

Response ID ANON-J8JA-R1QX-S

Submitted to **Ending the sale of energy drinks to children and young people: consultation**

Submitted on **2020-02-04 22:46:46**

Ministerial Foreword

Introduction

Mandatory Measures

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

Yes

Please describe any factors you have taken into consideration and provide any evidence you have to support a specific age restriction.:

The Scottish Wholesale Association (SWA) is the official trade association for Scotland's food, drink and allied trades wholesaling businesses. The wholesale market in Scotland is worth £2.9bn meaning our sector represents a significant part of the Scottish food and drink industry.

Wholesalers are not a homogeneous group. Our members include single-depot, family-owned businesses as well as national wholesale companies and buying groups.

As well as providing cash and carry services, many wholesalers also provide foodservice deliveries to public and private sector customers including schools, prisons, hospitals, restaurants and the hospitality sector.

We would agree that as the UK Government intends to ban sales to under 16s in England an aligned approach in Scotland would be preferable. Most importantly alignment would avoid further internal market segregation, between England and Scotland, as will be seen following the introduction of the Scottish deposit return scheme.

This alignment should also include any changes to labeling requirements.

Proposals for implementation and enforcement

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

Please explain your answer and provide any thoughts on how this could work in practice. In particular, views are sought for energy drinks sales in vending machines and those made online.:

We would support exemptions for wholesale outlets where sales are only made to trade.

We would also support exemptions to cover vending machines on premises where the age of employment is 16+ years and is not accessible to the public.

Unless on a purely trade to trade basis, for market fairness and so as to avoid anti-competitive behavior and to prevent moving the sale of Energy Drinks to areas that are exempt, we cannot see how on-line sales can be exempt from any age verification process. Just in the same way as other age restricted products, such as alcohol and tobacco, are not exempt from on-line sales (other than on a purely trade to trade basis).

3 Please comment on our proposals for enforcing any requirements that are implemented.

Please include any practical issues that we should consider to ensure that the enforcement of any policy implementation is done fairly and is not overly burdensome.:

We would also suggest the Scottish Government develop a Wholesale implementation guide to distinguish between the different requirements for wholesalers selling to the public versus those selling to trade only, as well as for those selling to both.

We would ask the Scottish Government to give further thought to the fairness and effectiveness of leaving the full burden of responsibility, of age verification, to the retailer.

Unlike other products restricted in their sale to under 16s, such as Lottery tickets or medicine, such restrictions were set at the outset or were easier to implement retrospectively due to the nature of the product not being a FMCG line, unlike energy drinks.

SWA recognise that a voluntary code of practice, relating to the sale of Energy Drinks, has been in place and which our members currently follow. Indeed many of our members support the 4,972 independent retail stores by supplying them with point of sale and staff educational literature to prevent the underage sale of these products.

We are concerned that this policy increases the likelihood of potential conflict points between retail staff and the public. Leading to a further increase in crime/harm against those retail staff. With recent trade reports highlighting an increase in assaults against retail staff the burden of enforcing this policy, or face potential sanction, seems disproportionate.

Training of staff members to deal with areas of potential conflict, include where the consumer has had to queue. Placing a sanction-able burden on a retailer to ensure they are only selling to over 16's means increasing the time taken to ID customers who look around that age.

While retailers mainly adopt an Age 25 verification scheme, it is in relation to products that are not bought as frequently as beverage products (ie. alcohol, tobacco, lottery). Thus, increasing the number of identifications that are now anticipated to be made, will inevitably increase the queue times for those other customers. In turn increasing the likelihood of frustration and anger in those waiting and therefore the creation of potential conflict with the retailer. This is not including the frustration of the customer actually being ID'd for their drink, nor the frustration created when they are refused.

We question how easy it is for a retailer to determine if someone is under 16, where physical ID verification is more difficult than for over 18s?

In order to support retailers and other outlets selling energy drinks, we would ask that a penalty, for those who both purchase energy drinks for themselves and are under 16 as well as those buying by proxy, should be considered. Doing so would provide a deterrent to those under the age of 16, from buying the product in the first place, as well as providing a line of defense to the retailer should they fail to correctly identify a persons age without adequate ID.

4 Please comment on our proposals for evaluating any policies that are implemented.

Please comment on our proposals for evaluating any policies that are implemented.:

Impact assessments

5 For sellers only:

If you have implemented age restrictions for energy drinks, please describe any effect, positive or negative, that this has had on your business. :

Current policy on ALL age restricted products are uniform across both Scotland, England, Ireland and Wales. Our members treat the UK as one market and trade across some, or all of those borders. We ask that mandatory age restrictions placed on Energy Drinks are uniform across those borders, so as to prevent divergence or the creation of trade borders within the Energy Drink market.

SWA recognise that a voluntary code of practice, relating to the sale of Energy Drinks, has been in place and which our members currently follow. Indeed many of our members support the 4,972 independent retail stores by supplying many of them with point of sale and staff educational literature to help prevent the underage sale of these products.

Following a small survey sample of members, feedback was that the impact of introducing a minimum age policy on the sales of Energy Drink would be minimal to their business.

6 For sellers only:

If you do not have age restrictions in place for energy drinks, please describe any effect, positive or negative, that implementing such restrictions would have on your business. :

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

Please include any anticipated differential impacts, positive and negative, on sellers, distributors and manufacturers of energy drinks.:

As per our answer to question 3, we would ask the Scottish Government to give further thought to the fairness and effectiveness of leaving the full burden of responsibility, of the sale, to the retailer.

Unlike other products restricted in their sale to under 16s, such as Lottery tickets or medicine, such restrictions were set at the outset or were easier to implement retrospectively due to the nature of the product not being a FMCG line, unlike energy drinks.

SWA recognise that a voluntary code of practice, relating to the sale of Energy Drinks, has been in place and which our members currently follow. Indeed many of our members support the 4,972 independent retail stores by supplying them with point of sale and staff educational literature to prevent the underage sale of these products.

We are concerned that this policy increases the likelihood of potential conflict points between retail staff and the public. Leading to a further increase in crime/harm against those retail staff. With recent trade reports highlighting an increase in assaults against retail staff the burden of enforcing this policy, or face potential sanction, seems disproportionate.

Training of staff members to deal with areas of potential conflict, include where the consumer has had to queue. Placing a sanction-able burden on a retailer to ensure they are only selling to over 16's means increasing the time taken to ID customers who look around that age. The current voluntary scheme uses 'best judgement' to determine a persons age, unlike the necessary verification that an enforceable policy will create.

While retailers mainly adopt an Age 25 verification scheme, it is in relation to products that are not bought as frequently as beverage products (ie. alcohol, tobacco, lottery). Thus, increasing the number of identifications that are now anticipated to be made, will inevitably increase the queue times for those other customers. In turn increasing the likelihood of frustration and anger in those waiting and therefore the creation of potential conflict with the retailer. This is not including the frustration of the customer actually being ID'd for their drink, nor the frustration created when they are refused.

We question how easy it is for a retailer to determine if someone is under 16, where physical ID verification is more difficult than for over 18s?

In order to support retailers and other outlets selling energy drinks, we would ask that a penalty, for those who both purchase energy drinks for themselves and are under 16 as well as those buying by proxy, should be considered. Doing so would provide a deterrent to those under the age of 16, from buying the product in the first place, as well as providing a line of defense to the retailer should they fail to correctly identify a persons age without adequate ID.

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?

Please consider potentially positive, negative and differential impacts, supported by evidence, and, if applicable, advise on any mitigating actions we should take.:

Any other comments

9 Please outline any other comments you wish to make.

Please outline any other comments you wish to make.:

We feel it's crucial that the public and trade have a clear understanding of what is meant by an "energy drink". We agree that the Scottish Government definition should be aligned with the one proposed by the UK Government i.e any drink, other than tea or coffee, which contains over 150 milligrams of caffeine per litre.

SWA would be concerned if this piece of legislation is a precursor for creating secondary legislation that impacts on other products deemed to have similar health impacts or depicted as containing some/similar ingredients as those defined as an "energy drink".

About you

What is your name?

Name:

Colin Smith

What is your email address?

Email:

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Scottish Wholesale Association

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response only (without name)

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

Yes

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Very satisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Slightly satisfied

Please enter comments here.: