



## **ACS Submission: Banning the sale of high-caffeine energy drinks to children**

### **Question**

**Do you agree or disagree with the proposal to ban the sale of high-caffeine energy drinks based on age?**

- **Agree**
- **Neither agree nor disagree**
- **Disagree**
- **Don't know**

**Please provide any specific information or evidence to support your answer (optional, maximum 300 words).**

The question of whether to restrict the sale of high-caffeine energy drinks based on age is complex and should ultimately be guided by sound, evidence-based public health research therefore it is best answered by qualified public health and nutrition experts.

Energy drinks are an important part of retailers' soft drinks offer but can attract concern from the local community, especially from parents and schools, around the consumption of energy drinks by young people. ACS acknowledges the public health concerns surrounding the sale of energy drinks to children and if a national ban on the sale of energy drinks is introduced, we will work proactively with the government to help ensure the policy is implemented effectively and responsibly.

### **Questions**

**Do you agree or disagree that the minimum age of sale for high-caffeine energy drinks should be 16 years?**

- **Agree**
- **Neither agree nor disagree**
- **Disagree**
- **Don't know**

**Please provide any specific information or evidence to support your answer (optional, maximum 300 words).**

**If you do not agree with the proposal, what should the minimum age of sale be?**

**Please provide any specific information or evidence to support your answer (optional, maximum 300 words).**

### **Questions**

**Do you agree or disagree that the ban should apply to any drink, other than tea or coffee, that contains over 150 milligrams of caffeine per litre?**

- **Agree**
- **Neither agree nor disagree**
- **Disagree**
- **Don't know**

**Please provide any specific information or evidence to support your answer, including information on other relevant caffeinated products (optional, maximum 300 words).**

**If you do not agree with the proposal, how should we define the products in scope and why? Please include in your answer any additional product categories you think should be in scope of any ban (maximum 300 words).**

The widely accepted definition for energy drinks is beverages containing more than 150 milligrams of caffeine per litre, excluding tea and coffee products. This threshold aligns with existing regulatory and industry practice, including current labelling requirements, voluntary codes of practice, and product formulation standards. Maintaining consistency with this definition is essential to ensure clarity for consumers, retailers, and suppliers alike.

ACS advises against expanding or narrowing this definition. Retailers and suppliers already operate under this established standard, and introducing a new or ambiguous threshold would risk confusion and increase compliance complexity. Consistency in definitions enables straightforward implementation, effective staff training, and continued high levels of compliance.

Clear government guidance on the scope of products covered by the age restriction is also critical. Ambiguity could create uncertainty over which products are in or out of scope particularly for beverages such as iced coffees, pre-mixed drinks, or hybrid products that may contain caffeine but are not traditionally marketed as energy drinks. A clear, practical definition will help retailers accurately identify affected products and update their point-of-sale systems and compliance training accordingly.

### **Questions**

**Do you agree or disagree that the ban should apply to all sellers, retailers and businesses, both in store and online, who operate in England?**

- **Agree**
- **Neither agree nor disagree**
- **Disagree**
- **Don't know**

**Please provide any specific information or evidence to support your answer (optional, maximum 300 words).**

ACS agrees that any age-based restriction on the sale of high-caffeine energy drinks should apply equally to all sellers operating in England, including both in-store and online businesses. Consistency in application is essential to ensure that the regulation is effective, fair, and respected by consumers and businesses alike.

If the restriction were to apply only to certain types of outlets, it would create an uneven trading environment and undermine the policy's intended public health impact. A consistent framework across all sales channels prevents children from accessing restricted products through less regulated routes, such as online marketplaces or delivery services. It also ensures that responsible, compliant retailers are not placed at a competitive disadvantage compared to less regulated competitors.

### **Questions**

**Do you agree or disagree that the sale of high-caffeine energy drinks should be banned from all vending machines?**

- **Agree**
- **Neither agree nor disagree**
- **Disagree**
- **Don't know**

**Please provide any specific information or evidence to support your answer (optional, maximum 300 words).**

Convenience retailers typically do not sell high-caffeine energy drinks through vending machines, as these products are sold directly in-store where existing age-restriction and verification procedures can be effectively implemented and monitored.

However, ACS members have highlighted the importance of maintaining access to energy drinks in workplace settings that are not open to the public, primarily distribution depots. In these locations, vending machines are accessible only to staff, all of whom are over the age of 16. As such, there is no risk of under-age access. A blanket ban on high-caffeine energy drinks in these controlled, staff-only spaces would not provide any additional safeguard for young people but would unnecessarily restrict adult employees' access to a legitimate product. ACS suggests that the government take this into account, and consider allowing the continued use of vending machines in non-public, staff-only workplaces within any measures introduced.

## Questions

**Do you agree or disagree that the person who controls or manages the premises where the machine is located should be liable for any underage sales of high-caffeine energy drinks from vending machines? (optional)**

- Agree
- Neither agree nor disagree
- Disagree
- **Don't know**

**Please provide any specific information or evidence to support your answer (optional, maximum 300 words).**

See above – convenience retailers typically do not sell high-caffeine energy drinks through vending machines, as these products are sold directly in-store where age-verification procedures are already in place.

For members operating distribution depots or other non-public workplaces, vending machines are accessible only to staff, all of whom are legally permitted to purchase these products. As under-16s are not present in these environments, underage access would not arise, and liability for underage sales would therefore not be a relevant issue in these settings.

## Questions

**What would be the impact of a complete ban on sales of high-caffeine energy drinks in vending machines to your business? (optional)**

**Please provide any specific information or evidence to support your answer (maximum 300 words).**

Limited. See above answer.

**How could a ban on vending sales of high-caffeine energy drinks to children under 16 years only work in practice?**

**Please provide any specific information or evidence to support your answer (maximum 300 words).**

The point of vending machines is that they are self-operated and require very little human interaction in the sales process so if a ban is introduced there needs to be a way of age gating sales without a human being present. As outlined above, the impact of a vending-machine ban would be limited for convenience retailers, as these products are not typically sold through vending in this sector. However, ACS would support consideration of allowing the continued use of vending machines in

non-public, staff-only workplaces. In practice, some ACS members operate distribution depots or similar facilities where vending machines are accessible only to adult employees. An exemption for these controlled, staff-only environments where no under-16s are present would enable continued access for adults without undermining the intent of the policy.

## Questions

**Do you agree or disagree that 6 months is an appropriate length of time for businesses and enforcement authorities to prepare to implement the ban?**

- Agree
- Neither agree nor disagree
- **Disagree**
- Don't know

**Please provide any specific information or evidence to support your answer (optional, maximum 300 words).**

**If you do not agree with the proposal, how long should the implementation period be? Enter the number of months. If you do not have an alternative suggestion, please enter '0' (zero).**

12 months between the passing new regulations and implementation of policy.

**Please provide any specific information or evidence to support your answer (optional, maximum 300 words).**

The policy will need to be clearly communicated to both retailers, young people and all customers. There are wide range of age restrictions in operation in shops, but retailers will not be used to operating an age restricted sales policy set at 16 years of age and this will present new challenges. Although our data shows that 80% of independent convenience stores have a policy in place they will need to formalise and adjust their approach to account for the new regulations. For example, staff will have to complete new training, EPOS systems will need to be updated and customer communications will need to be planned and delivered. We urge the government to introduce a 12-month lead time between the passing of new regulations and the implementation of the policy. This will give enough lead-in time to ensure consumers understand the changes coming and for retailers to feel prepared in operating a new age restricted sales policy in their store. Whenever, a new mandatory age restriction is introduced we urge the government to ensure that consumers are aware of the ban before they arrive in-stores. This will requires action from government, in partnership with industry, to communicate the ban and a 12 month lead-in time will ensure this is possible.

ACS has set out below key operational updates retailers will need to implement in their stores:

- Updates to epos systems
- Updates to self checkout age verification prompt

- Training staff and colleagues on the age restriction and acceptable forms of ID
- Implementation of POS materials e.g. posters and shelf edge label reminders

## Questions

**If you are a retailer or business selling high-caffeine energy drinks, have you already implemented a voluntary ban on sales to children under 16 years? (optional)**

- Yes
- No
- Don't know
- **Not applicable - I am not a retailer or business selling high-caffeine energy drinks**

## Question

**Should powers under the Regulation of Investigatory Powers Act 2000 be extended to allow local authorities to assess compliance with the age restriction on the sale of high-caffeine energy drinks?**

- **Yes**
- No
- Don't know

**Please provide any specific information or evidence to support your answer, including detail of any alternative approaches that could be considered to assess compliance (optional, maximum 300 words).**

It is important that Trading Standards services are equipped with sufficient powers to enforce any new legislation on the sale of energy drinks effectively. Robust enforcement powers will enable officers to ensure that all businesses trade responsibly and comply with the law. We hope that local authorities will take an evidence-led approach to deploying the use of these powers for test purchasing. We want to see targeted action against businesses that are intentionally ignoring regulations.

## Questions

**Do you agree or disagree that 28 days is an appropriate length of time to make representations and objections or to discharge liability for a notice of intent?**

- **Agree**
- Neither agree nor disagree

- Disagree
- Don't know

**Please provide any specific information or evidence to support your answer (optional, maximum 300 words).**

28 days is the typical time businesses are afforded in trading legislation to make representations and objections - this should be a sufficient time for businesses to gather the proper evidence to make their appeal. ACS would suggest that when guidance is developed information is provided on how retailers can make a "defense of due diligence" by suggesting appropriate evidence.

ACS will be developing its own guidance on the sale of energy drinks to under 16s and operates one of the largest Primary Authority Partnerships in the country. ACS would very much welcome opportunity for discourse and engagement with government in the development of guidance to ensure retailers can properly prepare for the policy.

#### **Question**

**Do you agree or disagree that a person or retailer should be able to discharge liability for a fixed monetary penalty at a rate of 50% of the penalty within 28 days of being issued a notice of intent?**

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

**Please provide any specific information or evidence to support your answer (optional, maximum 300 words).**

Yes, this is the case in most enforcement legislation.

#### **Questions**

**Do you agree or disagree that 28 days is an appropriate length of time to pay a final notice?**

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

**Please provide any specific information or evidence to support your answer (optional, maximum 300 words).**

If you do not agree with the proposal, how many days is an appropriate length of time to pay a final notice? Enter number of days. Suggestions must be less than 28 days. If you do not have an alternative suggestion, please enter '0' (zero).

Please provide any specific information or evidence to support your answer (optional, maximum 300 words).

#### Question

Do you agree or disagree that failure to pay or appeal a final notice within 28 days should result in the penalty being increased by 50%?

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

Please provide any specific information or evidence to support your answer (optional, maximum 300 words).

If a penalty has been imposed there should be an expectation that a business will recognise their wrongdoing and pay the requested amount. Compliance with regulations is something that should be incentivised and increasing the amount is a way to do this.

#### Questions

Do you agree or disagree that the proposed amounts for fixed monetary penalties are appropriate?

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

Please provide any specific information or evidence to support your answer (optional, maximum 300 words).

ACS supports the use of fines to disincentivise the sale of energy drinks to children. We recommend that the government take a consistent approach to fine levels as other age restricted products.

Energy drinks do not currently carry a statutory age restriction. Introducing one will require retailers to implement new policies, retrain colleagues, and adapt existing age-verification systems. During this transition, there is a genuine risk that responsible retailers and their staff may make inadvertent mistakes while adjusting to the new legal requirements. In these circumstances, imposing a high fixed penalty is disproportionate, especially where there is no intent to sell irresponsibly.

The proposed penalty also appears misaligned with other comparable enforcement regimes. For example, under the disposable vapes ban enforcement framework and the penalties proposed in the forthcoming Tobacco and Vapes Bill, Fixed Penalty Notices are set at £200. Implementation of the age restriction for energy drinks under the Food Safety Act 1990 does not allow for on-the-spot fines.

We urge the government ensure that enforcement agencies take a proportionate approach to financial penalties and seek to support and advise businesses, similar to improvement notices, before moving to monetary fines.

**If you do not agree with the proposed amounts, what should the fixed monetary penalty for individual, micro and small businesses be?**

If you do not agree with the proposed amounts, what should the fixed monetary penalty for medium and large businesses be?

For these questions, please enter an amount in pound sterling (£). If you do not have an alternative suggestion, please enter '0' (zero).

Please provide any specific information or evidence to support your answer (optional, maximum 300 words).

#### **Question**

**Are there any circumstances where it might be inappropriate for local authorities to publish details of cases where a civil sanction has been imposed?**

- Yes
- No
- **Don't know**

Please provide any specific information or evidence to support your answer (optional, maximum 300 words).

This is best answered by local authorities.

#### **Question**

**Will the additional guidance and transparency requirements place any additional costs on your local authority?**

- Yes
- No
- Don't know

Please provide any specific information or evidence to support your answer, including the estimated cost (optional, maximum 300 words).

This question is for local authorities to answer.

### **Question**

**Please provide any further information, evidence or data that should inform the new burdens assessment (optional, maximum 300 words).**

See above.