



ACS Submission - Sales ban of energy drinks to children

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the Scottish Government's consultation on the proposed sales ban of energy drinks to children. ACS is a trade association, representing 33,500 convenience stores across the UK. Members include the Co-op, Spar UK, Nisa Retail and thousands of independent retailers. For more information about ACS, see Annex A.

There are 4,973 convenience stores trading in Scotland which employ around 44,000 people¹. In a survey carried out in February 2018, 64% of independent convenience retailers in Scotland stated that they do not sell energy drinks to under 16s². If the Scottish Government decides, after careful consideration and the commissioning of new research³, that energy drinks do require an age restriction, we will work with retailers to ensure that this is implemented effectively across the sector. We believe that the Scottish Government should consider the evidence about the health impact when determining what age an age restriction for energy drinks should be set at.

ACS would support the age restriction for energy drinks being set at 16 years old, which would be consistent with the voluntary age restriction many convenience retailers have already introduced and the intended age restriction for energy drinks in England. The convenience sector is extremely effective at enforcing age restrictions in store on a wide range of products including alcohol, tobacco, fireworks, and e-cigarettes. Many of the age restrictions that convenience retailers enforce are set at 16, including the sale of lottery products, petrol, F1 category fireworks, and aerosol paint.

We believe that a minimum 12 months would be an appropriate implementation period for convenience retailers to introduce an age restriction on energy drinks. ACS will work with convenience retailers in Scotland to ensure that an age restriction for energy drinks is implemented effectively across the sector.

Please see below for ACS' response to the relevant consultation questions:

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

Other (please specify)

¹ ACS/SGF Local Shop Report 2019

² ACS Voice of Local Shops Survey February 2018

³ [The House of Commons Science and Technology Committee's report on energy drinks](#) concluded "that the current scientific evidence alone is not sufficient to justify a measure as prohibitive as a statutory ban on the sale of energy drinks to children."

If the Scottish Government decides, after careful consideration and the commissioning of new research, that energy drinks do require an age restriction, we will work with retailers to ensure that this is implemented effectively across the sector. We would welcome more research on energy drinks based on the experience of Scottish consumers, particularly on energy drinks purchased by young people and what factors determine their consumption.

From the proposed options listed in the consultation, ACS would support the age restriction for energy drinks being set at 16 years old, which would be consistent with the voluntary age restriction many convenience retailers have already introduced and the intended age restriction for energy drinks which will be introduced in England. Increasing the age limit to 18 would create confusion for store colleagues and customers.

Customers under 18 years old can use a passport, provisional driving licence, or [PASS \(Proof of Age Standards Scheme\)](#) accredited card to show proof of age⁴. If the Scottish Government are to introduce an age restriction on energy drinks, they should explore how it can further work with the Young Scot National Entitlement Card, which is PASS accredited, available free of charge to anyone aged 11-26 living in Scotland, to ensure a smooth introduction of the energy drinks age restriction.

The convenience sector is extremely effective at enforcing age restrictions in store on a wide range of products including alcohol, tobacco, fireworks, and e-cigarettes according to test purchasing rates. Many of the age restrictions that convenience retailers enforce are set at 16 including the sale of lottery products, petrol, F1 category fireworks, and aerosol paint. Moreover, while there is no legal requirement, many convenience retailers have a voluntary age restriction of 16 for medicines including paracetamol and aspirin.

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

If an age restriction for energy drinks were to be introduced, we believe it should apply to all premises which sell energy drinks, to be consistent with how other product age restrictions are enforced in order to provide clarity for consumers.

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

Proxy Purchasing

Feedback from members who have introduced a voluntary age restriction for energy drinks suggest that there have been incidences of proxy purchasing. Proxy purchasing is where an adult purchases an age restricted product for someone underage. The offence for proxy purchasing applies to the adult purchasing the age restricted product on behalf of someone underage. Our members suggest that they have been enforcing their store policies for proxy purchasing of products such as alcohol and tobacco for the sale of energy drinks and have refused the sale of an energy drink to an adult if they believe they are purchasing it on behalf of a child.

⁴ PASS was set up by industry to provide retailers reassurance about which cards can be accepted as valid proof of age

Proxy purchasing is difficult for retailers to identify because they all start with a legal sale. ACS has produced guidance⁵ for retailers on how to spot incidents of proxy purchasing to support them to challenge the sale, for example, if the retailer sees the adult asking the child what age-restricted product they want or if an adult appears to be asked to purchase an age-restricted product for young people hanging around outside. It is not only difficult for a retailer to identify proxy purchasing but also to challenge it, especially as one of the top triggers for violence and verbal abuse in convenience stores is enforcing age restrictions.

In the case of alcohol, data from the NHS Digital Smoking, Drinking and Drug Use survey that the most common sources of alcohol by young people is to be given it by parents or guardians (71%), by friends (49%) or from someone else (32%) rather than purchasing it directly from a shop. Proxy purchasing is a growing problem especially as retailers reduce the access of alcohol to children. There has been a long-term decline in the number of children purchasing alcohol directly from retailers, with currently only 6% of young people⁶ that have drunk alcohol in the last four weeks purchasing alcohol from a shop compared to 12% in 2004⁷.

The Scottish Government has made the proxy purchase an offence for other age restricted products such as alcohol, tobacco and e-cigarettes, which means it is illegal for an adult to purchase these products on behalf of someone underage. For example, the Licensing Act 2005 makes it an offence for any person to buy or attempt to buy alcohol for a person aged under 18. Anyone found purchasing alcohol on behalf of someone under 18 is liable to a fine of up to £5,000 and under certain circumstances may receive a custodial sentence.

Therefore, if the Scottish Government introduce an age restriction for energy drinks, they should introduce regulations to make the proxy purchase of energy drinks an offence. This will provide consistency for retailers who enforce other age restrictions where proxy purchase is an offence, including alcohol, tobacco, and e-cigarettes.

Fixed Penalty Notices

We would welcome clarification on the Scottish Government's plans for enforcement of the energy drinks age restriction. Currently, non-compliance will result in retailers receiving Fixed Penalty Notices. We have some concerns that given that local authorities can retain the money raised from Fixed Penalty Notices, that there may be a financial incentive for local authorities to issue Fixed Penalty Notices rather than taking an education led approach. We would welcome reassures from the Scottish Government, through guidance to local authorities, to take such an education led approach.

Assured Advice

ACS will work with convenience retailers to ensure that an age restriction for energy drinks is implemented effectively across the sector. We provide comprehensive guidance in our [Preventing Underage Sales Assured Advice](#) on enforcing age restrictions, which is approved by trading standards as part of ACS' Primary Authority Partnership. ACS launched its own

⁵ [ACS Preventing Underage Sales Assured Advice](#)

⁶ [Smoking, Drinking and Drug Use Survey 2018](#) Table 6.2b; How Pupils who Obtained Alcohol in the last 4 weeks did so?

⁷ [Smoking, drinking and drug use among young people in England in 2004](#), 7.3 Figure 7.2; Where pupils who buy alcohol usually buy it

Primary Authority scheme in 2014 in partnership with Surrey and Buckinghamshire County Council that is accessible to the smallest convenience retail businesses⁸. The ACS Assured Advice scheme provides tailored advice on regulatory compliance issues that specifically affect convenience store retailers. Through ACS' Assured Advice, small retailers have access to the same expertise, previously only available to the biggest companies with expensive in-house compliance departments. Currently the Scottish Government allow Primary Authority partnerships but only direct partnerships between the business and the local authority. We believe that the Scottish Government should consider extending Primary Authority to allow co-ordinated partnerships⁹ in Scotland. We believe that the benefits of the Primary Authority scheme should not be limited to large businesses but should be extended to smaller operators through their trade association.

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

We believe that the best way for the Scottish Government to evaluate the age restriction once implemented is through non-compliance which would be monitored by enforcement against premises not complying with the age restriction.

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

We have provided a response to the Scottish Government's industry engagement questions which will be used to inform the Business Regulatory Impact Assessment for the introduction of an age restriction on energy drinks. Key points raised in the response are set out below.

Cost of Implementation

Retailers will incur costs from the implementation of a legal age restriction on energy drinks, including staff training, developing training materials, developing consumer awareness materials such as posters to display in-store about the age restriction.

Till prompts can be used as an aid to enforce the age restriction for energy drinks, they would not be enough for a retailer to demonstrate to trading standards officers that they are ensuring due diligence. ACS' Assured Advice on Preventing Underage Sales¹⁰ includes guidance for retailers on the ways to ensure due diligence such as having an age verification policy in store (e.g. Challenge 25), staff training, and maintaining a log of refusals of each time a sale was refused for failure to provide valid identification. Therefore, retailers (including those with EPoS systems) will incur costs to not only familiarise themselves and their staff on the new regulations but also to ensure due diligence.

There will also be ongoing costs that retailers will incur including staff training costs such as refresher training and training of new staff. Retailers who have already introduced an age restriction policy for energy drinks in-store will also face these ongoing costs.

Retailers with Existing Age Restrictions

⁸ More information about ACS' Assured Advice scheme is available here: <https://www.acs.org.uk/advice>

⁹ Trade associations to form partnerships

¹⁰ [ACS' Assured Advice on Preventing Underage Sales](#)

The Scottish Government must take into account that independent and multiple retailers who have already implemented an age restriction on a voluntary basis will also be impacted by the introduction of a legal age restriction and this should be reflected in the Business Regulatory Impact Assessment. In a survey of 102 independent convenience retailers in Scotland in February 2018, 64% stated that they do not sell energy drinks to under 16s.

Retailers who have already introduced an age restriction for energy drinks will have to review their policies, signage and staff training process to ensure that it is well understood that the voluntary age restriction is now a legal age restriction, all of which will incur costs to retailers. The Scottish Government should also note that if the age restriction were to be set at 18, retailers who have already introduced a voluntary age restriction for energy drinks at 16 will be required to remove existing POS materials indicating the age restriction for energy drinks is at 16, create and print new POS material, and retrain store colleagues on the age restriction policy.

Risk of Violence and Verbal Abuse

The ACS Crime Report 2019 found that one of the top triggers for violence and verbal abuse in convenience stores is enforcing age restricted sales¹¹. Therefore, an unintended consequence of introducing an age restriction for energy drinks could be increasing the number of triggers for violence and verbal abuse in-store.

To mitigate this risk, it is important that there is a high level of awareness amongst the public on the introduction of a legal age restriction for energy drinks. Similarly, if the age restriction is increased to 18, there may be customer confusion in stores where a voluntary age restriction of 16 exists. This could act as another trigger point for violence and verbal abuse. As such, the Scottish Government must communicate the new regulations to trade associations and retailers and raise awareness amongst consumers to ensure a smooth introduction.

We welcome that the Scottish Government intend to work closely with local authorities and retailers to develop ministerial guidance to local authorities and an implementation guide for retailers regarding how to comply with the age restriction. The Scottish Government should work with trade associations including the Scottish Grocers' Federation and ACS to ensure the age restriction is effectively implemented across the convenience sector.

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

Definition

There should be a simple and straightforward definition for energy drinks. ACS supports the definition of energy drinks as any drink that contains over 150mg of caffeine per litre, unless all the caffeine comes from coffee, tea or coffee or tea extracts. This definition is consistent with what is commonly recognised as an energy drink. However, the Scottish Government should consider whether the definition for energy drinks can be made clearer to address any confusion around which products are within scope of an age restriction, for example, referring to energy drinks as high caffeinated soft drinks to ensure there is no retailer or customer confusion about tea and coffee being age restricted. The definition must also be

¹¹ ACS Crime Report 2019

clear that glucose-based sport drinks are not included, and that coffee and tea products are only excluded if all the caffeine in that drinks comes from coffee or tea extracts. We welcome that the definition will be consistent with the definition proposed for the energy drinks age restriction in England.

Confusion around the definition of products within scope of the age restriction could mean that both retailers and consumers find it challenging to identify these products. Confusion around which products are age restriction could also lead to confrontation. The Scottish Government must consider carefully how they communicate the products in scope to both retailers and consumers as the products included in the definition must be easily identifiable. This is particularly important for retailers as nearly a third (31%) of convenience stores in Scotland do not have electronic point of sale¹² which means that they will have to physically identify the product and determine if the age restriction applies rather than using a till prompt to support compliance.

Timeframes

We believe that a minimum of 12 months would be an appropriate implementation period for the introduction of a new statutory age restriction for energy drinks as the Scottish Government will need to communicate the new regulations to trade associations and retailers and raise awareness amongst consumers to ensure a smooth introduction. Retailers will also need to communicate the age restriction to their staff through training and raise awareness to their consumers.

ACS will work with convenience retailers to ensure that an age restriction for energy drinks is implemented effectively across the sector. We provide comprehensive guidance in our [Preventing Underage Sales Assured Advice](#) on enforcing age restrictions, which is approved by trading standards as part of ACS' Primary Authority Partnership.

The Scottish Government should note that if the age restriction were to increase to 18, larger retailers who have already introduced a voluntary age restriction for energy drinks at 16 will be required to remove existing POS materials indicating the age restriction for energy drinks is at 16, create and print new POS material, and retrain store colleagues on the age restriction policy.

For more information about ACS' submission, please contact Julie Byers, ACS Public Affairs Manager by emailing Julie.Byers@acs.org.uk or calling 01252 515001.

¹² ACS/SGF Scottish Local Shop Report 2019

ABOUT ACS

The Association of Convenience Stores lobbies on behalf of over 46,000 convenience stores across mainland UK on public policy issues that affect their businesses. ACS' membership is comprised of a diverse group of retailers, from small independent family businesses running a single store to large multiple convenience retailers running thousands of stores.

Convenience stores trade in a wide variety of locations, meeting the needs of customers from all backgrounds. These locations range from city centres and high streets, suburban areas such as estates and secondary parades, rural villages and isolated areas, as well as on petrol forecourts and at travel points such as airports and train stations.



WHO WE REPRESENT

INDEPENDENT RETAILERS



ACS represents almost 19,000 independent retailers, polling them quarterly to hear their views and experiences which are used to feed in to Government policy discussions.

These stores are not affiliated to any group, and are often family businesses with low staff and property costs. Independent forecourt operators are included in this category.

SYMBOL GROUPS AND FRANCHISES



ACS represents over 14,000 retailers affiliated with symbol groups. Symbol groups like SPAR, Nisa, Costcutter, Londis, Premier and others provide independent retailers with stock agreements, wholesale deliveries, logistical support and marketing benefits.

Symbol group forecourt operators and franchise providers like One Stop are also included in this category.

MULTIPLE AND CO-OPERATIVE BUSINESSES



ACS represents over 13,000 stores that are owned by multiple and co-operative retailers. These businesses include the Co-Operative, regional co-operative societies, McColls and others.

Unlike symbol group stores, these stores are owned and run centrally by the business. Forecourt multiples and commission operated stores are included in this category.

THE CONVENIENCE SECTOR



In 2019, the total value of sales in the convenience sector was £40.3bn.

The average spend in a typical convenience store transaction is £6.38.



There are 46,388 convenience stores in mainland UK. 71% of stores are operated by independent retailers, either unaffiliated or as part of a symbol group.



The convenience sector provides flexible employment for around 405,000 people.

18% of independent/symbol stores employ family members only.



19% of shop owners work more than 70 hours per week, while 17% take no holiday throughout the year.

70% of business owners are first time investors in the sector.



Convenience stores and Post Offices poll as the two services that have the most positive impact on their local area according to consumers and local councillors.

78% of independent/symbol retailers have engaged in some form of community activity over the last year.



Between August 2018 and May 2019, the convenience sector invested over £633m in stores.

The most popular form of investment in stores is refrigeration.

OUR RESEARCH

ACS polls the views and experiences of the convenience sector regularly to provide up-to-date, robust information on the pressures being faced by retailers of all sizes and ownership types. Our research includes the following regular surveys:

ACS VOICE OF LOCAL SHOPS SURVEY

Regular quarterly survey of over 1,200 retailers, split evenly between independent retailers, symbol group retailers and forecourt retailers. The survey consists of tracker questions and a number of questions that differ each time to help inform ACS' policy work.

ACS INVESTMENT TRACKER

Regular quarterly survey of over 1,200 independent and symbol retailers which is combined with responses from multiple businesses representing over 3,000 stores.

ACS LOCAL SHOP REPORT

Annual survey of around 2,400 independent, symbol and forecourt retailers combined with responses from multiple businesses representing 7,556 stores. The Local Shop Report also draws on data from HIM, IGD, Nielsen and William Reed.

BESPOKE POLLING ON POLICY ISSUES

ACS conducts bespoke polling of its members on a range of policy issues, from crime and responsible retailing to low pay and taxation. This polling is conducted with retailers from all areas of the convenience sector.