



ACS Submission – Ending the sale of energy drinks to children

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the Department of Health and Social Care's consultation on ending the sale 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. In a survey carried out in January 2018, 53% of independent convenience retailers stated that they do not sell energy drinks to under 16s¹.

If the 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 believe that the 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. 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 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.

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

1. Should businesses be prohibited from selling high-caffeine energy drinks to children?

If the 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 UK consumers, particularly on energy drinks purchased by young people and what factors determine their consumption.

¹ ACS Voice of Local Shops Survey February 2018

2. Are there any other approaches that you think should be implemented instead of, or as well as, a prohibition on sales of energy drinks to children, in order to address the issue of excess consumption of energy drinks by children?

ACS does not have any suggestions for other approaches that should be implemented instead of an age restriction for the sale of energy drinks. We have made clear that a voluntary age restriction for energy drinks is challenging to implement consistently across the convenience sector.

3. Which age limit would be most appropriate for a prohibition on sales of energy drinks to children?

If the government decide to introduce a legal age restriction for the sale of energy drinks, they should consider the evidence about the health impact when determining what age an age restriction for energy drinks should be set at.

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. Increasing the age limit to 18 would create confusion for store colleagues and customers.

There is a limited range of proof of age identification documents available to customers under 18, which could be a challenge for retailers enforcing an age restriction at 16. However, 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 age². If the government are to introduce an age restriction on energy drinks, they should consider promoting PASS cards to under 18s in order to ensure a smooth introduction.

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.

4. Should a prohibition on sales of energy drinks to children apply to any drink that contains over 150mg of caffeine per litre, except coffee and tea?

ACS supports the definition of energy drinks as any drink that contains over 150mg of caffeine per litre, except coffee and tea. This definition is consistent with what is commonly recognised as an energy drink. However, the 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.

² PASS was set up by industry to provide retailers reassurance about which cards can be accepted as valid proof of age

5. Should a prohibition on sales of energy drinks to children apply to all retailers who operate in England, including online businesses and the out-of-home sector (cafes, restaurants, takeaways and so on)?

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

8. If the sale of energy drinks to children is prohibited, would 12 months be an appropriate implementation period for all businesses?

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 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 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.

9. If you are a business selling energy drinks, have you already imposed limits on sales to children?

Convenience retailers have been responding to the concerns of their community about energy drinks for a long time before many of the large supermarket chains introduced age restrictions and the recent campaign activity. ACS polled 1,210 independent convenience retailers about their policies on the sale of energy drinks in 2014, with 49% saying they did not sell energy drinks to under 16s³. ACS recently polled a further 1,210 independent retailers on their energy drink sales policies in January 2018 and 53% of convenience retailers stated that they do not sell energy drinks to under 16s, a marginal increase from 2014.⁴ Moreover, in January 2018, 40% of independent convenience retailers responded that they also do not sell energy drinks to children in school uniform⁵.

In response to the recent Jamie Oliver campaign #notforchildren, a number of large convenience retailers have decided to ban the sale of energy drinks to under 16s. Larger retailers that have introduced a voluntary age restriction include the Co-op, all regional co-operative regional societies, BP and MRH Retail. Symbol group head offices, such as Spar UK and Nisa Retail, have also issued guidance on the sale of energy drinks or offered support to the retailers they deliver to.

³ ACS Voice of Local Shops Survey 2014

⁴ ACS Voice of Local Shops Survey February 2018

⁵ ACS Voice of Local Shops Survey February 2018

10. If you have not already limited sales of energy drinks to children, have you committed to do so or are you planning to do so in future?

72% of convenience stores in the UK are run by independent retailers, 36% of which are symbol group retailers, like Spar UK, Nisa Retail, Londis⁶. Unlike franchises, symbol groups are usually only based on a wholesale purchase agreement and common branding - there are no formal requirements on stores to follow strict operating procedures. This makes it extremely challenging to introduce a voluntary age restriction on energy drinks in the convenience sector.

ACS cannot endorse a voluntary age restriction for energy drinks in the convenience sector given the diversity of the sector and limited central control of in-store procedures. ACS is not an enforcement body and therefore would have no way of policing voluntary standards. However, we have developed guidance⁷ for retailers to help them consider how they might want to respond to requests from their community or parents to restrict the sale of energy drinks.

The guidance lists options including; introducing voluntary age restrictions, quantity restrictions or following consultation with schools – not selling energy drinks to children in school uniform or not selling energy drinks to children at agreed times. The guidance also provides a definition of energy drinks, labelling details and comparable caffeine content information based on the British Soft Drinks Association's Code of Practice on Energy Drinks⁸.

We have also included a reference to energy drinks in ACS' Preventing Underage Sales Assured Advice Guide⁹, which states: *"There is no legal prohibition on energy drinks. However, you should be aware that all major UK manufacturers advise that these products are not suitable for children which they define as under 16 years old. You may decide to impose a restricted sale policy on your own initiative, or you may be asked to do so by the local school or parents group. You should listen to such requests constructively and accommodate them if you can."*

11. If you have already limited sales of energy drinks to children, have you faced any obstacles in implementing this effectively?

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 energy drink 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.

Proxy purchasing is difficult for retailers to identify because it can often appear to be a legitimate sale. ACS has produced guidance¹⁰ 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

⁶ ACS Local Shop Report 2018

⁷ <https://www.acs.org.uk/advice/energy-drinks>

⁸ http://www.britishsoftdrinks.com/write/MediaUploads/Soft%20Drinks/Revised_Energy_Drinks_Code_of_Practice_270415.pdf

⁹ <https://www.acs.org.uk/advice/age-restrictions>

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

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 (70%), by friends (54%) 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 people¹¹ that have drunk alcohol in the last four weeks purchasing alcohol from a shop compared to 12% in 2004¹².

The industry has taken proactive action to prevent young people from accessing alcohol through the introduction of age verification schemes such as 'Challenge 25'. The Proof of Age Standards Scheme (PASS) has also supported retailers to enforce age restrictions. PASS accredited cards, provide reassurances to retailers about which cards can be accepted as valid proof of age. Given that there are a limited range of statutory proof of age identification documents available to customers under 18, the government should consider whether PASS can receive dedicated support to encourage the uptake of PASS accredited cards by customers under 18 to ensure a smooth introduction of the age restriction of energy drinks.

The government has made the proxy purchase an offence for other age restricted products such as alcohol, tobacco and e-cigarettes. For example, the Licensing Act 2003 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 £90 Fixed Penalty Notice and under certain circumstances may receive a custodial sentence and potentially an unlimited fine on conviction.

Therefore, if the 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.

12. If you have already limited sales of energy drinks to children, please explain how this has affected your business, either positively or negatively, providing supporting evidence where possible.

The ACS Crime Report 2018 found that one of the top triggers for violence and verbal abuse in convenience stores is enforcing age restricted sales¹³. 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

¹¹ [Smoking, Drinking and Drug Use Survey 2016](#) Table 7.2b; How Pupils who Obtained Alcohol in the last 4 weeks did so?

¹² [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

¹³ ACS Crime Report 2018

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. The high level of media activity around Jamie Oliver's #notforchildren campaign earlier this year and larger retailers' introducing a voluntary age restriction for energy drinks helped mitigate the impact of introducing a new age restriction.

13. If you have any suggestions for how this requirement could be enforced in a way that is fair and not overly burdensome, please provide details.

Enforcement of the age restriction should be conducted in line with the Office for Product Safety and Standards' Code of Practice on age restricted products and services¹⁴ so that the age restriction for energy drinks can be covered by Primary Authority. ACS has had its own Primary Authority Scheme since 2014 in partnership with Surrey and Buckinghamshire Trading Standards, which provides tailored advice on regulatory compliance issues that specifically affect convenience store retailers. Currently ACS' Assured Advice scheme includes 11 guides including a specific Assured Advice Guide on '[Preventing Underage Sales](#)', which we will update to reflect the new legislation once introduced.

Following implementation, we believe that Trading Standards should educate retailers about the new legislation rather than taking immediate enforcement action for non-compliance. Moreover, failing to implement an age restriction on energy drinks should not be grounds for a review of a retailers' alcohol licence as this would be disproportionate.

14. If you have any further evidence or data you wish to submit for us to consider for our final impact assessment, please provide it here

We believe that the Impact Assessment underestimates the administrative costs that retailers will incur as set out under Section 3.1.1. The flowchart states that if retailers have already introduced a voluntary age restriction that they will be unaffected by the legislation, however, 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.

ACS' Local Shop Report suggests that 69% of retailers have an EPoS system¹⁵. While the Impact Assessment assumes that 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 Sales¹⁶ 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 refusals register 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.

Regarding on-going costs, we believe that the Impact Assessment again underestimates the costs that retailers who have already introduced an age restriction for energy drinks will

¹⁴ [Office for Product Safety and Standards – Code of practice: age restricted products and services](#)

¹⁵ ACS Local Shop Report 2018

¹⁶ [ACS' Assured Advice on Preventing Underage Sales](#)

incur. There are also on-going enforcement costs that retailers will incur including on-going staff training costs such as refresher training and training of new staff.

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

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 over 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 12,000 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 2018, the total value of sales in the convenience sector was £39.1bn.

The average spend in a typical convenience store transaction is £6.50.



There are 46,262 convenience stores in mainland UK. 72% of stores are operated by independent retailers, either unaffiliated or as part of a symbol group.



The convenience sector provides flexible employment for around 365,000 people.

24% of independent/symbol stores employ family members only.



24% of shop owners work more than 70 hours per week, while 19% 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.

81% of independent/symbol retailers have engaged in some form of community activity over the last year.



Between August 2017 and May 2018, the convenience sector invested over £814m 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 over 2,400 independent, symbol and forecourt retailers combined with responses from multiple businesses representing 7,669 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.