Citizen Participation and Public Petitions Committee

3rd Meeting, 2022 (Session 6), Wednesday 23 February 2022

PE1919: Ban the sale of high caffeine products to children for performance enhancement

Note by the Clerk

Petitioner	Ted Gourlay
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to ban the sale of fast release caffeine gum to under 18s for performance enhancement due to risk of serious harm.
Webpage	https://petitions.parliament.scot/petitions/PE1919

Introduction

1. This is a new petition that was lodged on 11 January 2022.

2. The petition seeks to ban the sale of high performance caffeine products to children. The petitioner advises that fast release caffeine gum in particular, has no legal age restriction for sales. The petitioner is concerned that these products could be harmful if used by Under 18s and particularly those with undiagnosed underlying health conditions. A petition summary briefing can be found at **Annexe A.**

3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B.**

4. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected to collect this information. 65 signatures have been received.

5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.

6. A submission has been provided by the petitioner. This is included at **Annexe D**.

Action

The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

Annexe A

PE1919 : Ban the sale of high caffeine products to children for performance enhancement

Petitioner
Ted Gourley

Date Lodged:
11/1/22

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to ban the sale of fast release caffeine gum to under 18s for performance enhancement due to risk of serious harm.

Previous action

In my capacity as an athletics coach at Giffnock North AC I raised concerns with UK and Scottish Ministers, Scottish Government officials, MSPs and Senior Executives at sportscotland, UK Athletics, Scottish Athletics and Parkrun.

No action was taken as the gum is legal with no age restriction on purchasing it. The Children Commissioner's office has passed on concerns about high strength caffeine gum to Government Officials and suggested I consider the Scottish Parliament's petitions process.

Background information

European Food Standards Agency advise single doses of caffeine >3mg/Kg could compromise the cardiovascular system. There have been sudden cardiac deaths at races where caffeine gum was promoted although there were no investigations of any potential link.

Both Scottish Athletics and sportscotland warned of health risks particularly for U18s with undiagnosed medical issues.

The charity Cardiac Risk in Young state 1 in 300 young people have undetected life-threatening heart conditions. In the UK every week 12

apparently fit young athletes die of undiagnosed cardiac conditions.

The sale of caffeine gum to U18s may well be a violation of the UN Convention on Rights of the Child, a treaty ratified by the government.

Article 3 - “the best interests of a child should be a primary consideration”.

Article 19 – all measures must be taken “to protect the child from all forms of physical or mental violence, injury or abuse”.

Annexe B

SPICe The Information Centre
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition PE1919: Ban the sale of high caffeine products to children for performance enhancement, lodged by Ted Gourlay

Brief overview of issues raised by the petition

Caffeine acts as a stimulant on the human central nervous system. The effects of caffeine include an increased level of alertness but it can also induce unwanted effects such as irregular heart rhythms and difficulty sleeping.

Caffeine has been shown to enhance exercise performance, including improved muscle endurance, strength and speed. As a result, some athletes have been known to supplement their diet with caffeine, including caffeinated gum.

However, the petition raises concerns about the impact of products like caffeinated gum on young people who take them to enhance sporting performance. These concerns include a potential increased risk of cardiac death.

The European Food Safety Authority (EFSA) published a 'Scientific Opinion' in 2015 on the safety of caffeine which concluded the following in relation to cardiac risk:

> "A single dose of 200 mg of caffeine consumed one to two hours pre-exercise significantly increases [Blood Pressure] during resistance training in caffeine-naive subjects as well as in habitual coffee consumers after 24–48 hours of caffeine

> withdrawal. A single dose of 200 mg of caffeine also decreases [Myocardial Blood Flow] if consumed approximately one hour prior to endurance exercise (i.e. when the BP-raising effect of caffeine reaches its peak). Although such changes could increase the risk of acute cardiovascular events in subjects with an increased risk of [Cardio Vascular Disease] (e.g. with underlying hypertension and/or advanced atherosclerosis), the Panel considers the effect to be of low clinical relevance for healthy individuals in the general population under normal environmental conditions."

However, it does go on to say that higher doses (>3mg per kg body weight) **could** lead to prolonged physical exercise that might compromise the cardiovascular system and/or musculoskeletal system. In relation to children and adolescents, EFSA could not derive a safe caffeine intake due to insufficient information on the link between caffeine intake and health outcomes. However, it proposed that the safe limit derived for adults (3mg per kg of bodyweight per day) may also apply to children given that their body's ability to clear caffeine from the blood is at least that of adults.

There are currently no statutory restrictions on the availability of any caffeine products in Scotland, including caffeinated gum. However, there have been concerns about the consumption of energy drinks by young people and there are now several non-statutory policies in place. These include a ban on the sale of energy drinks on NHS sites, schools and local authority sites.

Some retailers also operate a voluntary ban on the sale of energy drinks to under 16s.

The Scottish Government has not taken any action around caffeinated gum but it has consulted on the sale of energy drinks to young people. This includes the application of a statutory age restriction.

The Scottish Government is currently considering the responses to the consultation and its subsequent policy response.

Kathleen Robson
Senior Researcher
19/01/2022

Annexe C

Scottish Government submission of 19 January 2022

PE1919/A – Ban the sale of high caffeine products to children for performance enhancement

I write in response to your email of 17 December 2021 on behalf of the Citizen Participation and Public Petitions Committee with regard to Petition PE1919 which states the following:

Calling on the Scottish Parliament to urge the Scottish Government to ban the sale of fast release caffeine gum to under 18s for performance enhancement due to risk of serious harm.

The Scottish Government's response to the petition is set out below, reflecting the petitioner's focus on caffeinated chewing gum.

Scottish Government's energy drinks consultation

We consulted on Ending the sale energy drinks to children and young people from December 2018 – February 2019. This fulfilled a commitment in our 2018 Diet and Healthy Weight Delivery Plan. The consultation paper's focus was on energy drinks. It stated (Annex B, paragraph 7):

> We know that young people consume caffeine from other dietary sources. However, it would take a large amount of chocolate to consume the same level of caffeine as in one can of energy drink. In addition, there is no evidence that young people overconsume caffeine from other caffeinated foods or drinks.

That said, the consultation paper did provide an opportunity for respondents to raise concerns in relation to other food and drink products, such as caffeine gum. As part of the consultation, we asked for views on our proposals and thoughts on any gaps, issues or unintended consequences. We also invited views from a range of organisations and individuals to ensure we identified the best actions, if any, to take forward.

We are currently considering responses to the consultation and evidence. We will publish an independent consultation analysis report and set out our policy response in due course. This work has been delayed due to the impact of the COVID-19 pandemic and other competing priorities.

We will make the committee aware of any findings related to caffeinated chewing gum upon the publication of the consultation analysis report.

Labelling rules for high caffeine drinks and food

Regulation (EU) No 1169/2011 (retained) on the provision of food information to consumers requires specific labelling for high caffeine drinks and food to help highlight the existence of caffeine in the product where, unlike coffee or tea, people may not expect it to be present. Chewing gum falls under the definition of food in food law and when placed on the market as such it will be regulated under food law. There are no legislative limits on the amount of caffeine that may be present in, or added to, food or drink. Further information on these rules are set out in the **Annex**.

Caffeine as performance enhancer

Caffeine for in-competition use remains on the World Anti-Doping Agency (WADA) Monitoring Program in 2022. As set out in the World Anti-Doping Code, caffeine is not on the Prohibited List, but WADA wishes to monitor in order to detect potential patterns of misuse in sport.

Caffeine safety

In May 2015, the European Food Safety Authority (EFSA) published its Scientific Opinion on the safety of caffeine. The opinion estimates acute and daily intakes that raise no safety concerns for the general healthy *population* and in specific groups such as children, adolescents, adults, the elderly, pregnant and lactating women, and people performing physical exercise.

It advised that single doses of caffeine up to 200mg from all sources do not raise safety concerns for the generally healthy adult population. With the exception of pregnant women, daily intakes of caffeine up to 400mg do not raise safety concerns for healthy adults.

Extensive evidence considered by (EFSA) included studies on the effect of caffeine when combined with exercise. This did not raise safety concerns for healthy adults and only pregnant women are advised to moderate their intake of caffeinated products.

For children and adolescents, EFSA's opinion explains that there is insufficient information available to set a safe caffeine intake. However, EFSA considered that due to children and adolescents processing caffeine at least at the same rate as adults, the single doses of no concern for adults may also be applied to children as a daily limit. This is about 3mg of caffeine per kilo of body weight per day.
It should be noted that EFSA did not consider the possible adverse effects of caffeine:

- in groups of the population affected by a disease or medical condition
- in combination with medicines and/or drugs of abuse
- in combination with alcohol doses which, by themselves, pose a risk to health (e.g. during pregnancy, binge drinking).

Further general information from EFSA on caffeine can be found here.

View on sudden cardiac deaths in Scotland

Direct evidence on caffeinated gum and heart arrythmia is limited at present. We will continue to keep any emerging evidence under review.

We continue to monitor and consider all available evidence and recommendations from the UK National Screening Committee (UK NSC), an independent expert advisory group, which inform decisions taken across the UK on screening programmes. The last UK NSC review of a potential population screening programme for Sudden Cardiac Death concluded in December 2019 and it does not currently recommend that a screening programme be carried out.

The next review of this recommendation is estimated to be completed in 2022 to 2023. Further information about the UK NSC's current recommendation, including the evidence used for the review is available online.

United Nations Convention on the Rights of the Child (UNCRC)

We are committed to delivering a proactive culture of everyday accountability for children's rights across public services in Scotland. The UNCRC was ratified at a UK level in 1991. On 16 March 2021, the Scottish Parliament unanimously passed the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill ("the Bill"), which will enable children, young people and their representatives to enforce their rights in court. On 6 October 2021, the UK Supreme Court judgment on the Bill found each of the provisions referred by the UK Law Officers to be outwith the legislative competence of the Scottish Parliament. While the judgment means that the Bill could not receive Royal Assent in its current form, the majority of work in relation to implementation of the UNCRC can proceed and is continuing.

Previous Petition on energy drinks

On June 23 2017 Scottish Government officials responded to petition PE1642 calling on a ban on the sale of caffeinated energy drinks to children under 16.

I hope the Committee finds this information helpful.

Annexe D

Petitioner submission of 14 February 2022 PE1919/B - Ban the sale of high caffeine products to children for performance enhancement

As a runner I was shocked to learn of clinical trials, carried out in 2016, using high strength caffeine gum for performance enhancement.

In email correspondence, Dr Linda De Caestecker, Director of Public Health Greater Glasgow and Clyde, raised concerns recommending the trials focus on short-term and long term-health risks, but I understand this did not happen.

One running event organiser's website states "it is practical and easy to chew a few pieces of gum prior to running so it's maybe something runners wishing to improve their performance could easily use if it is shown to be effective".

I understand that participants in some running events were given 3 pieces of high strength caffeine gum (equivalent to taking 3 – 4 cans of energy drink) or 6 Caffeine Tablets) as part of the trials.

Mark Munro, CEO Scottish Athletics (SA), took a strong stance against high strength caffeine gum due to the health risks and expressed concerns about children overdosing

Just a few days after SA confirmed their position I heard that it was handed out to hundreds of runners including children as young as 15 years of age at a 10K.

Following that incident SA asked me to help write a caffeine paper which is available on their website recommending athletes do not use caffeine. I expressed concerns about amendments saying runners should trial caffeine in training before taking it in competition.

One high strength caffeine gum promoted to runners for performance enhancement has a recommended daily dose on the label of 400mg which is four times the typical safe daily dose for U18s.

In 2021, I understand that UKA and other national sporting bodies endorsed caffeine gum in national advertising campaigns. This could be seen a green light to clubs, coaches and athletes to use it for performance enhancement.

I would highlight Irish Cycling banned the promotion of caffeine products at junior races due to this incident in 2016. Youth cyclists fall ill from caffeine products

Kirsten Oswald MP wrote to the UK and Scottish Ministers of Sport. Jackson Carlaw MSP indicated he would raise a parliamentary question to get it on the agenda of the Scottish Parliament.

I believe that East Ren Council has expressed concerns about caffeine gum with one senior staff member suggesting they may consider enforcement action if it is handed out or may even refer it to the Procurator Fiscal if anyone is harmed at events where it's given out.

The sale of energy drinks to U16s is banned in leisure centres so councils should be consulted on the use of caffeine gum at events in council spaces and facilities.

During a race your body is already under significant additional stress so high strength caffeine gum could increase the risk of a heart attack.

I would request the Scottish Parliament Information Centre (SPICe) and Scottish Government consider these recommendations from the American College of Sports Medicine.

In 2013 I understand that Mars withdrew caffeine gum due to concerns about health risks. It was relaunched in 2017 but it was only sold to adults to stay alert and not sold for performance enhancement. The dose per piece (40mg) is less than half the dose of high strength gum sold to athletes (100mg).

I understand that Sportscotland unreservedly condemns the use of performance enhancing drugs and that it has recommended clubs and organisations risk assess caffeine gum and have robust child safeguarding procedures and policies to cover it.

High strength caffeine gum is not currently on WADA's banned list. However, in considering the best interests of the child principle under Article 3 UN Convention on the Rights of the Child (UNCRC) it may well meet WADA's criteria for being banned.

I would request the petition's committee seek an expert opinion from the Children's Commissioner of Scotland on whether it violates the rights of a child to health.

According to NSPCC guidelines on 'Child Abuse in Sport' it could be considered a form of physical abuse to encourage a child to use substances such as caffeine gum.

The government's submission refers to EFSA studies on the effects of caffeine with exercise. In considering the health of a child the government should ensure that the research involved trials a) using the maximum recommended safe doses of high caffeine gum b) monitor those doses on people who had already taken caffeine from other sources c) monitor people who are not trained but the types of recreational runner of all ages who may wish to improve their PB in a 5K and d) monitor effects on their heart.

If high strength caffeine gum is potentially harmful when combined with exercise Food Standards should insist the labelling a) has clear warnings with maximum recommended safe single and cumulative doses for different at-risk groups b) prohibit the sale to children and young people.