

Response to the Department of Health and Social Care's consultation on ending the sale of energy drinks to children

November 2018

Introduction

- 1 This response draws on the conclusions and recommendations of a Nuffield Council on Bioethics report, *Public health: ethical issues*, which considers the ethical and social issues that arise when designing measures to improve public health.¹ Our response sets out the general principles that we believe should underpin public health policy and then focuses particularly on one of the case studies addressed in our report, which discusses a public health approach to obesity.

Background

- 2 Our report takes the position that the state has a duty to provide conditions that allow people to lead a healthy life. Everyone should have a fair opportunity to lead a healthy life, and therefore governments should try to remove inequalities that affect disadvantaged groups or individuals. To support this position, we propose a 'stewardship model' that outlines the ethical principles that should be considered by public health policy-makers, and sets out a series of public health goals (see **Appendix 1** below for a summary of the stewardship model). A key part of this model is the 'intervention ladder' (see **Appendix 2** below, and Box 3.2 in the report) as a way of thinking about the acceptability and justification of different public health policies. Interventions that are higher up the ladder are more intrusive and therefore require a stronger justification.

Response

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

- 3 We suggest that the stewardship-guided state should aim to protect children from harm and provide an environment in which they can lead healthy lives. We therefore welcome the Government's proposed ban on selling high-caffeine energy drinks to children. Our report highlights evidence that shows that children's early diet has a long-term impact on health, and that obesity in childhood is strongly associated with obesity in adulthood. The Department's consultation document also highlights a number of other significant harms to children's health associated with energy drinks.
- 4 We recognise the important voluntary action taken by larger retailers and supermarkets to stop selling energy drinks to under-16s. A great deal can be

¹ Nuffield Council on Bioethics (2007) *Public health: ethical issues*, available at: <http://nuffieldbioethics.org/project/public-health>.

achieved through voluntary initiatives; however, as the Department's consultation document notes, there are still many retailers who sell energy drinks to children and further proportionate intervention is needed. Given the negative impact on health, the state is ethically justified to implement regulation to change this.

Question 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?

Advertising

- 5 Children are especially susceptible to external influences, including marketing by industry. Companies have a corporate social responsibility to ensure that they make provisions for the protection of children in this context. Where they fail to do so, the state could intervene through regulation of the advertising of unhealthy food or drinks, including energy drinks, to children. In our report, we suggest that it would be desirable not to advertise to children foods and drinks high in fat, salt, and sugar by any medium (paragraphs 5.22-3).

Reformulation

- 6 We consider that food businesses have an ethical duty to help individuals to make healthier choices, and therefore they should review the composition of products that they manufacture and the way they are marketed and sold. The Government could do more to encourage energy drink manufacturers to reduce the level of sugar and caffeine in their products through voluntary commitments. Where the market fails to uphold its responsibility, proportionate regulation by the Government is ethically justifiable.

Interventions in schools

- 7 The state has an ethical justification to intervene in schools to achieve a more positive culture towards food, cooking, and physical activity. In addition to a ban on energy drinks, the Government could develop long-term strategies for schools with the aim of preventing obesity, and changing food and exercise culture.

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Appendix 1: The stewardship model

Acceptable public health goals include:

- reducing the risks of ill health that result from other people's actions, such as drink-driving and smoking in public places
- reducing causes of ill health relating to environmental conditions, for instance provision of clean drinking water and setting housing standards
- protecting and promoting the health of children and other vulnerable people
- helping people to overcome addictions that are harmful to health or helping them to avoid unhealthy behaviours
- ensuring that it is easy for people to lead a healthy life, for example by providing convenient and safe opportunities for exercise
- ensuring that people have appropriate access to medical services
- reducing unfair health inequalities

At the same time, public health programmes should:

- not attempt to coerce adults to lead healthy lives
- minimise the use of measures that are implemented without consulting people (either individually or using democratic procedures)
- minimise measures that are very intrusive or conflict with important aspects of personal life, such as privacy

Appendix 2: The intervention ladder

Eliminate choice: regulation in such a way as to entirely eliminate choice, for example through compulsory isolation of patients with infectious diseases.
Restrict choice: regulation in such a way as to restrict the options available to people with the aim of protecting them, for example removing unhealthy ingredients from foods, or unhealthy foods from shops or restaurants.
Guide choice through disincentives: fiscal and other disincentives can be put in place to influence people not to pursue certain activities, for example through taxes on cigarettes, or by discouraging the use of cars in inner cities through charging schemes or limitations of parking spaces.
Guide choices through incentives: regulations can be offered that guide choices by fiscal and other incentives, for example offering tax-breaks for the purchase of bicycles that are used as a means of travelling to work.
Guide choices through changing the default policy: for example, in a restaurant, instead of providing chips as a standard side dish (with healthier options available), menus could be changed to provide a more healthy option as standard (with chips as an option available).
Enable choice: enable individuals to change their behaviours, for example by offering participation in an NHS 'stop smoking' programme, building cycle lanes, or providing free fruit in schools.
Provide information: inform and educate the public, for example as part of campaigns to encourage people to walk more or eat five portions of fruit and vegetables per day.
Do nothing or simply monitor the current situation