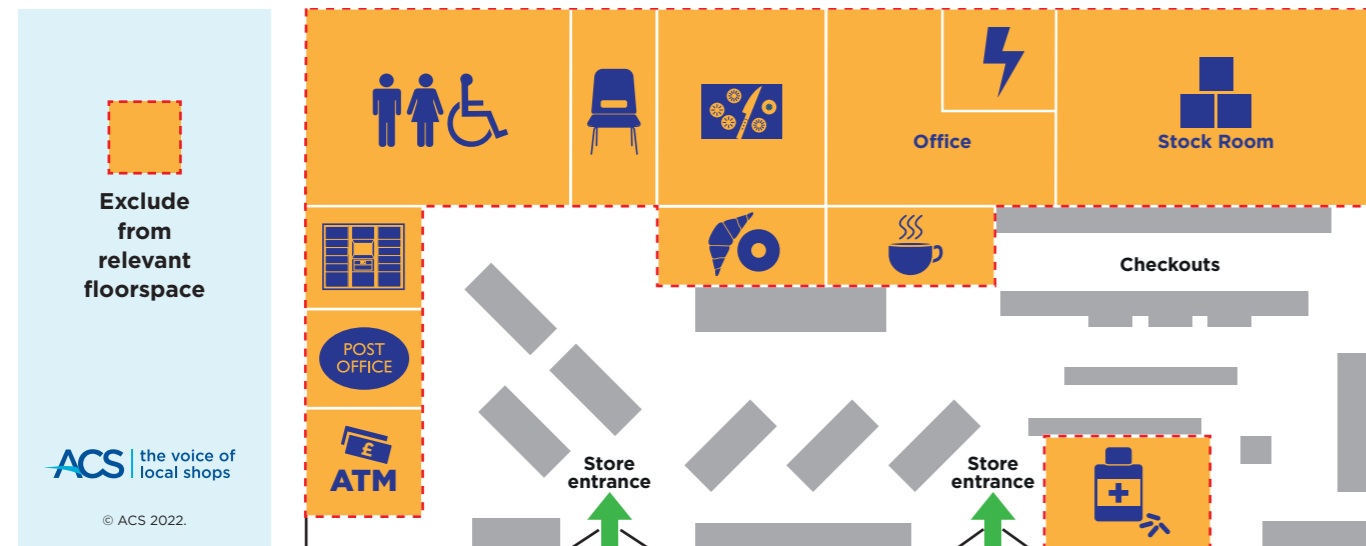
1. IS MY BUSINESS IMPACTED BY THE REGULATIONS?

STEP 2/3: Location restrictions

Convenience retailers deemed under the definition explained in step one to have more than 50 employees **AND** relevant internal floor area of over 2,000 sq. ft (185.8sqms) cannot display HFSS products within certain distances of checkouts and designated queuing areas, end-of-aisle units, and store entrances.

How to calculate relevant internal floor area of your store(s)?

To determine if you are impacted by location restrictions you must calculate if the “relevant floor area” in your business is over 2000sqft (185.8sqm). The relevant internal floor area of your store(s) is **NOT** the whole store area. **You can exclude certain parts of your store from your relevant floor area as outlined in the diagram and table below.**



Areas of the store that DO NOT count towards relevant floor area	Examples (not exhaustive)
Not used for displaying goods or for serving customers in connection with the sale of goods.	<ul style="list-style-type: none"> • Customer toilets • Stock rooms • Staff areas • ATMs • Parcel lockers • Seating areas (used for the consumption of food)
Used mainly for the preparation or sale of food intended for immediate consumption, whether on or off the premise.	<ul style="list-style-type: none"> • Food preparation areas • Bakery counters/ovens • Deli or sandwich counters • Heated food display units • Vending solutions for immediate consumption
Occupied by a business other than the business primarily responsible for managing and operating the store (“a concession”), but only where the concession operates its own payment facilities.	<ul style="list-style-type: none"> • Post Office Counters (Mains) • Food concessions with separate payment facilities (including coffee shops) • Pharmacy

Convenience retailers should have up to date information available in stores demonstrating how they have come to their relevant floor area calculation to support with enforcement visits.

STEP 3/3: Online restrictions

Convenience retailers deemed under the definition explained in step one to have more than 50 employees cannot offer volume promotions (as defined in section 2) on HFSS products on their websites and online marketplaces.

Online marketplaces refers to any software that allows customers to make a purchase. This could be on a businesses’ website, if this service is provided, or on a third-party delivery application that a business uses.

It is important to remember that convenience retailers are liable for the promotion of their products on third party applications. Convenience retailers could demonstrate due diligence by checking that delivery applications they use are aware of the regulations and should record the interaction or the advice received from the online provider².

Impacted areas of websites and online marketplace

The regulations prevent convenience retailers from locating HFSS products on certain areas of their website or online marketplaces similar to the location restrictions in stores.

HFSS products cannot be offered for sale online in the following circumstances:

Areas of your website/ online marketplace where HFSS products cannot be displayed	Examples (not exhaustive)
Homepage	The highest level public page.
Checkout page	A page shown to a consumer as part of the checkout process.
While a consumer is searching for or browsing non-HFSS products.	Promoting HFSS products alongside non-HFSS products . Exemptions exist where HFSS products are within the same categories outlined in the HFSS product category below.
On a page not opened intentionally by the consumer.	Pop-up page
On a favourite products page, unless the food has already been identified as a favourite by the customer. In this case the HFSS food should not be given greater prominence than other foods.	A page opened by a consumer for the purpose of browsing products they have previously purchased or intentionally identified as favourite products.

² Source: Food Safety Act 1990 – Section 20 and 21

2. WHAT IS A VOLUME PROMOTION?

Volume promotion restrictions will apply to multibuy and extra free promotions of HFSS products for convenience retailers with 50 or more employees regardless of their floor area. Check out the FAQs section of ACS' website for more example of promotions.

Volume promotions means:

A multibuy promotion where you offer a financial incentive for buying multiple items compared with buying each item separately.



THREE FOR THE PRICE OF TWO!

3 for £10

BUY 6 AND SAVE 25%

A promotion where you offer a product or any part of the product free.



50% EXTRA FREE

BUY ONE GET ONE FREE

Volume promotions also restrict:

The promotion of HFSS products alongside a non-food product or loyalty points.



BUY A SOFT DRINK AND GET A NEWSPAPER FREE

The promotion of party foods/platters/hampers/gift sets. If an item of prepacked food comprises more than one type of food and contains a HFSS product within it, the whole item is to be treated as a HFSS product.



Volume promotions: Exemptions

Relevant special offers such as “meal deals” and “dine for two” promotions can still be offered.

The exemption covers promotions that offer a discount for multiple items intended be consumed by one person or by two or more people together. For example, the following promotions would be allowed:

Meal deal



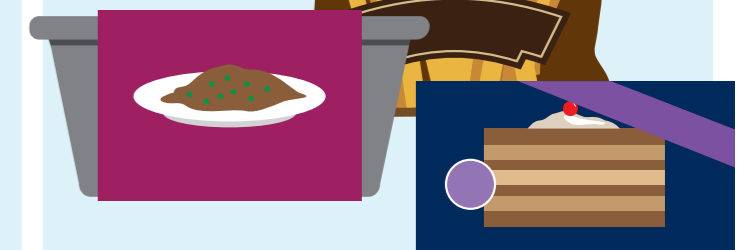
Lunch



Breakfast



Dine for two



Multipacks

A multipack as a standalone item is not considered to be a multiple buy promotion or volume promotion. However, you cannot offer volume promotion on multiple multipacks e.g. buy two multipacks get one multipack free, or 50% extra for the same price.



6 PACK CLASSIC



On pack promotions

HFSS products with on-pack volume promotions on their packaging can still be sold until **October 2023**.

We recommend that convenience retailers attempt to sell through all HFSS products with on pack volume promotions on before **October 2022**.



BUY ONE GET ONE FREE



3. LOCATION RESTRICTIONS

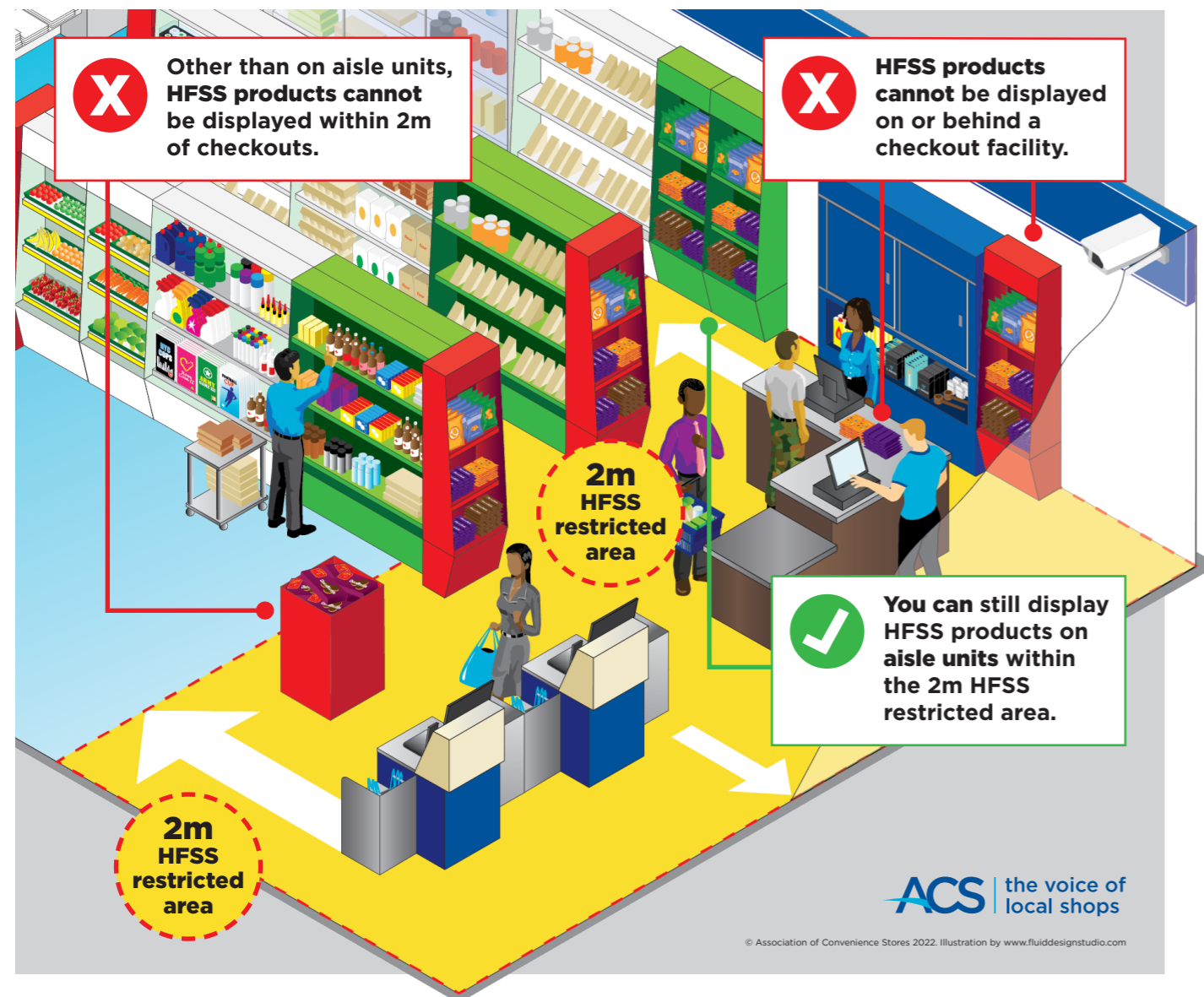
Convenience retailers with more than 50 employees **AND** relevant internal floor area (sales space) of over 2,000 sq. ft (185.8sqm) cannot display HFSS products within certain distances of checkouts and designated queuing areas, on end-of-aisle units, and near store entrances.

The location restrictions apply to **all HFSS products** regardless of how they are promoted. You cannot display HFSS products in the locations outlined below:

Checkout facility

You cannot display HFSS product within 2m of a checkout facility where customers complete purchases. This includes areas on or behind the checkout and self-service checkouts. You can display HFSS products within 2m of a checkout facility if they are within (but not at the end of) an aisle.

There are no restrictions on images of HFSS products, on posters or digital screens, being displayed within 2m of checkout facilities or behind counters.



End-of-aisle units

You cannot display HFSS products on end-of-aisle units or a separate structure (such as an island bin, free-standing unit, side stack or clip strip) connected or adjacent to, or within 50cm of, such an aisle end.

The areas, shaded red in the diagram below, represent aisle ends where HFSS products cannot be displayed. Other separate display structures must be 50cm away from these locations.

Island type displays are not captured by the end-of-aisle unit restrictions as these do not have one prominent end for displaying goods unless they are in a HFSS restricted area. See diagram below:



3. LOCATION RESTRICTIONS

Convenience retailers with more than 50 employees **AND** relevant internal floor area (sales space) of over 2,000 sq. ft (185.8sqm) cannot display HFSS products within certain distances of checkouts and designated queuing areas, on end of aisle displays, and near store entrances.

The location restrictions apply to **all HFSS products** regardless of how they are promoted. You cannot display HFSS products in the locations outlined below:

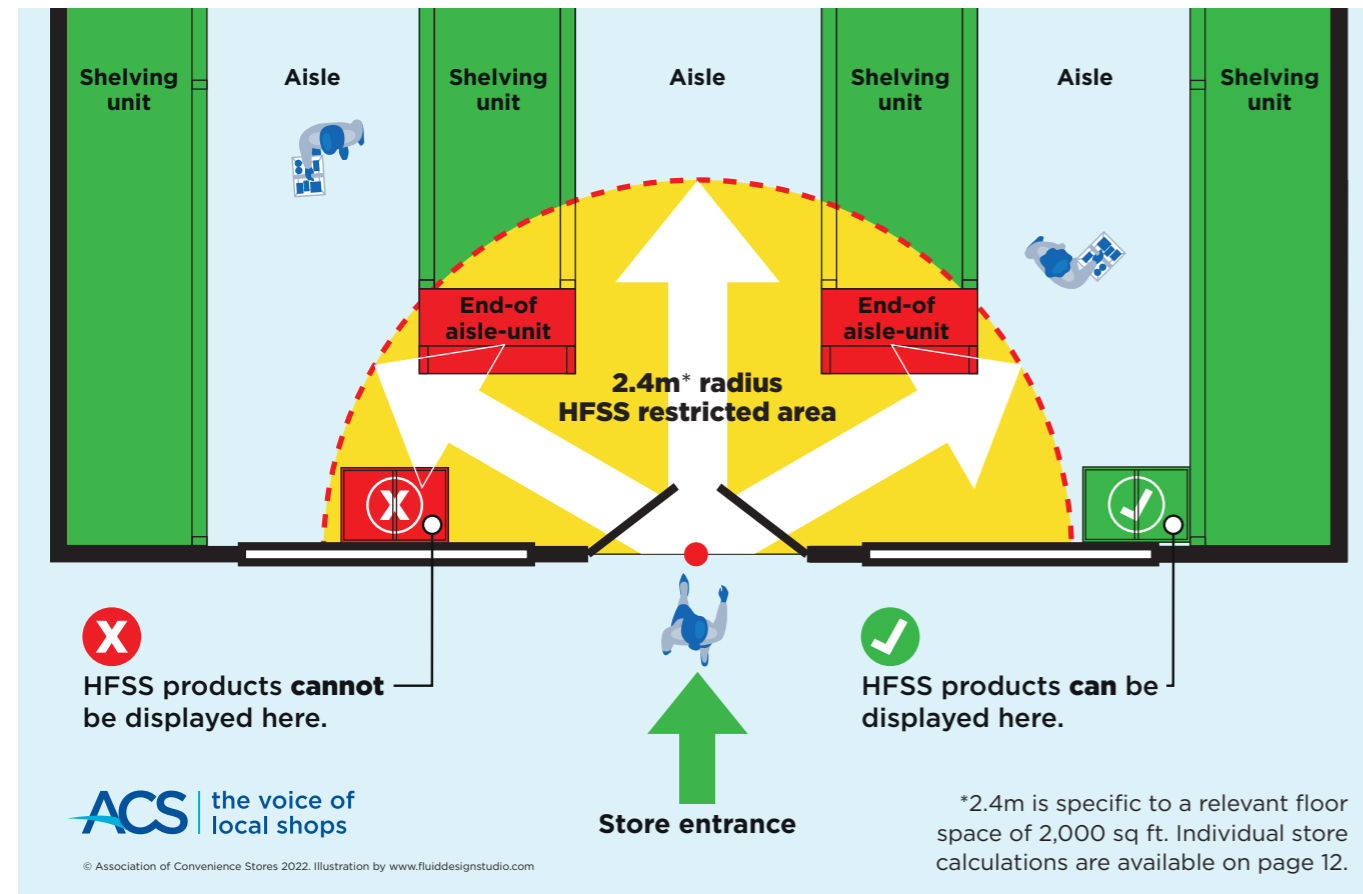
Store entrances

You cannot display HFSS products within a restricted area of your store entrance. This applies to ALL public store entrances, but dedicated store exits are exempt.

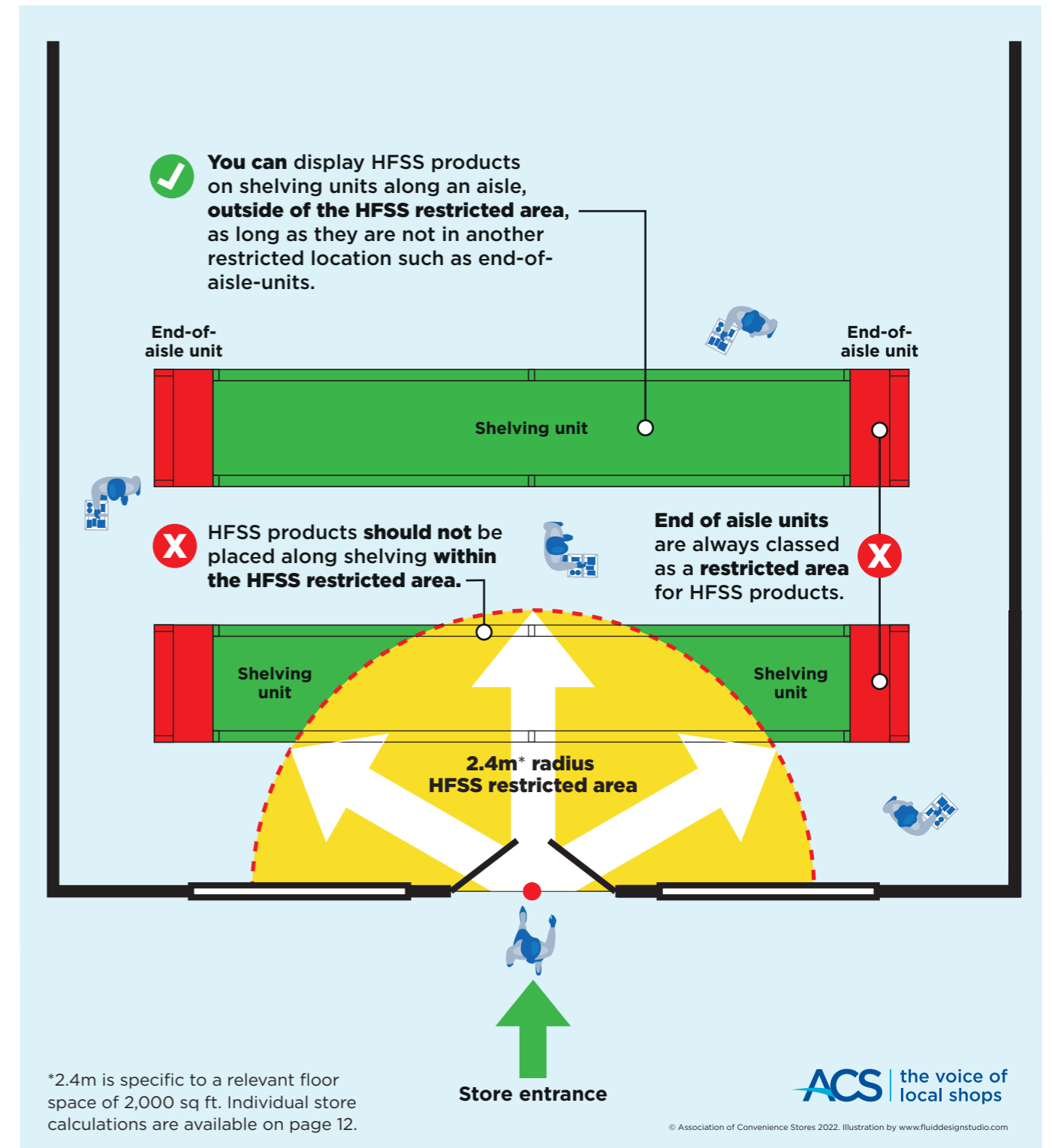
The restricted area around your store entrance is 3% of your total relevant floorspace up to a maximum of 15m. There is a conversion table and guidance below to help you calculate the restricted area around your store entrance.

The restricted area (2.4m in the example below) represents the measurement from the mid-point of the store entrance out and to the sides of the entrance where you are not allowed to display HFSS products.

This forms a semi-circle aligned with base of the inside of the door as demonstrated in the diagram below.



If the restricted area around the store entrance overlaps with your aisles HFSS products cannot be placed in the restricted areas of the aisles, even if this is not visible to the customers from the entrance.



Covered external areas through which the public passes to enter the main shopping area (such as a foyer, lobby or vestibule) is considered a restricted area too meaning HFSS products cannot be placed there.

3. LOCATION RESTRICTIONS

To calculate the size of the restricted area around your store entrance, where you cannot display HFSS products, consult the conversion table below or use the calculations outlined below:

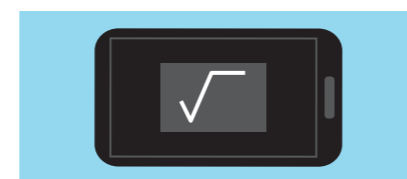
Conversion table

Relevant floor area	Prohibited distance
185.8m ² (2,000 sq. feet) (see example below)	2.4m (7.8ft)
278.7m ² (3,000 sq. feet)	2.9m (9.5ft)
371.6m ² (4,000 sq. feet)	3.3m (10.8ft)
464.5m ² (5,000 sq. feet)	3.7m (12.1ft)
557.4m ² (6,000 sq. feet)	4.1m (13.5ft)
650.3m ² (7,000 sq. feet)	4.4m (14.4ft)
743.2m ² (8,000 sq. feet)	4.7m (15.4ft)
836.1m ² (9,000 sq. feet)	5.0m (16.4ft)
929.0m ² (10,000 sq. feet)	5.3m (17.4ft)

To calculate the square route on your mobile phone:



iPhone: In order to locate the square root symbol on your iPhone, open the calculator app and put the calculator function in scientific mode by turning your phone horizontally. The square root symbol can be found on the third row down in the second column from the left.



Android: In order to locate the square root symbol on your Android phone, open the calculator app and turn the device horizontally to put it in scientific mode. The square root symbol can be found on the first row in the third column from the left.

Formula	0.03	X	Relevant store floor area (m ²)	=	Square root (√) of restricted area around store entrance
Explanation	3%	Multiplied by	See relevant floor area section	Equals	Calculate the square root of restricted area The maximum restricted area is 15m

Example Formula	0.03	X	185.8m ²	=	√5.574m ² = 2.36m
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Designated queuing areas

You cannot display HFSS product within 2m of a designated queuing area.

Designated queuing areas mean an area set aside or marked using signage, floor stickers or barriers for customers to use when waiting to complete a purchase.

You can display HFSS products within 2m of a designated queuing area only if they are within (but not at the end of) an aisle.

If your store does not have a designated queuing area set aside or marked using signage, floor stickers or barriers then you can continue to display HFSS products in this area, as long as they comply with restrictions on checkouts, store entrances and end-of-aisle units.



4. HFSS PRODUCTS

Convenience retailers, not suppliers, are liable if HFSS products are not correctly promoted or displayed in their stores. Failure to correctly identify products as HFSS could result in enforcement action.

Convenience retailers must demonstrate they have undertaken sufficient due diligence³ to identify HFSS products. There are two practical ways that convenience retailers can demonstrate due diligence and you can choose one or a combination of these approaches:

1. Consult with your suppliers to determine which of their products are HFSS

Suppliers are required to provide accurate information about the nutritional profile of their products so are best placed to advise what products in their range are HFSS products.

If a supplier does not indicate which of their products are HFSS you should contact them and clarify before displaying or promoting their products.

Record the interaction or the advice you receive from the supplier, for example retaining emails or information from websites.

2. Consult with third party providers of information on the HFSS product

There are a wide range of commercial providers of databases about the nutritional profile of food products, for example Nielsen Brandbank or GS1.

Check all new products you stock in your store against these databases and regularly check for updates to database for products that already stocked in store(s).

Retain information used to inform your decision about the promotion and location of products in store(s).

Calculating the nutritional profiling score of products yourself

You can try to calculate the nutritional profiling score of products yourself. This is a complex process. Technical guidance is available here: <https://tinyurl.com/v5t8t4kn>

Prepacked foods

The regulations do not impact "Pre-packed food for direct sale" (PPDS) which is food that is packaged at the same place it is offered or sold to consumers and is in this packaging before it is ordered or selected by the consumer; or food that is sold loose or non-prepacked.

³ Source: Food Safety Act 1990 - Section 20 and 21

HFSS categories and nutritional profiling score

The regulations do not relate to particular brands or to whole categories, each prepacked product must be assessed to see if it fits within one of the 15 categories listed below AND has a nutritional profiling score of above 4.

HFSS categories

				
Soft drinks with added sugar	Confectionery	Cakes	Ice cream	Crisps and savoury snacks
				
Morning goods (eg pastries)	Puddings and dairy desserts	Sweet biscuits	Breakfast cereals	Ready meals
				
Yoghurts	Milk drinks with added sugar	Juices with added sugar	Pizza	Chips and similar potato products

The full definition of each category is contained in the Department for Health and Social Care guidance.

5. ENFORCEMENT

Where an enforcement officer has reasonable grounds for believing that a business is failing to comply with the regulations, they may issue an improvement notice stating:

- The officer's grounds for believing that the business is failing to comply with the regulations.
- The measures which, in the officer's opinion, the business must take action in order to secure compliance.
- The requirement to take the relevant corrective measures within a given time period.

Any business failing to comply with an improvement notice is guilty of an offence and the enforcement authority will have the option to issue a fixed monetary penalty as an alternative to prosecution. This would be a fine of £2,500.

Local authorities must publish guidance on how they intend to use fixed penalty notices.

ABOUT THIS GUIDE

This guide is provided by the Association of Convenience Stores in consultation with Buckinghamshire and Surrey Trading Standards. It was last updated in February 2022. Please refer to the ACS website for the most current version of this guidance.

ACS Primary Authority Scheme

This advice was developed by ACS, Buckinghamshire and Surrey Trading Standards, Woking Borough Council and Surrey Fire and Rescue Service; as part of a dedicated primary authority scheme. This means that all the advice that has this mark against it is 'Assured Advice'.

Assured Advice means that if you adopt this policy in your business, then it must be respected by all other local authorities and they cannot ask you to adopt a different policy.



This guide covers a range of different issues of best practice and law. Those that qualify as assured advice are marked by this hallmark.

To benefit from assured advice you must sign up to the ACS scheme. All ACS members can sign up to the ACS Primary Authority Scheme for details of how to join up visit www.acs.org.uk/advice

Relevant legislation and additional guidance

- The Food (Promotion and Placement) (England) Regulations 2021 No. 1368
- Food Safety Act 1990

CONTACT

For more details on this guidance, contact a member of the ACS team on 01252 515001.

For more details on ACS:

Visit: www.acs.org.uk

Call: 01252 515001

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