

From: [redacted] <[redacted]@britishsoftdrinks.com>
Sent: 03 February 2020 13:50
To: Diet Policy
Cc: [redacted]
Subject: BSDA Energy Drinks Consultation response.
Attachments: BSDA response - Ban on sale of EDs to children Scotland.pdf

Please find attached the BSDA's response to the Scottish Government's consultation on ending the sale of energy drinks to children and young people.

Name: [redacted], Policy Manager, British Soft Drinks Association

Email address: [redacted]@britishsoftdrinks.com

Responding as an organisation (trade association)

Organisation: British Soft Drinks Association

Publish response with name

I am content for Scottish Government to contact me again in relation to this consultation exercise.

Thank you

[redacted]

[redacted]

Policy Manager

British Soft Drinks Association

Address: [redacted]
Email: [redacted]@britishsoftdrinks.com
Telephone: [redacted]
Mobile: [redacted]
Website: britishsoftdrinks.com
Twitter: [@britishsoftdrinks](https://twitter.com/britishsoftdrinks)
LinkedIn: [linkedin.com/company/british-soft-drinks-association](https://www.linkedin.com/company/british-soft-drinks-association)



Registration Number: 500979 Place of Registration: England

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From: [redacted]
Sent: 04 February 2020 13:35
To: [redacted]; Diet Policy
Subject: RE: BSDA Energy Drinks Consultation response.

Hi [redacted],

Thank you for submitting your response and for including details for the Respondent Information Form (RIF).

Best wishes,

[redacted]

[redacted]

Policy Officer, Diet Policy
Population Health Directorate | Health Improvement Division
Scottish Government

[redacted], St Andrew's House, Regent Road EH1 3DG
Tel: **[redacted]**
Pronouns: **[redacted]**

From: [redacted] <[redacted]@britishsoftdrinks.com>
Sent: 03 February 2020 13:50
To: Diet Policy <DietPolicy@gov.scot>
Cc: [redacted] <[redacted]@gov.scot>
Subject: BSDA Energy Drinks Consultation response.

Please find attached the BSDA's response to the Scottish Government's consultation on ending the sale of energy drinks to children and young people.

Name: **[redacted]**, Policy Manager, British Soft Drinks Association

Email address: **[redacted]**@britishsoftdrinks.com

Responding as an organisation (trade association)

Organisation: British Soft Drinks Association

Publish response with name

I am content for Scottish Government to contact me again in relation to this consultation exercise.

Thank you

[redacted]

[redacted]

Policy Manager

British Soft Drinks Association

Address: [redacted]
Email: [redacted]@britishsoftdrinks.com
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Registration Number: 500979 Place of Registration: England

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From: [redacted]@energydrinkseurope.org
Sent: 28 January 2020 10:48
To: Diet Policy
Subject: Energy Drinks Europe Submission on Energy Drink Consultation
Attachments: image002.wmz; Energy Drinks Europe - Submission to the Scottish Government on Ending the Sale of Energy Drinks to Children.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Dear Minister,

Thank you for the opportunity to respond to your consultation on the sale of energy drinks to children and young people. Please find attached our response.

Please don't hesitate to contact me directly should you wish to discuss further.

Yours sincerely,
[redacted]

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From: [redacted]< [redacted]@britishsoftdrinks.com>
Sent: 16 February 2018 10:28
To: [redacted]; [redacted]
Cc: [redacted]
Subject: BSDA follow-up - Energy Drinks
Attachments: BSDA media statement - Energy Drinks - 15.02.18.docx

Hi both,

It was great to catch-up with you earlier this week and thank you once again for your time.

Just wanted to follow-up on the energy drinks discussion. BSDA and its members welcome the leadership shown by some of the retailers, and I have attached our media statement which outlines our view.

Our [Fact Sheet](#) (designed for parents and teachers) and [FAQ's](#) might also be useful. I'm in the process of obtaining data around consumption occasions that I referenced in the meeting and I will be happy to share this with you.

In the meantime please let me know if there is anything else I can help with.

Kind regards,
[redacted]

[redacted]
Press Officer
British Soft Drinks Association

Address: [redacted]
Email: [redacted]@britishsoftdrinks.com
Telephone: [redacted]
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UK soft drinks manufacturers
have reduced sugar intake from
their products by 18.7% since 20

Registration Number: 500979

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Email Attachment

Media Statement

[redacted], Director General at the British Soft Drinks Association:

We welcome the leadership shown by many retailers.

These decisions endorse our [Code of Practice](#) which has been in place for many years. Members do not market or promote energy drinks to under 16s, nor do they sample products with this age group. In addition energy drinks carry an advisory note stating: Not recommended for children.

We are committed to working with retailers to ensure that the energy drinks segment continues to grow in a responsible way – meeting both the spirit of our Code of Practice and the new sales policies being put in place.

Our industry data shows that consumption of energy drinks [by under 16s] is far more limited than recent media coverage would suggest. However, we understand the concerns being raised over the consumption of high-caffeine energy drinks by children and remain committed to helping consumers and parents make informed choices.

Notes

- The BSDA code of practice states that high caffeine content soft drinks are not recommended for children, and specifies that this information should be clearly

stated on the label of such drinks. It also states that high caffeine soft drinks should not be promoted or marketed to those under 16

- The energy drinks sector is committed to helping consumers make informed choices which is why they offer low sugar variants across the majority of product lines
- The 2015 [EFSA Opinion](#) confirms the safety of energy drinks and their ingredients and therefore does not provide any scientific justification to treat energy drinks differently than the main contributors to daily caffeine intake
- There is no more caffeine in most energy drinks than in a typical cup of coffee
- The main contributors to daily caffeine intake in all age groups are tea, coffee, chocolate and other non-alcoholic beverages [EFSA]
- Under 16s accounted for 6.5% of consumption occasions for energy drinks in 2017 [Kantar Worldpanel]
- The EFSA opinion confirms the safety of daily caffeine intakes of up to 3 mg per kg of body weight for children and adolescents (3-18 years) and up to 400 mg for adults
- The BSDA code of practice is supported by the following brands; Red Bull, Monster, Relentless, Rockstar
- Further information can be found on our [FAQ's page](#).

ENDS

For media enquiries:

[redacted]

Press Officer

British Soft Drinks Association

M: **[redacted]**

E: **[redacted]**@britishsoftdrinks.com

From: [redacted]@lrsuntory.com
Sent: 21 January 2020 16:52
To: [redacted]
Subject: RE: Energy Drinks BRIA Notes
Attachments: Lucozade Energy Misidentification - Jan 3 2020.jpg

Categories: Energy Drinks

Hi [redacted],

Sorry for the delay in getting back to you. I've been in a number of all-day workshops the last few days.

I'm really glad you found it useful, and thanks so much for the opportunity to feed in. It's reassuring that you understand our concerns and are willing to hear our suggestions on how they can be addressed.

Please find below answers to your specific questions, as well as any tweaks/amends to the notes from our call. Hope it all makes sense, but please do let me know if you need any further information or detail. I am seeking answers to the questions you raised during the call and hope to send these to you soon also.

As discussed, we will be submitting a formal response into the consultation, but would welcome the opportunity to continue to discuss and feed in to the process going forward.

Best wishes,

[redacted]

From: [redacted]@gov.scot [mailto:[redacted]@gov.scot]
Sent: 16 January 2020 11:48
To: [redacted] <[redacted]@lrsuntory.com>
Subject: Energy Drinks BRIA Notes

Hi [redacted],

Thanks again for our chat the other day, we found it really useful. I just wanted to share our notes with you, please feel free to send through any amendments.

Also, I had a couple of additional questions.

- Is it just the Lucozade brand that causes concern – are there any Ribena products that might also be impacted?

Ribena and its sub brands are not energy drinks/brands and we do not market them as such. Therefore, we do not currently believe that they will be unintentionally impacted by the high caffeine energy/stimulant drinks sales ban. However, it is worth noting that Lucozade will be releasing a new sub-brand next month, Lucozade Revive, which will be a more natural alternative to Lucozade Energy. Again, whilst it is not high in caffeine, we are concerned that alongside the Lucozade Energy and Lucozade Sport sub-brands, it may be unwittingly impacted by any high caffeine energy drinks sales ban as it will be an energy drink and associated with the Lucozade master brand.

- Also, when you said no products are marketed to U16 – was this just Lucozade and V Energy?

Our Responsible Marketing Code applies to all of our products. Full details can be found at: <https://www.lrsuntory.com/dyn/assets/pdfs/lrsresponsiblemarketingcodeuk.pdf>

Many thanks,
[redacted]

Notes from call:

- Noted that LRS are having similar discussions with colleagues in England and Wales with consistent messaging. This links to their desire to see ~~UK~~ GB alignments with regards to the approach and timing of implementation.
- Key concern is around the confusion that “energy drinks” as a term causes, with calls for the use of “high caffeine energy/stimulant drinks” to be used **instead**. The impact of this was likened to the introduction of the Soft Drinks Industry Levy, often referred to as a “sugar tax” which causes confusion about what it actually does and what is in scope. Since the voluntary ban has been in place, LRS have engaged with retailers to ensure that their brands (Lucozade **Energy and Lucozade Sport**) are not **accidentally misidentified as high caffeine energy/stimulant drinks and included in any sales ban** – this poses a particular challenge for smaller, independent retailers who may not have the time to digest regulations. Some concern on consumer understanding also which could impact negatively on sales.
- The suggestion of clearer labelling and an age limit icon would make it easier for retailers (and consumers) to spot straightaway. They have not considered putting an “age friendly” icon on their packaging and, **to increase the recyclability of their packaging**, are currently changing their **portfolio bottles** and decreasing the size of their labels (meaning less space for content). They would be happy to change their labels on V Energy (**the only high caffeine energy/stimulant drink they sell**). An indicative timing for changing labels would be at least 2 months for new artwork, then time for approvals, printing and distribution. Need to be aware that stock shelf-life could be c.6-9 months so would like a transition period. **However, suggest that retailers best placed to advise on transition period and time needed to familiarise themselves with regulation.**

- [redacted]
- Consumer care reports and social media shows that people do confuse Lucozade Energy, and thinks it is subject to voluntary sales bans – a recent example was a Tweet from someone who was declined a sale of Red Bull so bought Lucozade Energy instead thinking they had circumnavigated the voluntary ban (see <https://twitter.com/Tesco/status/1213162006766850048> and picture attached). After the voluntary ban, they-LRS witnessed a lot of confusion but are unable to say whether it negatively impacted on sales as it happened at the same time as the SDIL and reformulation. A high-levels sales drop was noticed but it is hard to pin down whether the ban specifically contributed to the reasons for this.
- Education to ensure there is no confusion could include account managers talking to key customers (e.g. big retailers and wholesalers), adverts in trade magazines, literature when selling to retail (as they did with SDIL) and potential consumer outreach dependent on sales trends – all of this would have an initial plus smaller ongoing cost.
- Their initial concern was around Lucozade Energy but isotonic and sport drinks have been flagged, so they have concern for Lucozade Sport that brand too – [redacted]. Note they will be launching Lucozade Revive next month and have similar concerns even though it is also not high in caffeine.
- The impact on consumer views could impact on adult purchasing too, especially if it was a ban at U168 as this puts the products in the same category as alcohol (BSDA view – LRS don't take a specific view).
- LRS to try to find out whether if there is any U16 data (IRI Marketplace data) and if they supply V Energy to vending machines.

[redacted]

Policy Officer, Diet Policy

Population Health Directorate | Health Improvement Division

Scottish Government

[redacted], St Andrew's House, Regent Road EH1 3DG

Tel: [redacted]

Pronouns: [redacted]

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From: [redacted]@lrsuntory.com
Sent: 06 February 2020 14:46
To: [redacted]
Subject: RE: Ending the sale of energy drinks to children and young people - Response from LRS 04 02 2020

Categories: Energy Drinks

Thanks [redacted].

You'll notice that we didn't include the specific data/information that we had previously agreed to share for the BRIA. We thought it better to send this separately, below.

Hope this helps, but please do let us know if you have any further questions or if there's any further data you are looking for.

Best wishes,

[redacted]

[redacted]

- [redacted]
- [redacted]

[redacted]

- [redacted]
- [redacted]

[redacted]

- [redacted]
- [redacted]

From: [redacted]@gov.scot [mailto: [redacted]@gov.scot]

Sent: 05 February 2020 09:34

To: [redacted] <[redacted]@lrsuntory.com>

Subject: RE: Ending the sale of energy drinks to children and young people - Response from LRS 04 02 2020

Hi [redacted],

Thanks very much for sending through.

Best wishes,
[redacted]

From: [redacted]@lrsuntory.com <[redacted]@lrsuntory.com>
Sent: 04 February 2020 18:28
To: Diet Policy <DietPolicy@gov.scot>
Cc: [redacted] <[redacted]@gov.scot>
Subject: Ending the sale of energy drinks to children and young people - Response from LRS 04 02 2020

Dear Sir/Madam,

Please find attached Lucozade Ribena Suntory's response to 'Ending the sale of energy drinks to children and young people – October 2019'.

We hope the response is helpful. Please do let us know if you require any further information.

Yours faithfully,

[redacted]



[redacted]
Senior Public Affairs Manager

[redacted]
[redacted]
[redacted]

www.lrsuntory.com



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From: [redacted]@lrsuntory.com
Sent: 18 December 2019 10:10
To: [redacted]
Subject: Energy Drinks BRIA - LRS Response
Attachments: SG Energy Drinks BRIA - LRS Response 18 12 19.pdf

Categories: Energy Drinks

Dear [redacted],

Please find attached Lucozade Ribena Suntory's (LRS) response to the Scottish Government's 'Energy Drinks BRIA – Industry Engagement Questions December 2019'.

As outlined through our response, we support the introduction of an GB-wide under-16 sales ban for drinks classified as high in caffeine. However, we are concerned that a potential sales ban may unwittingly impact energy brands and drinks not classified as high in caffeine. Lucozade Energy and Lucozade Sport beverages are not high in caffeine and will therefore not be subject to the ban as currently proposed, but there is a risk of retailers accidentally restricting their sale as well as misidentification by consumers.

We have outlined a number of steps we believe the Scottish Government should be taking to minimise the potential impact of the ban on other energy brands and drinks not classified as high in caffeine in the document. However, we would welcome the opportunity to meet to take you through these in more detail and discuss additional measures that could be put in place.

Please do let us know if a meeting will be helpful. In the meantime we will prepare our full response for 4th Feb.

Many thanks again for the opportunity to input.

Best wishes,

[redacted]



[redacted]
Senior Public Affairs Manager

[redacted]
[redacted]
[redacted]

www.lrsuntory.com



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Energy Drinks BRIA – Industry Engagement Questions

We are conducting a Business and Regulatory Impact Assessment (BRIA) on the proposals set out in the Scottish Government consultation, [Ending the sale of energy drinks to children and young people](#).

BRIsAs help to assess the likely costs, benefits and risks of any proposed primary or secondary legislation, voluntary regulation, codes of practice or guidance that may have an impact on the public, private or third sector. This is in line with our Better Regulation agenda, which aims to reduce unnecessary burdens on business by ensuring all regulation follows the principles of being: proportionate, consistent, accountable, transparent and targeted only when needed.

Any information we receive may be subject to the Freedom of Information (Scotland) Act 2002. The Act, which applies to the Scottish Government, provides that any person who requests information from a Scottish public authority which holds it, is entitled to be given that information by the authority. This right is subject to certain conditions and exemptions set out in the Act. This can include restricting the release of commercially sensitive information unless its release is in the public interest.

Responding to the BRIA

It is our intention to collate responses and present an overall report. We understand the scope of the questions may prove difficult to complete – please complete what you can, and let us know if you or your company will not be able to participate.

Please forward your completed response to [REDACTED] [@gov.scot](#) by Wednesday 18th December 2019.

Summary of the policy

The following summarises the consultation on [Ending the sale of energy drinks to children and young people](#). You are encouraged to also complete the consultation online. Among other things, the consultation asks for views on whether any places should be considered for exemptions and what support sellers, distributors and manufacturers would need to implement an age restriction effectively.

The primary aim of the policy is to reduce the health risks associated with young people consuming energy drinks. We would also look to the policy to help reduce related health inequalities, including in relation to socioeconomic disadvantage.

We define an energy drinks as any drink, other than tea or coffee, which contains over 150 milligrams of caffeine per litre. These drinks [require a warning label](#) stating “High caffeine content. Not suitable for children or pregnant or breast-feeding women”. This definition excludes sports or isotonic drinks that do not contain high volumes of caffeine.

We are considering applying the restrictions to any place where energy drinks are sold to the public in the course of business. This would apply, among other places, to retail and Out of Home outlets.

Exemptions would apply to locations that are not widely open to, or attended by, young people, for example wholesales outlets where sales are only to trade. We are seeking views on whether we should consider other exemptions, for example, cafeterias and vending machines located in workplaces. The consultation also seeks views on whether, and if so to what extent, restrictions should be applied online.

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Section 1 – [General questions \(all\)](#)

Section 2 – Supplementary questions

2.1 – [for retailers](#)

2.2 – [for vending](#)

2.3 – [for manufacturers](#)

2.4 – [for wholesalers / distributors](#)

2.5 – [for industry bodies](#)

1. General question (all)

If you are responding as a trade association, where applicable, please provide information on behalf of your sector.

1.1 About your business

1. Please describe the nature and scope of your business in Scotland.

Lucozade Ribena Suntory is the third largest branded soft drinks supplier in the UK, and our much-loved brands – including Lucozade Energy, Lucozade Sport, Ribena and Orangina – account for 7% of the UK market.

Our business is driven by our ‘Yatte Minahare’ (‘Go for it!’) spirit and our role is to have a positive impact on the lives of our consumers, providing them with a responsible choice of great tasting drinks and inspiring them to lead more active lifestyles.

Health and Wellbeing

Lucozade Ribena Suntory is committed to having a positive impact on the lives of our consumers, providing them with a responsible choice of great tasting drinks and enabling them to lead more active lifestyles.

Since March 2018, all of our existing core and new drinks with added sugar contain less than 5g of sugar per 100ml (approximately a teaspoon) – and zero and reduced calorie alternatives are available for every brand. We have also introduced new lower-sugar and less sweet drinks such as Lucozade Sport FitWater, True Nopal Cactus Water and, in March this year, Ribena Frusion. In total, we have reduced sugar by 50% on average across our core range - removing 25,500 tonnes of sugar and 98.1bn calories - while still delivering great tasting drinks. This includes reducing the sugar content of our best-selling product, and Scottish favourite, Lucozade Energy by more than 50%.

Alongside changes to our drinks, we are investing £30 million over three years to help get the nation moving more. We have so far inspired 1.5 million people to move more with our ‘Made to Move’ campaign, fronted by unified world heavyweight champion Anthony Joshua OBE.

LRS has also partnered with Active Communities Network (ACN) to launch ‘B Active’ programmes in five cities with high levels of health inequality across the UK – London, Newport, Belfast, Manchester and Hull. The programmes have been designed to help increase physical activity as well as improve the lifestyles and prospects of young people aged 16-24. They include youth-led activity programmes running five days a week, 50 weeks of the year and, in a

collaboration with the Open College Network and 1st4Sport, ACN is offering volunteers a range of qualifications (including: enterprise, diversity & inclusion and developing community activities for youth at risk).

In 2018, over 4,000 young people took part in B Active – three times as many as originally expected. Nearly half of these young people have volunteered in their local community, and over 700 have gained vocationally-recognised qualifications. We have expanded the programme further in 2019, with almost 6,000 young people currently taking part.

2. How many staff do you employ across the UK (by headcount and FTE)?

- Micro (0-9 employee headcount)
- Small (10-49 employee headcount)
- Medium (50-249 employee headcount)
- Large (250+ employee headcount)

705

3. What proportion of those staff are based in Scotland?

Our staff are based between our head office in Uxbridge, our manufacturing site in the Forest of Dean and our Ireland Headquarters. Our field sales team work across the whole of the UK and Ireland.

4. Do you produce, sell or distribute energy drinks?

V Energy is the only brand in the Lucozade Ribena Suntory portfolio that classifies as a high caffeine energy drink under the current EU definition of “high caffeine” and accounts for █████ of LRS total sales (IRI INT TOTAL MARKET 52W TO 27.10.19). Significantly, we reformulated V Energy to 4.5g of sugar per 100ml in March 2018 and we have not activated any consumer marketing support or activity for the brand in 2018 or 2019.

5. What is your total annual turnover in Scotland and what is this as a percentage of your total turnover?

Producers can only report to whom they first sold a given product, not where the product is eventually retailed to a consumer. Once a product leaves the producer’s own supply chain, producers have no visibility of (or legal right to know) where the product goes so it is not possible to ascertain exact turnover for different parts of Great Britain.

6. Approximately, if known, what proportion of your Scottish annual turnover derives from energy drinks?

V Energy is the only brand in the Lucozade Ribena Suntory portfolio that classifies as a high caffeine energy drink under the current EU definition of “high caffeine” and accounts for █████ of LRS total sales (IRI INT TOTAL MARKET 52W TO

27.10.19). Significantly, we reformulated V Energy to 4.5g of sugar per 100ml in March 2018 and we have not activated any consumer marketing support or activity for the brand in 2018 or 2019.

7. What does this equate to in monetary terms?

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8. Of this, what is the split between physical and online sales?

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1.2 Impact on your business

9. Taken as a whole, how would the proposals impact you, either positively or negatively, in relation to the following (where possible, please provide evidence and quantification of these impacts)?

a) changes in product range	
b) changes in turnover due to change in demand for energy drinks	<p>V Energy is the only brand in our portfolio that will be covered by a high caffeine energy drink sales ban. Given our efforts to ensure it does not appeal to under-16s, both through our Responsible Marketing Code and adherence to UNESDA and BSDA’s codes of practice, we do not believe the sales ban will have an impact on the brand.</p> <p>Our main concern is that a potential ban may unwittingly impact energy brands and drinks not classified as high in caffeine, such as Lucozade Energy and Lucozade Sport, and may accidentally result in them being included in the sales restrictions by retailers – please see answer to question 11 for further details.</p>
c) changes in employment	
d) changes in business model	
e) changes in growth across the UK	
f) any other supply chain impact	
g) any other impact	

10. What could help mitigate any of the impacts outlined above?

--

11. Do you think that there is likely to be any confusion around the brands and products included in this policy?

<p>a) If so, do you think that this confusion will have any impact on your business (or those you represent)?</p>	<p>We are concerned that a potential sales ban may unwittingly impact energy brands and drinks not classified as high in caffeine. Lucozade Energy and Lucozade Sport beverages are not high in caffeine and will therefore not be subject to the ban as currently proposed. However, there is a risk of retailers accidentally restricting their sale as well as misidentification by consumers.</p>
<p>b) What could help mitigate any of the impacts outlined above?</p>	<p>Retailers have systems and processes in place to manage the sale of under-16 age restricted products such as Lottery tickets, petrol and spray paints. Under-16 bans for high caffeine stimulant drinks are also already being effectively operated by large retailers and managed through staff training, point of sale information, EPOS and till system data, as well as Challenge 21 and Challenge 25 procedures.</p> <p>However, smaller retailers may require additional support to become aware of the new legislation, the products that are covered, and any changes that may need to be made. Larger retailers will also require time to update their till systems and train staff.</p> <p>To ensure that energy brands and drinks not classed high in caffeine (such as Lucozade Energy and Lucozade Sport) are not negatively impacted by the high caffeine stimulant drinks sales ban, we would recommend the Scottish Government:</p> <ol style="list-style-type: none"> 1. Is clear in all legislation and future references to the ban that it is referring to 'high caffeine stimulant drinks'. Governments are currently using the terms "high caffeine energy drinks" and "energy drinks" interchangeably which is aiding misunderstanding about what is being proposed. 2. Require manufacturers to place explicit labelling on the age restricted products so small retailers and consumers are clear on what is and what is not included in the ban. High caffeine drinks already have the labelling 'High caffeine content. Not recommended for children or pregnant or breastfeeding women'. However, we believe that this wording should be strengthened and an age limit icon should be added to

	<p>pack on a GB-wide basis empowering rapid choice at point of purchase.</p> <p>3. Publish guidance to further support retailers (particularly small and medium sized retailers) in implementing the ban. This could include providing an indicative list of products that are subject to the sales ban, as well as clear guidance on how to identify products subject to the ban.</p> <p>4. Introduce an implementation period in order for retailers to understand and adhere to the sales ban. Government should engage closely with retailers and relevant trade bodies to understand how long is required, but we would envisage a minimum of 12 months. This would also be a sufficient time frame for on-pack labelling changes.</p>
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1.3 Costs of implementation

12. Would there be any **one-off costs** to you in implementing an age restriction (where possible, please provide evidence and quantification of these impacts)?

a) What would these costs comprise of?	If Scottish Government requires manufacturers to place explicit labelling on age restricted products as we have recommended, we would face one off costs for labelling changes. We envisage this would be in the region of ██████████ to change the one Stock Keeping Unit (SKU) of V Energy that we sell in small volumes across the UK.
b) What aspects of the proposals would lead to these costs?	
c) Would these costs be offset by any savings, if so what would they be?	
d) Any other comments for one-off costs?	

13. What could help mitigate any of the impacts outlined above?

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14. Would there be any **ongoing costs** to you in implementing an age restriction (where possible, please provide evidence and quantification of these impacts)?

<p>a) What would these costs comprise of?</p>	<p>As outlined, we are concerned that a potential sales ban may unwittingly impact energy brands and drinks not classified as high in caffeine. Lucozade Energy and Lucozade Sport beverages are not high in caffeine and will therefore not be subject to the ban as currently proposed. However, there is a risk of retailers accidentally restricting their sale as well as misidentification by consumers.</p> <p>If the Scottish Government fails to adopt our recommendations on how to avoid this from happening (see answer to question 11), we envisage we will have to spend significant time and money educating our customers and consumers that our products are not subject to the ban.</p>
<p>b) What aspects of the proposals would lead to these costs?</p>	
<p>c) Would these costs be offset by any savings, if so what would they be?</p>	
<p>d) Any other comments for ongoing costs?</p>	

15. What could help mitigate any of the impacts outlined above?

We are concerned that a potential sales ban may unwittingly impact energy brands and drinks not classified as high in caffeine. Lucozade Energy and Lucozade Sport beverages are not high in caffeine and will therefore not be subject to the ban as currently proposed. However, there is a risk of retailers accidentally restricting their sale as well as misidentification by consumers.

Retailers have systems and processes in place to manage the sale of under-16 age restricted products such as Lottery tickets, petrol and spray paints. Under-16 bans for high caffeine stimulant drinks are also already being effectively operated by large retailers and managed through staff training, point of sale information, EPOS and till system data, as well as Challenge 21 and Challenge 25 procedures.

However, smaller retailers may require additional support to become aware of the new legislation, the products that are covered, and any changes that may need to be made. Larger retailers will also require time to update their till systems and train staff.

To ensure that energy drinks not classed high in caffeine (such as Lucozade Energy and Lucozade Sport) are not negatively impacted by the high caffeine stimulant drinks sales ban, we would recommend the Scottish Government:

1. Is clear in all legislation and future references to the ban that it is referring to 'high caffeine stimulant drinks'. Governments are currently using the terms "high caffeine energy drinks" and "energy drinks" interchangeably which is aiding misunderstanding about what is being proposed.
2. Require manufacturers to place explicit labelling on the age restricted products so small retailers and consumers are clear on what is and what is not included in the ban. High caffeine drinks already have the labelling 'High caffeine content. Not recommended for children or pregnant or breastfeeding women'. However, we believe that this wording should be strengthened and an age limit icon should be added to pack on a GB-wide basis empowering rapid choice at point of purchase.
3. Publish guidance to further support retailers (particularly small and medium sized retailers) in implementing the ban. This could include providing an indicative list of products that are subject to the sales ban, as well as clear guidance on how to identify products subject to the ban.
4. Introduce an implementation period in order for retailers to understand and adhere to the sales ban. Government should engage closely with retailers and relevant trade bodies to understand how long is required, but we would envisage a minimum of 12 months. This would also be a sufficient time frame for on-pack labelling changes

1.4 Impact on the sector

16. Do you envisage any competition issues for you arising from the proposals as they are set out, including, where applicable, the potential of the legislation to directly or indirectly limit the following (please explain your answer)?

a) the number or range of suppliers	
b) the availability of suppliers to compete	
c) suppliers' incentives to compete vigorously	
d) the choices and information available to consumers	

17. What impact would different regulatory regimes for energy drinks in Scotland and the rest of the UK have on your business – positive, negative or neutral?

a) What would be the impact and why?	<p>While we support clearer labelling of energy drinks in order to minimise consumer and retailer confusion, we believe this should be delivered on a GB-wide basis through coordination of regulation of high caffeine energy drinks between Scotland, England and Wales.</p> <p>Separate labelling regimes across GB will present a significant and unnecessary burden on businesses by</p>
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	fracturing the single market economy we operate in. The financial cost of having to differentiate Scottish SKUs in terms of manufacture, packaging and labelling, transport, warehousing and distribution would be significant and would place huge administrative and resource requirements on business. Separate schemes across GB could prompt decisions on whether to reduce the number of SKUs for individual markets, with a resulting impact on consumer choice.
b) Are there any particular aspects that would cause this impact?	
c) If possible, please quantify the impact.	

18. Do you anticipate any particular impacts on you if the proposed restrictions are, or are not, applied online? Please explain your answer.

19. Once the policy is finalised, how much lead-in time would you require before the policy came into force? Please explain your answer.

The Scottish Government should engage closely with retailers and relevant trade bodies to understand how long is required, but we would envisage a minimum of 12 months. This would also be a sufficient time frame for on-pack labelling changes.

20. Do you have any other comments?

The next section is split by business sector, please complete the section most relevant to you e.g. [retailers](#), [vending](#), [manufacturers](#), [wholesalers / distributors](#), [industry bodies](#).

2. Supplementary questions

2.1 For retailers

1. Do you currently have an age restriction of 16 in place for energy drink sales?

If yes , has this had... (impacts can be positive or negative)	
a) any effect on your turnover?	
b) any impact on your staff?	
c) any other effect on your business?	
If no...	
a) are you able to provide an estimate of the proportion of your income that is derived from sales of energy drinks to under 16s?	
b) do you have concerns about implementing an age restriction?	

2. What could help mitigate any of the impacts outlined above?

--

3. What is the duration of contracts you may have with manufacturers or distributors of energy drinks?

--

4. Do you anticipate any particular challenges for the retail sector, not covered elsewhere? Please provide a quantification of impacts, where possible.

--

2.2 For vending

1. What is the duration of contracts you may have with manufacturers or distributors of energy drinks?

--

2. Are you able to provide an estimate of the proportion of your income is derived from sales of energy drinks to under 16s?

- []
3. For vending machines that young people are able to access, how will the implementation of an age restriction affect your business?

- []
4. Do you anticipate any particular challenges for the vending sector, not covered elsewhere? Please provide a quantification of impacts, where possible.

2.3 For manufacturers

1. What proportion of your energy drink sales are (i) in Scotland, (ii) elsewhere in the UK, (iii) beyond the UK?

Producers can only report to whom they first sold a given product, not where the product is eventually retailed to a consumer. Once a product leaves the producer's own supply chain, producers have no visibility of (or legal right to know) where the product goes so it is not possible to ascertain exact turnover for different parts of Great Britain.

2. What is the duration of any existing contracts you have with retailers for the sales of energy drinks?

3. Are you able to provide an estimate of the proportion of your income is derived from sales of energy drinks to under 16s?

V Energy is the only brand in the Lucozade Ribena Suntory portfolio that classifies as a high caffeine energy drink under the current EU definition of "high caffeine" and accounts for [] of LRS total sales (IRI INT TOTAL MARKET 52W TO 27.10.19). Significantly, we reformulated V Energy to 4.5g of sugar per 100ml in March 2018 and we have not activated any consumer marketing support or activity for the brand in 2018 or 2019.

4. Do you anticipate any particular challenges for the manufacturing sector, not covered elsewhere? Please provide a quantification of impacts, where possible.

2.4 For wholesalers / distributors

1. What proportion of your energy drink sales are (i) in Scotland, (ii) elsewhere in the UK, (iii) beyond the UK?

2. What is the duration of any existing contracts you have with retailers, manufacturers or distributors for the sales of energy drinks?

3. Are you able to provide an estimate of the proportion of your income is derived from sales of energy drinks to under 16s?

4. If you operate both as "Trade to Trade" and "Trade to Public", how will the implementation of an age restriction affect your business?

5. Do you anticipate any particular challenges for the distribution sector, not covered elsewhere? Please provide a quantification of impacts, where possible.

2.5 For industry bodies

1. Are you aware of any additional data on the number of businesses in your sector operating in Scotland?

2. Are you aware of any other relevant data sources that would be useful in assessing the impact of the proposals?

3. Do you see any particular challenges for your sector, not covered elsewhere?

From: [redacted] <[redacted]@agbarr.co.uk>
Sent: 25 February 2020 08:50
To: [redacted]
Subject: Re: BRIA Energy Drinks Discussion

Categories: Energy Drinks

Thanks [redacted]

Hope you are feeling better

Notes seem like a good summary - I would just make 3 small points

E-post tills are increasing in small shops so in terms of implementation this suggests that systems to prompt those selling the drinks to verify age could be put in place relatively easily.

1. the electronic tills are referred to as EPOS
2. small shops are gradually migrating to EPOS tills however I think it might be a while before they all have them so it's a direction of travel rather than something that would be "relatively easy"

"they are aware from their own focus groups held that children buy cheaper (30p or 40p) own brand energy drinks. "

3. I'm not sure our focus groups specifically provided evidence about the cheap energy drinks points - I can check. I think the evidence is a bit more anecdotal than that.

Other than that all fine for me

If there's anything further I can help with please let me know

[redacted]

On Mon, 24 Feb 2020 at 16:56, <[redacted]@gov.scot> wrote:

Hi [redacted],

Thanks for coming in to meet with my colleagues last week and apologies I wasn't in work to meet with you.

I have copied the notes my colleague [redacted] took below, please do let me know if you have any comments at all.

Best wishes,

[redacted]

Restricting Foods Promotions Bill – BRIA – Meeting with AG Barr – 20 February 2020

Attendees:

AG Barr- [redacted]

SG- [redacted], [redacted]

Survey responses

- Rockstar and Irn Bru energy are the main energy drink brands
- Rockstar are an American franchise to which AG Barr have sole distribution rights in the UK
- Irn Bru energy is a new brand that was launched last year. Sales so far have been steady and consistent

Business sales trends and patterns

- AG Barr's business model currently does not sell directly to the end user. Any online sales are through supermarkets or Amazon.
- Their biggest online partner is Amazon, but reiterated this makes up a very small portion of their business

- Scotland makes up approx.40% of their total sales of which approx. 4% are Rockstar drinks sales. They didn't have Irn Bru energy drinks data as this brand was recently launched
- The rest of the UK makes up approx. 60% of their total sales of which approx.12% are Rockstar drinks sales
- AG Barr do supply to vending machines, but it is a very small proportion of the business and it would be hard to quantify energy drinks sales.
- AG Barr are unable to say what impact the voluntary ban has had on sales as this coincided with a drop in sales due to other factors, such as the impact of reformulation and the sugar levy.

Main concerns

AG Barr have no major objections to the introduction of legislation restricting energy drinks sales to under 16 year olds (they currently don't promote these drinks to children and are compliant with the voluntary measures in place).They did however query whether it was needed given that sites where most sales are made are already compliant. AG Barr voiced **two main concerns**:

- **Age restriction** – As a UK business that doesn't operate with a border between Scotland and the rest of the UK, AG Barr would find it helpful to have consistency across the whole of the UK. AG Barr would like to define restricting sales of energy drinks to children under the age of 16 as this is consistent with what is being proposed in England and the widely accepted definition of a child. They also raised concerns about classifying energy drinks in the same restriction category as alcohol and tobacco - which are seen as harmful products. This would raise concerns for them in terms of their reputation with investors and public perceptions if these products are classified the same. They hold a high level of social and environmental responsibility and don't target children in their energy drinks sales. This classification could have an effect on the investment and in valuing stock for the business as a whole if children in this context are defined as under 18.
- **Practicalities of implementation** – AG Barr raised concerns about the implementation of the restrictions if it meant changes to packaging. There are some concerns around the practicality of different labels for the same product and how much that will cost them as a business if there are additional changes to be made. Again, alignment with the rest of the UK and clarity on definitions would help to minimise these costs. If such changes were necessary, AG Barr would expect a 12 month minimum transition period to allow them to run through existing stock, make changes and minimise write off.

Policy implications in general

- AG Barr are content with the current European definition for energy drinks. Their main concern as mentioned above is on labels changes. If the restrictions are mandatory for all businesses, they envisage a level playing field with their competitors and given current voluntary arrangements, would not expect this to have a significant impact, if any on sales. However, if the age were to rise to 18, that could look quite different.
- In the past they collaborated with the British Soft Drinks Association (BDSA) on guidance for retailers. AG Barr currently provide support to their customers in terms of identifying new legislation etc they would expect to do similar when these restrictions become mandatory.
- E-post tills are increasing in small shops so in terms of implementation this suggests that systems to prompt those selling the drinks to verify age could be put in place relatively easily.
- Although they don't have aggregated data on energy drinks sales to children, they are aware from their own focus groups held that children buy cheaper (30p or 40p) own brand energy drinks. Rockstar and Irn Bru energy are more premium products that are more expensive and children aren't their target customer.
- Noted the cumulative effect of the demands currently being placed on the sector (DRS, Sugar levy, packaging, promotions etc) primarily by Government amidst already challenging trading conditions. AG Barr were very proactive in reformulating their drinks to reduce sugar content (this included Rockstar drinks) in response to the sugar levy. Their competitors didn't take this step in reducing sugar content in their drinks, which meant that many customer switched preference to drinks that had more sugar content (suited the taste profile). [redacted].

[redacted]

Policy Officer, Diet Policy

Population Health Directorate | Health Improvement Division

Scottish Government

[redacted], St Andrew's House, Regent Road EH1 3DG

Tel: [redacted]

[redacted]

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[redacted]

Head of Corporate Affairs & Communication

A.G. Barr p.l.c.

Direct Dial : [redacted]

Mobile : [redacted]



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Energy Drinks BRIA – Industry Engagement Questions

We are conducting a Business and Regulatory Impact Assessment (BRIA) on the proposals set out in the Scottish Government consultation, [Ending the sale of energy drinks to children and young people](#).

BRIsAs help to assess the likely costs, benefits and risks of any proposed primary or secondary legislation, voluntary regulation, codes of practice or guidance that may have an impact on the public, private or third sector. This is in line with our Better Regulation agenda, which aims to reduce unnecessary burdens on business by ensuring all regulation follows the principles of being: proportionate, consistent, accountable, transparent and targeted only when needed.

Any information we receive may be subject to the Freedom of Information (Scotland) Act 2002. The Act, which applies to the Scottish Government, provides that any person who requests information from a Scottish public authority which holds it, is entitled to be given that information by the authority. This right is subject to certain conditions and exemptions set out in the Act. This can include restricting the release of commercially sensitive information unless its release is in the public interest.

Responding to the BRIA

It is our intention to collate responses and present an overall report. We understand the scope of the questions may prove difficult to complete – please complete what you can, and let us know if you or your company will not be able to participate.

Please forward your completed response to [REDACTED]@gov.scot by Wednesday 18th December 2019.

Summary of the policy

The following summarises the consultation on [Ending the sale of energy drinks to children and young people](#). You are encouraged to also complete the consultation online. Among other things, the consultation asks for views on whether any places should be considered for exemptions and what support sellers, distributors and manufacturers would need to implement an age restriction effectively.

The primary aim of the policy is to reduce the health risks associated with young people consuming energy drinks. We would also look to the policy to help reduce related health inequalities, including in relation to socioeconomic disadvantage.

We define an energy drinks as any drink, other than tea or coffee, which contains over 150 milligrams of caffeine per litre. These drinks [require a warning label](#) stating “High caffeine content. Not suitable for children or pregnant or breast-feeding women”. This definition excludes sports or isotonic drinks that do not contain high volumes of caffeine.

We are considering applying the restrictions to any place where energy drinks are sold to the public in the course of business. This would apply, among other places, to retail and Out of Home outlets.

Exemptions would apply to locations that are not widely open to, or attended by, young people, for example wholesales outlets where sales are only to trade. We are seeking views on whether we should consider other exemptions, for example, cafeterias and vending machines located in workplaces. The consultation also seeks views on whether, and if so to what extent, restrictions should be applied online.

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Section 1 – [General questions \(all\)](#)

Section 2 – Supplementary questions

2.1 – [for retailers](#)

2.2 – [for vending](#)

2.3 – [for manufacturers](#)

2.4 – [for wholesalers / distributors](#)

2.5 – [for industry bodies](#)

1. General question (all)

If you are responding as a trade association, where applicable, please provide information on behalf of your sector.

1.1 About your business

1. Please describe the nature and scope of your business in Scotland.

Soft drinks manufacturer

2. How many staff do you employ across the UK (by headcount and FTE)?

- Micro (0-9 employee headcount)
- Small (10-49 employee headcount)
- Medium (50-249 employee headcount)
- Large (250+ employee headcount)

c.1,000

3. What proportion of those staff are based in Scotland?

c.50%

4. Do you produce, sell or distribute energy drinks?

Yes

5. What is your total annual turnover in Scotland and what is this as a percentage of your total turnover?

c.£108.5m (2018/19 financial year) – c.39% of total turnover

6. Approximately, if known, what proportion of your Scottish annual turnover derives from energy drinks?

c.4%

7. What does this equate to in monetary terms?

c.£4.5m

8. Of this, what is the split between physical and online sales?

Majority physical 99%+

1.2 Impact on your business

9. Taken as a whole, how would the proposals impact you, either positively or negatively, in relation to the following (where possible, please provide evidence and quantification of these impacts)?

a) changes in product range	We do not market or promote energy drinks to children therefore we expect no material change
b) changes in turnover due to change in demand for energy drinks	As above
c) changes in employment	As above
d) changes in business model	As above
e) changes in growth across the UK	As above
f) any other supply chain impact	None – provided there are no changes required to packaging labelling
g) any other impact	n/a

10. What could help mitigate any of the impacts outlined above?

n/a

11. Do you think that there is likely to be any confusion around the brands and products included in this policy?

a) If so, do you think that this confusion will have any impact on your business (or those you represent)?	We do not anticipate any confusion. Labelling of energy drinks is already clear on caffeine content and that products are not recommended for children
b) What could help mitigate any of the impacts outlined above?	n/a

1.3 Costs of implementation

12. Would there be any **one-off costs** to you in implementing an age restriction (where possible, please provide evidence and quantification of these impacts)?

a) What would these costs comprise of?	Unless labelling changes are required we anticipate no material costs
b) What aspects of the proposals would lead to these costs?	If labelling changes are required this can be extremely costly due to both artwork origination costs (required for every different stock keeping unit) as well as the potential for raw material (cans) and full goods stock write-off e.g. in the event of a “cliff edge” implementation.
c) Would these costs be offset by any savings, if so what would they be?	No
d) Any other comments for one-off costs?	

13. What could help mitigate any of the impacts outlined above?

No mandated change in product labelling. Communication could be done more efficiently and cost effectively at the point of sale

14. Would there be any **ongoing costs** to you in implementing an age restriction (where possible, please provide evidence and quantification of these impacts)?

a) What would these costs comprise of?	Not anticipated
b) What aspects of the proposals would lead to these costs?	n/a
c) Would these costs be offset by any savings, if so what would they be?	n/a
d) Any other comments for ongoing costs?	n/a

15. What could help mitigate any of the impacts outlined above?

n/a

1.4 Impact on the sector

16. Do you envisage any competition issues for you arising from the proposals as they are set out, including, where applicable, the potential of the legislation to directly or indirectly limit the following (please explain your answer)?

a) the number or range of suppliers	Provided all energy drinks are treated equally and there is a level playing field with no exemptions we do not anticipate any competition issues.
b) the availability of suppliers to compete	n/a
c) suppliers' incentives to compete vigorously	n/a
d) the choices and information available to consumers	n/a

17. What impact would different regulatory regimes for energy drinks in Scotland and the rest of the UK have on your business – positive, negative or neutral?

a) What would be the impact and why?	It would be a matter for retailers to “police” any age restrictions at the point of purchase
b) Are there any particular aspects that would cause this impact?	n/a
c) If possible, please quantify the impact.	n/a

18. Do you anticipate any particular impacts on you if the proposed restrictions are, or are not, applied online? Please explain your answer.

No

19. Once the policy is finalised, how much lead-in time would you require before the policy came into force? Please explain your answer.

ONLY IF LABELLING CHANGES REQUIRED : c.3-6 months to allow the run-out of raw materials, finished goods and redesign of artwork

20. Do you have any other comments?

None

The next section is split by business sector, please complete the section most relevant to you e.g. [retailers](#), [vending](#), [manufacturers](#), [wholesalers / distributors](#), [industry bodies](#).

2. Supplementary questions

2.1 For retailers

1. Do you currently have an age restriction of 16 in place for energy drink sales?

If yes , has this had... (impacts can be positive or negative)	
a) any effect on your turnover?	
b) any impact on your staff?	
c) any other effect on your business?	
If no...	
a) are you able to provide an estimate of the proportion of your income that is derived from sales of energy drinks to under 16s?	
b) do you have concerns about implementing an age restriction?	

2. What could help mitigate any of the impacts outlined above?

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3. What is the duration of contracts you may have with manufacturers or distributors of energy drinks?

--

4. Do you anticipate any particular challenges for the retail sector, not covered elsewhere? Please provide a quantification of impacts, where possible.

--

2.2 For vending

1. What is the duration of contracts you may have with manufacturers or distributors of energy drinks?

--

2. Are you able to provide an estimate of the proportion of your income is derived from sales of energy drinks to under 16s?

- [Redacted]
3. For vending machines that young people are able to access, how will the implementation of an age restriction affect your business?

- [Redacted]
4. Do you anticipate any particular challenges for the vending sector, not covered elsewhere? Please provide a quantification of impacts, where possible.

2.3 For manufacturers

1. What proportion of your energy drink sales are (i) in Scotland, (ii) elsewhere in the UK, (iii) beyond the UK?

[Redacted]
Scotland : c.41% ; Rest of UK and International : c.59%

2. What is the duration of any existing contracts you have with retailers for the sales of energy drinks?

[Redacted]
Commercially sensitive information

3. Are you able to provide an estimate of the proportion of your income is derived from sales of energy drinks to under 16s?

[Redacted]
We do not market or promote energy drinks to children. We have no visibility of the end consumer purchasing a drink at a retail outlet

4. Do you anticipate any particular challenges for the manufacturing sector, not covered elsewhere? Please provide a quantification of impacts, where possible.

[Redacted]
Only if labelling changes are required and particularly if different administrations across the UK adopt different age restrictions or mandate different labelling

2.4 For wholesalers / distributors

1. What proportion of your energy drink sales are (i) in Scotland, (ii) elsewhere in the UK, (iii) beyond the UK?

- [Redacted]
2. What is the duration of any existing contracts you have with retailers, manufacturers or distributors for the sales of energy drinks?

3. Are you able to provide an estimate of the proportion of your income is derived from sales of energy drinks to under 16s?

4. If you operate both as “Trade to Trade” and “Trade to Public”, how will the implementation of an age restriction affect your business?

5. Do you anticipate any particular challenges for the distribution sector, not covered elsewhere? Please provide a quantification of impacts, where possible.

2.5 For industry bodies

1. Are you aware of any additional data on the number of businesses in your sector operating in Scotland?

2. Are you aware of any other relevant data sources that would be useful in assessing the impact of the proposals?

3. Do you see any particular challenges for your sector, not covered elsewhere?