

C06/2018



**Command Paper on a draft Bill to make
provision for offences relating to the sale of
energy drinks, and to provide for the enforcement
of those offences, and for connected purposes.**

**Presented to Parliament by
the Minister with responsibility for Health, Care and Justice.**

by Command of Her Majesty

10th December 2018

1. Draft Bill

2. Draft Explanatory Memorandum

Comments on this Command Paper should be sent by email to command.papers@gibraltar.gov.gi or delivered to –

Command Papers Consultation c/o Karl Tonna, Ministry of Health Care and Justice, Zone 1, Level 7, St Bernard's Hospital, Harbour Views Road, Gibraltar, no later than 24th December 2018.

Any comments received later than 24th December 2018 may not be taken into account for the purposes of the relevant consultation.

BILL

FOR

AN Act to make provision for offences relating to the sale of energy drinks, and to provide for the enforcement of those offences, and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Energy Drinks (Prohibition) Act.

Commencement.

2. This Act comes into operation on the day of publication.

Interpretation

3. In this Act—

“EEA state” means a State that is a party to the European Economic Area Agreement;

“energy drink” has the meaning given in section 4;

“identity card” means—

(a) an identity card or civilian registration card issued under the Civilians Registration Act; or

(b) an identity card issued by an EEA state;

“Minister” means the Minister with responsibility for Health;

“premises” includes any place and any vehicle, vessel, aircraft, stall or moveable structure;

“sell” includes offer for sale.

Energy drink.

4.(1) In this Act “energy drink” means any liquid intended for human consumption, other than tea or coffee, that contains over 150 milligrams of caffeine per litre.

(2) The Minister may by regulations amend subsection (1).

Prohibition on the sale of energy drinks to persons aged under 16.

5.(1) Any person who sells an energy drink to a person under the age of 16 years (the “relevant person”) is guilty of an offence and is liable on summary conviction to a fine up to level 3 on the standard scale.

(2) It is a defence for a person charged with the commission of an offence under this section by reason of his own conduct to prove that—

- (a) he believed that the relevant person was aged 16 or over;
- (b) the relevant person produced as evidence of his age—
 - (i) a passport; or
 - (ii) an identity card; and
- (c) that evidence would have convinced a reasonable person.

(3) Where a person is charged with an offence under this section by reason of the act or default of some other person, it is a defence that he exercised all due diligence to avoid committing it including the training, monitoring and supervision of staff.

Notice in premises where energy drinks are sold.

6.(1) A notice displaying the following statement—

“It is illegal to sell energy drinks to anyone under the age of 16.”

shall be exhibited at every premises in which energy drinks are sold, and shall be exhibited in a prominent position where the statement is readily visible to persons at the point of sale of the energy drink.

(2) The dimensions of the notice to be exhibited in accordance with subsection (1) shall be at least 297 millimetres by 420 millimetres and the statement shall be such that no character shall be less than 36 millimetres high.

Failure to comply with section 6.

7.(1) Where—

- (a) any person carries on a business involving the sale of energy drinks at any premises; and
- (b) no notice is exhibited at those premises in accordance with section 6; or
- (c) the notice exhibited does not conform with the requirements of section 6,

that person shall be guilty of an offence and liable on summary conviction to a fine up to level 2 on the standard scale.

(2) Where any such offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Prohibition of energy drinks in vending machines.

8.(1) Where an energy drink is offered for sale or sold by a vending machine the owner of that machine commits an offence and is liable on summary conviction to a fine up to level 3 on the standard scale.

(2) Where an offence under subsection (1) has been committed, the following people may each be proceeded against for the purposes of this Act—

- (a) operator of the vending machine;
- (b) owner of the premises where the vending machine is located;
or
- (c) occupier of the premises where the vending machine is located.

(3) Where any such offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Draft

Explanatory Memorandum

This Act provides for the prohibition on the sale of energy drinks to persons aged under 16.