

REPORT TO: ENVIRONMENT COMMITTEE – 8th DECEMBER 2014

REPORT ON: THE SCOTTISH GOVERNMENT’S CONSULTATION ON ELECTRONIC CIGARETTES AND STRENGTHENING TOBACCO CONTROL IN SCOTLAND

REPORT BY: DIRECTOR OF ENVIRONMENT

REPORT NO: 460-2014

1.0 PURPOSE OF REPORT

- 1.1 To seek Committee approval for the Council's proposed response to the above Scottish Government's consultation exercise.

2.0 RECOMMENDATIONS

- 2.1 It is recommended that Committee approves the attached response and remits the Director of Environment to submit this to the Scottish Government accordingly.

3.0 FINANCIAL IMPLICATIONS

- 3.1 There are no financial implications arising from this report.

4.0 MAIN TEXT

- 4.1 The Scottish Government are currently consulting on a range of potential measures for the sale and use of electronic cigarettes and strengthening tobacco control in Scotland.
- 4.2 The consultation is seeking views from a wide range of interested stakeholders and the general public on;
- the introduction of control over the sale and advertising of e-cigarettes;
 - a ban on smoking in cars in the presence of children under 18 and introducing smoke-free children and family areas; and
 - smoke-free NHS grounds.
- 4.3 The Scottish Government is working towards a tobacco free Scotland by 2034 and this consultation seeks views on whether or not the proposed measures will strengthen tobacco control in Scotland.
- 4.4 The Scottish Government invited responses to the consultation by 2nd January 2015. Appendix 1 sets out the proposed responses to the consultation questions posed.

5.0 POLICY IMPLICATIONS

- 5.1 This report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-poverty, Equality Impact Assessment and Risk Management. There are no major issues.

6.0 CONSULTATIONS

- 6.1 The Chief Executive, Director of Corporate Services, Head of Democratic and Legal Services and Director of City Development have all been consulted in relation to this report.

7.0 BACKGROUND PAPERS

- 7.1 None

Ken Laing
Director of Environment

Andy Malcolm
Head of Policy & Performance

17th November 2015

CONSULTATION QUESTIONS

Age restriction for e-cigarettes

1. Should the minimum age of sale for e-cigarette devices, refills (e-liquids) be set at 18?

Yes ☒ No ☐

2. Should age of sale regulations apply to:

a. only e-cigarette devices and refills (e-liquids) that contain nicotine or are capable of containing nicotine, or

b. all devices / refills (e-liquids) regardless of whether they contain or are capable of containing nicotine?

a ☐ b ☒

3. Whom should the offence apply to:

a. the retailer selling the e-cigarette a ☒

b. the young person attempting to purchase the e-cigarette b ☐

c. both c ☐

4. Should sales of e-cigarettes devices and refills (e-liquids) from self-service vending machines be banned?

Yes ☒ No ☐

5. Should a restriction be in place for other e-cigarette accessories?

Yes ☒ No ☐

6. If you answered "yes" to question 5, which products should have restrictions applied to them?

All accessories which are intended specifically for use with e-cigarettes

Proxy purchase for e-cigarettes

7. Should the Scottish Government introduce legislation to make it an offence to proxy purchase e-cigarettes?

Yes ☒ No ☐

Domestic advertising and promotion of e-cigarettes

8. Should young people and adult non-smokers be protected from any form of advertising and promotion of e-cigarettes?

Yes ☒ No ☐

9. In addition to the regulations that will be introduced by the Tobacco Products Directive do you believe that the Scottish Government should take further steps to regulate domestic advertising and promotion of e-cigarettes?

Yes ☒ No ☐

10. If you believe that regulations are required, what types of domestic advertising and promotion should be regulated?

a. Bill boards ☒

b. Leafleting ☒

c. Brand-stretching (the process of using an existing ☒

brand name for new products or services that may not seem related)

d. Free distribution (marketing a product by giving it away free) ☒

e. Nominal pricing (marketing a product by selling at a low price) ☒

f. Point of sale advertising (advertising for products and services

at the places where they were bought) ☒

g. Events sponsorship with a domestic setting ☒

11. If you believe that domestic advertising and promotion should be regulated, what, if any, exemptions should apply?

There should be no exemptions on the use of e-cigarettes or other similar products. The controls should be consistent with the restrictions on smoking. There is a need to uphold the gains achieved in the current smoking restrictions and reduce the risk of making smoking attractive to children. This is core to strategies such as Getting it Right for Every Child.

12. Are you aware of any information or evidence that you think the Scottish Government should consider in relation to regulating domestic advertising in relation to impacts on children and adults (including smokers and non-smokers)?

In Dundee smoking remains a major health problem. The results of the Annual Citizens Survey 2013 shows there has been an increase in the proportion of participants who said that they currently smoke from 22% in 2012 to 26% in 2013.

Those who lived in the most deprived areas were most likely to have said they smoked (38%) than those who lived in all other areas (17%).

The success of the current smoking controls should be sufficient evidence. These controls made smoking in closed public spaces socially unacceptable. E-cigarettes need to be

similarly controlled. Advertisers should be prevented from undermining existing tobacco controls by reinforcing the normalcy of smoking behaviour by making the use of E-cigarettes seem attractive.

NHS Health Scotland have adopted the following policy:-“ Restrictions on the use of e-cigarettes and other smoking simulator products in public places that resemble cigarettes should be consistent with restrictions to smoking (legislation and policies). Such measures would seek to uphold rather than undermine current smoking restrictions, reduce the risk of role-modelling of smoking to children, and support the precautionary principle.”

The Scottish Government will be able to access a wide range of research some of which doubts whether E-cigarettes are effective in reducing tobacco smoking. According to some research ‘vaping’ releases volatile organic compounds and ultrafine particles into the indoor environment and that the actual health impact is said to be unknown.

Local authorities have a shared duty with health boards to work in partnership to improve public health.

Dundee City Council supports the precautionary principle adopted by our partners.

13. Are you aware of any information or evidence that you think the Scottish Government should consider in relation to regulating domestic advertng in relation to impacts on business, including retailers, distributors and manufacturers?

Any impacts are best assessed by business.

Inclusion of electronic cigarettes on the Scottish Tobacco Retailer Register

14. Do you agree that retailers selling e-cigarettes and refills should be required to register on the Scottish Tobacco Retailers Register?

Yes ☒ No ☐

15. Do you agree that the offences and penalties should reflect those already in place for the Scottish Tobacco Retailers Register?

Yes ☒ No ☐

16. If you answered ‘no’, to question 15, what offences and penalties should be applied?

E-cigarettes – use in enclosed public spaces

17. Do you believe that the Scottish Government should take action on the use of e-cigarettes in enclosed public spaces?

Yes ☒ No ☐

18. If you answered 'yes' to Question 17, what action do you think the Scottish Government should take and what are your reasons for this?

As stated previously current smoking controls should not be undermined by simulated smoking through E-cigarettes. For practical purposes the restrictions should be the same as for smoking. It is difficult to visually distinguish between tobacco smoke and the vapour from E-cigarettes. The public support for the smoking ban was not entirely about health risk to the smoker and the passive smoker.

19. If you answered, 'no' to Question 17, please give reasons for your answer.

20. Are you aware of any evidence, relevant to the used of e-cigarettes in enclosed spaces, that you think the Scottish Government should consider?

As stated in the answer to Questions 12 and 18, the main evidence is the success of existing smoking controls in changing smokers' habits to either smoke less or smoke outwith enclosed spaces. Other evidence sources are referred to in the answer to Question 18.

Smoking in cars carrying children aged under 18

21. Do you agree that it should be an offence for an adult to smoke in a vehicle carrying someone under the age of 18?

Yes ☒ No ☐

22. Do you agree that the offence should only apply to adults aged 18 and over?

Yes ☐ No ☒

23. If you answered 'no' to Question 22, to whom should the offence apply?

The risk of harm to the person under 18 remains the same regardless of the age of the smoker. Smoking exerts strong peer pressure on young people. A young person sharing a vehicle with peers who are smoking will be reluctant to ask for cigarettes to be extinguished. Making this an offence will re-enforce the message that it is unreasonable for a smoker to expose someone else to a health risk in such a confined space.

24. Do you agree that Police Scotland should enforce this measure?

Yes ☒ No ☐

25. If you answered 'no' to Question 24, who should be responsible for enforcing this measure?

26. Do you agree that there should be an exemption for vehicles which are also people's homes?

Yes ☐ No ☒

27. If you think there are other categories of vehicle which should be exempted, please specify these?

None

28. If you believe that a defence should be permitted, what would a reasonable defence be?

In general there should be no defence provided the government effectively promotes the new legislation. The only possible defence could be proving that no other person was exposed to the risk of harm.

Smoke-free (tobacco) NHS grounds

29. Should national legislation be introduced to make it an offence to smoke or allow smoking on NHS grounds?

Yes ☒ No ☐

30. If you support national legislation to make it an offence to smoke on NHS grounds, where should this apply?

- a. All NHS grounds (including NHS offices, dentists, GP practices) a ☒
- b. Only hospital grounds b ☐
- c. Only within a designated perimeter around NHS buildings c ☐
- d Other suggestions, including reasons, in the box below

None

31. If you support national legislation, what exemptions, if any, should apply (for example, grounds of mental health facilities and / or facilities where there are long-stay patients)?

There should be a presumption that there are no exemptions. However the NHS and other responding organisations may have examples where limited exemptions for clinical reasons may be appropriate.

32. If you support national legislation, who should enforce it?

Local authorities should enforce the legislation.

33. If you support national legislation, what should the penalty be for non-compliance?

The penalties should be the same as the ones in place for breaching the existing smoking legislation

34. If you do not support national legislation, what non-legislative measures could be taken to support enforcement of, and compliance with, the existing smoke-free grounds policies?

Smoke-free (tobacco) children and family areas

35. Do you think more action needs to be taken to make children's outdoor areas tobacco free?

Yes ☒ No ☐

36. If you answered 'yes' to Question 35, what action do you think is required:

a. Further voluntary measures at a local level to increase the number of smoke-free areas

a ☐

Introducing national legislation that defines smoke-free areas across Scotland

b ☒

c. That the Scottish Government ensures sufficient local powers to allow decisions at a local level as to what grounds should be smoke-free

c ☐

d. Other actions. Please specify in the box below

37. If you think action is required to make children's outdoor areas tobacco-free, what outdoor areas should that apply to?

Any national legislation will need to define smoke free areas carefully. Many play parks are already fenced to prevent the entry of dogs and defining these as smoke free is straight forward. Areas designed for use by children such as play parks, skate parks etc. should be included.

Age verification policy 'Challenge 25' for the sale of tobacco and electronic cigarettes

38. Do you agree that retailers selling e-cigarettes, refills and tobacco should be required by law to challenge the age of anyone they believe to be under the age of 25?

Yes ☒ No ☐

39. Do you agree that the penalties should be the same as those which are already in place for selling tobacco to someone under the age of 18?

Yes ☒ No ☐

Unauthorised sales by under 18 year olds for tobacco and electronic cigarettes

40. Do you agree that young people under the age of 18 should be prohibited from selling tobacco and non-medicinal e-cigarettes and refills unless authorised by an adult?

Yes ☒ No ☐

41. Who should be able to authorise an under 18 year old to make the sale, for example, the person who has registered the premises, manager or another adult working in the store?

The supervisor or duty manager.

42. Do you agree with the anticipated offence, in regard to:

a. the penalty

a ☒

b. the enforcement arrangements

b ☒

Equality Considerations

43. What issues or opportunities do the proposed changes raise for people with protected characteristics (age; disability; gender reassignment; race; religion or belief; sex; pregnancy and maternity; and sexual orientation)?

Negative impacts are not anticipated. On the contrary positive opportunities for health are apparent. It is assumed that the Scottish Government will carry out a full equalities impact assessment on the proposed changes.

44. If the proposed measures are likely to have a substantial negative implication for equality, how might this be minimised or avoided?

45. Do you have any other comments on or suggestions relevant to the proposals in regard to equality considerations?

No further comments

Business and Regulatory Impacts Considerations

46. What is your assessment of the likely financial implications, or other impacts (if any), of the introduction of each of these proposals on you or your organisation?

Local authorities will have a key role in implementing these proposals and any support from Scottish Government would be welcome. These proposals are the essence of preventative spends. Investment now can lead to substantial health gains in the future and a consequent reduction in the cost of ill health caused by smoking. It is assumed that SG will be responsible for the major promotional campaigns and standardise literature for local use. This would be consistent with a number of previous and existing major government policies.

Increased staff costs for monitoring and enforcing the policy are likely.

47. What (if any) other significant financial implications are likely to arise?

Additional signs and amendments to existing public notices will be required

48. What lead-in time should be allowed prior to implementation of these measures and how should the public be informed?

Eighteen months to two years would be reasonable.

49. Do you have any other comments on or suggestions relevant to the proposals in regard to business and regulatory impacts?

None

As a party to the World Health Organization's Framework Convention on Tobacco Control (FCTC), Scotland has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To meet this obligation, we ask all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. We will still carefully consider all consultation responses from the tobacco industry and from those with links to the tobacco industry and include them in the published summary of consultation responses.

Dundee City Council does not receive funding from the tobacco industry directly or indirectly.