

Scottish Government's '*Ending the Sale of Energy Drinks to Children and Young People*' Consultation Paper

Consultation Response from Obesity Action Scotland
Closing date: 4th February 2020

Question 1: Should sales of energy drinks to young people under the age of 16 be banned?

No – the mandatory age limit should be 18

We believe that 18 is the most appropriate age, for the following reasons:

1. Article 1 of the UN Convention on the Rights of the Child (1) defines a child as “every human being below the age of eighteen years [...]”, making it clear that all young people under the age of 18 have the rights it outlines. One such right, in Article 24, outlines that ‘*States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health*’, implying that children should have good nourishment from their food and be able to live in a healthy environment, aided by Governments creating systems and passing laws that protect these rights. Furthermore, Article 36 goes on to state that *States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare*.
2. Energy drinks are unsuitable for children, and must be labelled such, and therefore, are unsuitable for anyone under the age of 18.
3. It would bring it in line and therefore ensure consistency with regulations for other health-harming commodities where 18 has been considered the most appropriate age limit, such as alcohol and tobacco.
4. A comprehensive review into energy drinks and consumption by children, adolescents and adults across the EU by the European Food Safety Authority (EFSA) reported that 69% of UK children aged 10-17 were energy drink consumers, and consumed 3.1 litres of energy drinks per month, on average.(2) This is more than 50% higher than their EU-counterparts who consume 2 litres per month. Figures show that 73% of 15-17 year olds consume energy drinks EU-wide, compared to 55% of 10-14 year olds. This translates as older adolescents (aged 15-17) year olds being 1.33 times more likely to consume energy drinks than younger adolescents (aged 10-14).(3) This demonstrates that the highest consumers of energy drinks in children EU-wide are aged 15-17.
5. The UK Government’s ‘Banning the Sale of Energy Drinks to Children Impact Assessment’ calculated that in 2016, almost 2 million litres of energy drinks were consumed by 17 year olds every month in the UK.(3) If we are serious about reducing the health harms of energy

drink consumption in children and young people, we should follow the evidence to avoid overlooking the highest consumers of energy drinks in this group – 17 year olds.

6. Further to point 3, much of the scientific evidence surrounding the negative health effects of energy drink consumption by children and young people includes 17 year olds in their analyses. To overlook this evidence would be to put 17 year olds at a disadvantage to other children in terms of their health and their health-based human rights (see point 1), and risks being non-evidence-based.
7. From a practical viewpoint, a mandatory age limit of 18 could make it easier to implement, as 17 year olds would not necessarily have ID if asked, which may present an issue to sellers being able to identify who the law applies to and who it does not. In their response to an inquiry into Energy Drinks and Children by the House of Commons Science and Technology Committee, ASDA highlighted this, saying “there is also the issue that most 16 and 17 year olds don’t usually carry proof of age cards [...]”(4)
8. In schools where energy drink consumption is not banned, setting the age limit at 16 would create disparity amongst children of similar ages (who may also be in the same class) where 17 year olds could buy energy drinks and their 16 year old classmates could not. This may also lead to 17 year olds purchasing energy drinks for their friends, negating the impact of a mandatory ban. This scenario could easily arise since Scottish Government is proposing that it won’t be an offence to purchase energy drinks on behalf of a person under the age restriction. An age limit of 18 would ensure greater peer group consistency in school settings as two-thirds of school leavers now leave in S6 as 17 year olds, with a few having turned 18 before leaving school.
9. Poor or short sleep is associated with a significantly greater risk of developing overweight or obesity in all stages of childhood and adolescence (12-18 years), as highlighted by a 2018 systematic review and meta-analysis by Miller et al. (5) Energy drinks are therefore potentially playing a role in the obesity crisis. In addition, children with obesity are more likely to consume energy drinks than healthy weight children.(6)
10. Other countries have led the way in implementing a mandatory age limit set at 18: Latvia, Lithuania and Turkey (7,8) – Scotland should lead the way in the UK, maintaining our reputation of taking decisive actions to improve child health, by following suit and ensuring the sending of a clear message that these drinks are harmful to all children and young people.
11. The fact that most retailers have already introduced a ban for those under the age of 16 should not be an argument against adopting an age limit of 18 in a mandatory ban, but confirmation that it is possible, and that only a small change will take us to where we want to be.
12. As part of their inquiry into Energy Drinks and Children, the House of Commons Science and Technology Committee wrote to major UK supermarkets to ask how they were currently implementing voluntary bans and what their views were on mandatory legislation.(9) Some retailers did not express a strong view, or indeed any view, on the age limit for which the ban should apply, with Boots explaining that they “would support a legal ban at 18, if that is the conclusion of the government’s ongoing consultation.” Morrisons stated that they would be in favour of a legal ban at either 16 or 18, if supported by the evidence. Sainsbury’s stated that it would be for the government to decide. The Co-Op and Asda suggested in evidence that schemes were readily available to check the age of customers regardless of whether a ban applied to under 16s or under 18s.

Tesco was the only large UK retailer that voiced a preference that the ban be applied to under 16s. (9) The only reason given for this was simply to avoid having to retrain staff.

However, most of the large supermarkets, Tesco included, explained that they enforce the voluntary ban in the same way they do alcohol and tobacco – through a ‘Challenge/Think 25’ policy that is already in place. This would not be required to change if 18 was the age limit, as stores should be asking for ID from any person who looks to be under 25 in either scenario.

We believe that sales of energy drinks to children under the age of 18 should be banned.

Sugar-sweetened beverage consumption (SSB) by children has long been a public health concern, which has led to a decrease in SSB intakes in higher income countries, but energy drinks consumption has not followed the same trend, despite their health effects.(10)

Around two thirds of children aged 10-17 in the UK and nearly a quarter of those aged 6-9 consume energy drinks.(11) The evidence suggests that some consume three or more in one sitting, which may expose them to the adverse effects of consuming high doses of caffeine,(12) and that boys consume more energy drinks than girls.(6)

Consumption of energy drinks in children and young people has been associated with a number of health complaints including headaches, sleeping problems, stomach aches, irritation, tiredness and fatigue.(13,14) Consumption of energy drinks by young people is also associated with other health harming behaviours such as binge drinking, smoking, drug use, excessive screen time and poor dietary habits.(14,15)

A study in 2015 revealed the excessive amounts of sugar in energy drinks, some containing 20 teaspoons of sugar (78g) per 500ml serving.(16) Excessive sugar consumption is associated with tooth decay, type 2 diabetes and obesity, which can increase the risk of heart disease, stroke and some common cancers.(17)

Little is known about how caffeine interacts with other stimulants sometimes found in energy drinks, or the effects of such combinations on young people (15) and there is no evidence that either caffeine or other stimulants found in energy drinks have any health benefits or place in the diet of children and young people.

This, together with the evidence listed above warrants further action.

- (1) The United Nations Convention on the Rights of the Child.
<https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>
- (2) Nomisma-Arete Consortium, External scientific report. Gathering consumption data on specific consumer groups of energy drinks. 2013, European Food Safety Authority: Parma, Italy.
<https://www.efsa.europa.eu/en/supporting/pub/en-394>
- (3) Department of Health and Social Care (2018) Impact assessment: ending the sale of energy drinks to children.
<https://www.gov.uk/government/consultations/ending-the-sale-of-energy-drinks-to-children>
- (4) House of Commons Science and Technology Committee (2018) Energy Drinks and Children. Thirteenth report of session, 2017-2019. Written evidence submitted by Asda (END0039).
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evi>

[dencedocument/science-and-technology-committee/energy-drinks/written/88000.html](https://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/science-and-technology-committee/energy-drinks/written/88000.html)

- (5) Michelle A Miller, Marlot Kruisbrink, Joanne Wallace et al (2018) Sleep duration and incidence of obesity in infants, children, and adolescents: a systematic review and meta-analysis of prospective studies, *Sleep*, 41(4) <https://doi.org/10.1093/sleep/zsy018>
- (6) Visram S, Cheetham M, Riby DM, et al (2016) Consumption of energy drinks by children and young people: A rapid review examining evidence of physical effects and consumer attitudes. *BMJ Open* 6:. <https://doi.org/10.1136/bmjopen-2015-010380>
- (7) World Cancer Research Fund International (2019) NOURISHING database. <https://www.wcrf.org/int/policy/nourishing-database>
- (8) Daily Sabah (2018) Turkey aims to curb energy drink consumption, homemade booze with new regulations. <https://www.dailysabah.com/turkey/2017/12/31/turkey-aims-to-curb-energy-drink-consumption-homemade-booze-with-new-regulations>
- (9) House of Commons Science and Technology Committee (2018) Energy Drinks and Children. Thirteenth report of session, 2017-2019. Written evidence submitted by Tesco (END0034), Aldi (END0036), Waitrose (END0037), Morrisons (END0038), Asda (END0039), Sainsbury's (END0040) and Boots (END0042). <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/science-and-technology-committee/energy-drinks/written/88000.html>
- (10) Obesity Action Scotland (2019) Briefing: Energy Drinks and Children – December 2019 <https://obesityactionsotland.org/media/1387/energy-drinks.pdf>
- (11) Department of Health and Social Care (2018) Consultation on proposal to end the sale of energy drinks to children
- (12) Zucconi S, Volpato C, Adinolfi F et al (2013) Gathering consumption data on specific consumer groups of energy drinks. EFSA Supporting Publications. EFSA Support Publ 10:
- (13) Huhtinen H, Lindfors P, Rimpelä A (2013) Adolescents' use of energy drinks and caffeine induced complaints in Finland. *J Public Heal* 23:
- (14) Visram S, Crossley SJ, Cheetham M, Lake A (2017) Children and young people's perceptions of energy drinks: A qualitative study. *PLoS One* 12:1–17. <https://doi.org/10.1371/journal.pone.0188668>
- (15) Visram S, Hashem KM (2016) Energy drinks: what's the evidence? *Food Res Collab* 1–13
- (16) Action on Sugar (2015) Energy Drinks Fuel the Obesity Epidemic
- (17) Tedstone A, Targett V, Allen R (2015) Sugar Reduction. The evidence for action

Question 2: If implemented, are there any places where energy drinks are currently sold, that should be exempt from mandatory age restrictions?

No. We believe the most appropriate action would be to implement the ban in all places that sell food and drink to the public, and that such products should be prohibited from vending machines - consistent with approaches for tobacco, alcohol and other age-restricted health harming products.

Restricting vending machine sale of energy drinks to private premises with age restrictions to be enforced by businesses or to areas where child footfall is low, would not stop all children and young people being able to purchase energy drinks and would create an uneven playing field for businesses.

Furthermore, restricting vending machine sales to young people would be extremely difficult to effectively implement. Options to child-proof tobacco vending machines were proposed by the tobacco industry before the ban on tobacco vending machines but were deemed unsuitable and open to abuse.(1) While tobacco vending machines were in operation staff responsible for the machines frequently failed to ask for ID (2) and 41% of attempted cigarette purchases from vending machines by people under the legal age of 18 were successful. (3)

There is already a precedent set online for restriction of goods to under 18s, as is the case with tobacco and alcohol sales. The same system could be implemented for the sale of energy drinks.

This, for example, could include

- Age verification upon delivery requiring the person who place the order to show proof of age
- Restricting age restricted goods to collection in-store only

This should not include:

- Online self-certification by any means, for example through a check box or entering of a date of birth, as these can be easily manipulated

- (1) Action on Smoking and Health (2011) Tobacco Vending Machines. Briefing.
- (2) National Association of Cigarette Machine Operators. Evidence submission to the Scottish Bill Committee, 2009.
- (3) Test Purchasing of Tobacco Products, Results from Local Authority Trading Standards, 1st October 2007 to 31st March 2008. Local Government Regulation (formerly LACORS) is the organisation responsible for overseeing local authority regulatory services in the UK.

Question 3: Please comment on our proposals for enforcing any policies that are implemented.

The proposals are an important step; however, they differ significantly from other age-restricted products (tobacco and alcohol) where it is an offence not only for children to purchase these products, but also for an adult to purchase them on behalf of a child under the age of 18. For alcohol, tobacco and fireworks there are also aspects of use and consumption by children that are controlled by law. In the case of energy drinks, the Scottish Government proposes only to make it an offence to sell energy drinks to children under the age limit, i.e. all responsibility will fall upon the seller. For this to be effective, the age limit must be set at 18+, as under 18s occupy, for the most part, the same social spaces, e.g., are at school together. If the age limit was set at 16, the

enforcement proposals would open a large 'loophole' allowing 17 year olds (and adults) to purchase energy drinks for younger children, to no consequence. If this were to happen, it would likely lessen any impact of a mandatory ban.

To ensure that the enforcement of any policy implementation is not overly burdensome, retailers could follow the same procedures that exist for tobacco and alcohol, i.e. the 'Challenge/Think 25' policy.

Question 4: Please comment on our proposals for evaluating any requirements that are implemented.

All proposals for monitoring and assessment are logical and would help evaluate the policy; however, the most important point is the assessment of "any changes in consumption levels by the age groups affected", particularly as most retailers in Scotland have already introduced a voluntary ban for under-16s.

Questions 5 and 6 are for businesses only.

Question 7: What, if any, impact do you think applying mandatory age restrictions to sales of energy drinks would have on businesses?

In Scotland, some businesses have already implemented voluntary age restrictions on the sale of energy drinks to under-16s. This includes retailers, all publicly owned leisure centres across Scotland and in NHS establishments. However, voluntary restrictions will not solve the problem. As not all retailers and businesses have introduced a ban, and with young people in the UK continuing to consume more energy drinks than their EU counterparts,(1) mandatory age restrictions are vital to ensuring an even playing field across all retailers and businesses whilst protecting the health of children and young people in Scotland.

As part of their inquiry into Energy Drinks and Children, the House of Commons Science and Technology Committee wrote to major UK supermarkets to ask how they were currently implementing voluntary bans and what their views were on mandatory legislation.(2) Some retailers did not express a strong view, or indeed any view, on the age limit for which the ban should apply, with Boots explaining that they "would support a legal ban at 18, if that is the conclusion of the government's ongoing consultation." Morrisons stated that they would be in favour of a legal ban at either 16 or 18, if supported by the evidence. Sainsbury's stated that it would be for the government to decide. The Co-Op and Asda suggested in evidence that schemes were readily available to check the age of customers regardless of whether a ban applied to under 16s or under 18s.

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staff in convenience stores and other retailers that either do or do not use an electronic point-of-sale system. Tesco also already provide staff with compulsory training on this, two times a year.(2) Furthermore, stores have stated that they have prompts loaded in their till systems that display to the member of staff that an item is age-restricted and to ask for ID. This means that for businesses using an electronic point-of-sale system (that can be loaded with a prompt for age-restricted products/ to ask for ID) there would be minimal need for training over and above the norm if the age limit was set at 18.

- (1) Nomisma-Arete Consortium, External scientific report. Gathering consumption data on specific consumer groups of energy drinks. 2013, European Food Safety Authority: Parma, Italy.
<https://www.efsa.europa.eu/en/supporting/pub/en-394>
- (2) House of Commons Science and Technology Committee (2018) Energy Drinks and Children. Thirteenth report of session, 2017-2019. Written evidence submitted by Tesco (END0034), Aldi (END0036), Waitrose (END0037), Morrisons (END0038), Asda (END0039), Sainsbury's (END0040) and Boots (END0042).
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/science-and-technology-committee/energy-drinks/written/88000.html>

Question 8: What, if any, impact do you think implementing mandatory age restrictions to sales of energy drinks will have on people based on any of the following characteristics?

- **Age**
- **Sex**
- **Race**
- **Religion**
- **Sexual orientation**
- **Pregnancy and maternity**
- **Disability**
- **Gender reassignment**
- **Marriage or civil partnership**
- **Socioeconomic disadvantage**

If the mandatory age limit is set at under-16, we believe this could negatively impact 17 year olds who are more likely to consume higher volumes of energy drinks and are included in many studies that demonstrate links to health harms. In particular, the health of 17 year old boys (boys consume more energy drinks than girls in the UK)(1) could be negatively impacted.

Implementing a ban on all vending machines may, by way of virtue, impact positively on pregnant women as these products can also be harmful to this demographic, and current warning labels have been deemed inadequate.(2) Given that around half of pregnancies are unplanned, this may have a protective effect in the early days of foetal development.

Consumption of energy drinks may also be linked with deprivation and therefore if mandatory age restrictions are put in place it may impact positively on inequalities in disadvantaged groups.(2) An

association between consumption of energy drinks and receiving free school meals (indicator of low socioeconomic status) was found in a study of health behaviours in English school-aged children.(3) Similarly, a large Norwegian study involving over 31,000 adolescents concluded that daily and high consumption of energy drinks among 12-19 year-olds, was independently associated with low socioeconomic status, as well as with male gender, physical inactivity, high leisure screen time, and rural residency.(4)

Additionally, as energy drinks have been linked to fatigue, lack of concentration and poor attendance in school-aged children (5,6), it is extremely important to halt any trend that may lead to poor educational attainment, particularly in groups that are already disadvantaged.

Obesity and tooth decay show a strong link with inequalities in Scotland. Children and young people from the most deprived areas are more at risk of overweight or obesity and are more likely to have tooth decay than those in the least deprived areas.(7,8) Young people from lower socioeconomic backgrounds are consuming energy drinks due to the low price of some brands.(9) Restrictions on sales to children would limit consumption for all children irrespective of socioeconomic status.

- (1) HBSC (201) England National Report.
https://www.researchgate.net/publication/282857118_HBSC_England_National_report
- (2) A House of Commons Science and Technology Committee (2018) Energy Drinks and Children. Thirteenth report of session, 2017-2019.
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/science-and-technology-committee/energy-drinks/written/88000.html>
- (3) Brooks F, Klemera E, Magnusson J, Chester K (2018) Young People and Energy Drink Consumption in England. Univ. Hertfordshire, Hatf. 1–16
- (4) Degirmenci N, Fossum I., Strand T., et al (2018) Consumption of energy drinks among adolescents in Norway: a cross-sectional study. BMC Public Health 18:1391
- (5) Visram S, Crossley SJ, Cheetham M, Lake A (2017) Children and young people’s perceptions of energy drinks: A qualitative study. PLoS One 12:1–17. <https://doi.org/10.1371/journal.pone.0188668>
- (6) Huhtinen H, Lindfors P, Rimpelä A (2013) Adolescents’ use of energy drinks and caffeine induced complaints in Finland. J Public Heal (23)
- (7) NHS Health Scotland (2019) Diet and Obesity
- (8) The Scottish Government (2016) National indicator: Children’s dental health
- (9) Sustain (2018) Response to consultation on proposal to end the sale of energy drinks to Children

Question 9: Please outline any other comments you wish to make.

Labelling

Children and young people in the UK continue to consume energy drinks, often in high volumes, despite mandatory EU warning labels on energy drinks stating that they are not suitable for children or pregnant women. This suggests that currently labelling is inadequate, and/or there is not enough awareness of the dangers to young people’s health that energy drinks pose. Energy drink labelling should therefore be strengthened, and awareness of health harms heightened, which could impact

not only on children and young people, but on pregnant mothers. Inadequate labelling has been highlighted by retailers in previous consultations, such as ASDA, who supported a ban, provided it was accompanied by clear labelling:

“The most difficult aspect is that the products don’t have an age limit on their packaging. By contrast the DVDs say that they are 12 or 15, so our colleagues know what age is permissible. That isn’t the case with these products. If it becomes law, it would be very helpful to insist on this on future packs [...] we would be very happy with a legal ban accompanied by clear labelling.”(1)

Bans on sale of energy drinks to under 18s in other countries, such as in Latvia, by law, must be accompanied at the point of sale by warning signs reading, “High caffeine content. Not recommended for children and pregnant and breastfeeding women.”(2) This could also be considered alongside a ban in Scotland, to make it clearer to the consumer and support enforcement by staff.

Based on the wealth of evidence showing the inadequacy of labelling on energy drinks, the report of the House of Commons Science and Technology Committee recommended as a result of their inquiry into a ban on energy drinks that “the [UK] Government should use the opportunity of leaving the EU to introduce, within 18 months of exit day, additional labelling requirements to ensure that advisory messages are more prominent on energy drinks packaging and not merely in ‘the small print’.”(3)

Marketing, advertising and sponsorship

As research has demonstrated a link between adverts seen by children, food and drink choice, and consumption/overconsumption,(4) and as children are particularly susceptible to brand recognition and loyalty,(5) measures should also be taken to restrict the marketing of energy drinks in a way that makes them attractive or desirable to children/adolescents. This includes cartoon style adverts, social media, YouTube, and celebrity endorsements. There should be no sponsorship or hosting of events, sports events or competitions aimed at children by energy drinks companies.

Particularly concerning is the ‘Monster Army’ athlete development scheme for 13-21 year olds. On the website for the scheme, it states a benefit is “tons of monster energy product and gear...all ranked athletes get access to the exclusive athlete store where they can place orders for the gear and drink they like and want.”(6)

Again, this precedent has already been set by Lithuania, who has prohibited energy drinks companies from sponsoring venues and events frequented by, or organising events for under-18s, such as schools, cinemas, theatres and sporting events.(7) Latvia has also followed suit by banning the advertising of energy drinks in (or on the walls of) educational establishments, public buildings and structures.(7) Association of energy drinks with sports activities is also prohibited, and advertisements must not suggest that they can quench thirst or consumption alongside alcohol. Furthermore, by law, at least 10% of any advertisement for energy drinks in Latvia must consist of warnings on the negative effects of consuming too many energy drinks and are prohibited on during and after TV programmes or print media that target under-18s.(7)

To gain the most impact from restrictions surrounding the sale of energy drinks, the Scottish Government should implement similar actions, or urge the UK Government to implement them where powers are reserved.

Addressing Social Acceptability

In light of the proposed regulation only addressing the *sale* of energy drinks further measures would be needed to support and increase the effectiveness of this regulatory measure. A change in the social acceptability of children drinking energy drinks will need to be achieved along with engagement of children in the understanding of the need for change. It may therefore be useful to consider supporting this regulatory measure with public education and local action in schools to enable a wider movement to reduce consumption in children

Water

Finally, water should continue to be promoted as the drink of choice for children and young people. This could be promoted through the installation of free refill stations in schools.

- (1) House of Commons Science and Technology Committee (2018) Energy Drinks and Children. Thirteenth report of session, 2017-2019. Written evidence submitted by Asda (END0039).
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/science-and-technology-committee/energy-drinks/written/88000.html>
- (2) A World Cancer Research Fund International (2019) NOURISHING database.
<https://www.wcrf.org/int/policy/nourishing-database>
- (3) House of Commons Science and Technology Committee (2018) Energy Drinks and Children. Thirteenth report of session, 2017-2019.
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/science-and-technology-committee/energy-drinks/written/88000.html>
- (4) Tedstone A, Targett V, Allen R (2015) Sugar Reduction. The evidence for action
- (5) Visram S, Cheetham M, Riby DM, et al (2016) Consumption of energy drinks by children and young people: A rapid review examining evidence of physical effects and consumer attitudes. *BMJ Open* 6:.
<https://doi.org/10.1136/bmjopen-2015-010380>
- (6) Monster (2019) Monster Army Athlete Development Programme. Accessed 17th December 2019. <https://www.monsterarmy.com/about/>
- (7) A World Cancer Research Fund International (2019) NOURISHING database.
<https://www.wcrf.org/int/policy/nourishing-database>