

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

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

c. both

a ☐
b ☐
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?

Cartridges and pre-filled cartridges; tanks, atomisers, cartomisers and clearomisers; e-liquids and diluents; variable voltage kits, pass-throughs and drop in modules; coils; drip tips; and e-cigarette wicking materials. In recognition of the fact that e-cigarettes and their modifiable variants are a rapidly evolving market the restrictions should have scope to add new accessories as they become available.

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 | a <input checked="" type="checkbox"/> |
| b. Leafleting | b <input checked="" type="checkbox"/> |
| c. Brand-stretching (the process of using an existing brand name for new products or services that may not seem related) | c <input checked="" type="checkbox"/> |
| d. Free distribution (marketing a product by giving it away free) | d <input checked="" type="checkbox"/> |
| e. Nominal pricing (marketing a product by selling at a low price) | e <input checked="" type="checkbox"/> |
| f. Point of sale advertising (advertising for products and services at the places where they were bought) | f <input type="checkbox"/> |
| g. Events sponsorship with a domestic setting | g <input checked="" type="checkbox"/> |

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

There should be an exemption to allow current smokers to be made aware of products which are less harmful to use than lit tobacco. Such products could be advertised, for example, at the point of sale of tobacco with an emphasis on informing smokers on the benefits of switching away from tobacco use. However, regulations should be used to promote cessation rather than recreational or dual use, and to stop the uptake of smoking among young people.

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)?

Comments

13. 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 business, including retailers, distributors and manufacturers?

No. There is currently very little reliable information about the size and nature of the retail environment for e-cigarettes.

The companies selling e-cigarettes have a clear commercial interest to expand their market beyond existing smokers into the wider population, especially the next generation. Tobacco companies in particular are a growing force in the e-cigarette market and have experience of the profits to be had in creating a market for addictive products. Whilst future profits will be limited by seeking to restrict e-cig use to current smokers this remains a valid public health goal.

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?

Comments

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?

Comments

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

A legislative ban on using e-cigarettes in enclosed public places should require the same established evidence base which underpinned legislation for smokefree public spaces. This is not the situation at this time. However, we support the right of organisations and venues to develop their own policy with regard to these devices and would support the provision of guidance and information to enable them to develop the most appropriate policy for their own situation.

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?

No

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?

To any individual smoking when another person under the age of 18 is present. However, in the situation of the driver being under 18, smoking, and alone in the vehicle, the offence should not apply.

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?

Comments

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?

The regulations should relate to enclosed vehicles that are on the road. Enclosed means enclosed wholly or partly by a roof and by any door or window that may be opened. It does not include, for instance, a motorbike or a convertible car with the roof completely down. These exemptions would be in alignment with the proposals set out in England and Wales.

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

ASH Wales believes the focus of the offence should be on the person smoking. There are several reasonable defences that the driver can give based on the fact he/she has the main responsibility to drive safely rather than monitoring others' behaviour or engaging in debate. These include:

- the driver, by reason of driving the vehicle, was unable to prevent another individual from smoking in the car, and
- the driver made all reasonable efforts to prevent the offence

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

Comments

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)?

None

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

In line with the legislation which governs smokefree enclosed public places, NHS authorities and health boards should extend current monitoring and enforcement practices to include all hospital grounds, within which all smoking is prohibited.

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

We suggest the penalty for non-compliance of smoking legislation on hospital grounds be kept in line with the penalties for indoor offences.

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?

Comments

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 ☐
- b. 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**

Comments

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

The outdoor locations and events that should be made smokefree are those where lots of children tend to congregate and are particularly susceptible to the influence of adult smoking behaviour; what may begin as experimentation or 'modelling' of adult behaviour can become an addictive habit. Such areas include:

- play areas – Wales has been very successful in introducing smokefree play areas, with 21 of the 22 councils in Wales now having voluntary bans in playgrounds.
- school gates
- beaches
- sports grounds and stadia
- public events such as concerts and child attractions

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 authorisation should rest with the person formally named on the tobacco retailer's register. Therefore, the on-duty manager or other adult who authorises the young person to make any sales, whether or not that adult is present at the time of the offence, should be the offender in the case of any underage sales. Both (potential) parties – the register member and authorising adult – should be held responsible should an offence be committed.

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)?

The Marmot Review notes that 'tobacco control is central to any strategy to tackle health inequalities as smoking accounts for approximately half of the difference in life expectancy between the lowest and highest income groups. Smoking-related death rates are two to three times higher in low-income groups than in wealthier social groups'. ASH Wales therefore welcomes the Scottish Government's commitment both to reducing wider health inequalities, and to addressing the specific inequalities relating to smoking prevalence outlined in the Tobacco Control Strategy for Scotland.

Tobacco usage is highest amongst Scotland's most disadvantaged communities, and is a major contributor to health, poverty and social inequalities. Smoking remains the most important preventable cause of ill-health and premature death in Scotland, with smoking-attributable deaths accounting for around a quarter of all deaths. However, amongst the most well-off it drops to around 15% of deaths, whilst for the least well-off it rises to 32%, and amongst the 35-69 age group an average of 22 years of life are lost per death from smoking. According to the Scottish Household Survey, the adults who most commonly smoke are those unable to work due to short-term ill-health (60%), those unemployed and seeking work (51%) and those who are permanently sick or disabled (51%).

Tobacco use and exposure to secondhand smoke in pregnancy affects the health of pregnant women and their children. In Scotland over 10,000 mothers are recorded annually as being smokers at their 'first booking' with a health professional, and the highest levels are recorded in the lowest SIMD quintiles.

With regards to advertising, ASH Wales is concerned that the recent move towards television advertising of e-cigarettes requires close scrutiny. By strongly sexualising both the brand and product, the product could be marketed subversively at the expense of the protected rights related to gender. ASH Wales hopes that the Scottish Government and the Advertising Standards Authority will ensure that the new e-cigarette advertising guidelines are upheld with a rapidly evolving market.

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

The proposals seem likely to have positive implications for equality, particularly where tobacco harms can be reduced for vulnerable populations,

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

No

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?

None

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

Reductions in smoking prevalence whilst having gains for public health will result in reduced tobacco sales for retailers. However, the retail profit margin from selling tobacco is minimal and the slow decline in smoking rates provides a long lead-in time for retailers to adapt to selling products which are less harmful to the communities they serve.

Action on measures to improve public health must not be deterred by fallacious arguments devised by vested commercial interests. For example, headlines originating with the tobacco industry suggesting widespread and immediate shop closures in relation to specific proposed tobacco control measures continue to be exposed as baseless scaremongering.

With the display ban coming into force for smaller retailers in April of 2014, as well as pending proposals around the currently under-unregulated sale of e-cigarettes, it is clear that retailers will need to be prepared to enforce new regulations. Improved enforcement of existing age restrictions should support responsible retailers already abiding by the law.

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

ASH Wales believes that there is no need to wait with any age-restriction implementation timescale. Therefore, were the proposals to be put before the Scottish Parliament in the latter part of this parliamentary year, it would be reasonable to expect any new age restriction laws to come into force by April 2016. By acting quickly in this way we believe Scottish Ministers would signal their commitment to the appropriate regulation of e-cigarettes.

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

No

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.

ASH Wales has no direct/indirect links to, and does not receive funding from, the tobacco industry.



ASH Wales response to the Scottish Government consultation on 'Electronic cigarettes and strengthening tobacco control in Scotland'

ASH Wales is the only public health charity in Wales whose work is exclusively dedicated to tackling the harm that tobacco causes to communities. Further information about our work can be found at <http://www.ashwales.org.uk/>

We are engaged in a wide range of activities including:

- Advocating for tobacco control public health policy
- Undertaking tobacco control research projects
- Training young people and those who work with young people to provide factual information about the health, economic and environmental effects of smoking
- Engaging young people and professionals working with young people through the ASH Wales Filter project
- Bringing health information and advice to the heart of the community

We also oversee the Wales Tobacco or Health Network (a network of over 300 individual members) and the Wales Tobacco Control Alliance (an alliance of 35 voluntary and professional bodies in Wales), providing forums for sharing knowledge and best practice.

General observations

ASH Wales broadly welcome the regulatory approach suggested in the consultation, which we believe represents progress towards a bespoke regulatory regime reflecting the unique characteristics of electronic cigarettes (e-cigarettes) and balancing the positive opportunity to help smokers to quit while reducing the potential for commercial interests to recruit a new generation into nicotine use.

Consultation questions (additional information)

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

Nicotine is addictive, to a degree similar to drugs such as heroin or cocaine¹ and therefore not appropriate for sale to children and young people under 18. Nicotine addiction is usually established within one year of experimenting with traditional cigarettes, which, for most life-long smokers, was before they were 16². Nicotine yields from automated smoking machines suggest that e-cigarettes deliver less nicotine per puff than traditional cigarettes, and clinical studies indicate that e-cigarettes deliver only modest nicotine concentrations to the inexperienced e-cigarette user. However, current e-cigarette users are able to achieve systemic nicotine and/or cotinine concentrations similar to those produced from traditional cigarettes³. We therefore support the proposal to set the minimum age of sale for these products at 18.

1. Royal College of Physicians. Nicotine addiction in Britain - A report of the Tobacco Advisory Group of the Royal College of Physicians. 2000. www.rcplondon.ac.uk/publications/nicotine-addiction-britain [Accessed 02 December 2014]

2. Ibid

3. Schroeder M J, Hoffman A C. Electronic cigarettes and nicotine clinical pharmacology. Tobacco Control 2014;23. http://tobaccocontrol.bmj.com/content/23/suppl_2/ii30 [Accessed 02 December 2014]

2. Should age of sale regulations apply to:

a. only e-cigarette devices / 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?

We believe age of sale regulations should apply to all devices because it is possible for non-nicotine containing e-cigarettes to look the same as nicotine containing e-cigarettes, and some types of e-cigarettes have user-replaceable parts and a choice of nicotine or non-nicotine fluid, exempting non-nicotine e-cigarette from these rules could make it easier to subvert any age restriction. It also creates the potential scenario where 'cigarette like' non-nicotine e-cigarettes sold to children act as "trainer" devices, forming habits and expectations which prime them to take up "the real thing" when it becomes available to them.

3. Whom should the offence apply to

We are in favour of the offence applying to both the retailer and young person attempting to purchase the e-cigarette so that the legislation mirrors the situation already in place regarding current tobacco sales. However, as we do not want to see the criminalisation of those who are children themselves we also recognise that before an offender under the age of 18 is referred to court or prosecuted, due consideration should be given as to whether or not it is in the public's interest to do so. Furthermore, we believe prosecuting the retailer should be the first priority and should take precedence over attempts to prosecute the young person attempting to purchase the e-cigarette.

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

ASH Wales is in favour of banning the sales of e-cigarettes and refills from self-service vending machines because age restrictions cannot be verified during these transactions. This argument has already been accepted during the comprehensive scrutiny of the removal of self-service tobacco vending machines.

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

We believe e-cigarettes are not suitable for people under 18 years of age, whether they purchase the product themselves or an adult makes the purchase for them so should therefore be subject to proxy purchase restrictions. We have heard the concern raised that this would penalise, for example, a parent attempting to help their child to quit tobacco use, however we believe that the consideration of public interest before proceeding with any prosecution is sufficient safeguard in such a scenario.

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

There should be no advertising which might encourage non-smokers of any age to use e-cigarettes nor ex-smokers to relapse but advertising to make the benefits of switching from lit tobacco to e-cigarettes clear to those who are current smokers should not be prohibited.

There is a strong need, and a public demand, for the provision of good information about e-cigarettes. However this is quite distinct from marketing, where the clear intention is to build

the market for commercial products. This may involve information provision but is more likely to involve attractive or glamorising imagery.

We believe that electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to non-tobacco users. In particular addictive products, such as electronic cigarettes, should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people. The Tobacco Advertising and Promotion Act 2002 led to a banning of most conspicuous forms of tobacco advertising and promotion in the UK, however tobacco companies have shifted to 'below the line marketing' to promote their brands. This type of marketing typically includes public relations and sales promotions, point of sale displays and trade discounts for the promotion of particular brands. This latter technique known as "push promotion" involves advertising to sellers and wholesalers, giving retailers financial incentives and offering prizes and competitions around specific products. Other forms of below the line marketing include "buzz marketing" and "experiential marketing." The tobacco industry uses all of these methodologies and others to continue to promote tobacco despite the 2002 Act, and e-cigarette companies (many of which are now owned by tobacco companies) may also seek to exploit this apparent loophole.

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?

We propose:

1. Regulation of advertising of unlicensed electronic cigarettes and other nicotine containing products should be, as far as is possible, consistent with that for licensed products. For example, celebrity endorsement and free samples are not allowed for licensed nicotine containing products and should not be allowed for unlicensed electronic cigarettes either.
2. Electronic cigarettes and other nicotine containing products should not be advertised or promoted in ways that could reasonably be expected to promote smoking of tobacco products.
3. Electronic cigarettes and other nicotine containing products should be required to be advertised as an alternative to smoking cigarettes or other tobacco products for existing smokers only.
4. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to non-tobacco users.
5. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people.

We suggest that the production of statutory guidelines would be the best means of taking this forward and that these be amenable to rapid revision in light of emerging evidence surrounding what is a rapidly evolving class of products, or the impact of their marketing on the non-smoking population and particularly on people under 18.

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

a. Bill boards; YES. Billboard adverts are a non-discriminatory medium which reach the wider population and so targeting the advertising towards existing smokers can only occur through regulating the content and location of adverts.

b. Leafleting; YES, for the same reasons as for billboards, with regulation relating to distribution rather than billboard location.

c. Brand-stretching (the process of using an existing brand name for new products or services that may not seem related); YES

The possibility remains that e-cigarettes which resemble tobacco cigarettes could be used to implicitly or explicitly promote tobacco cigarette smoking. As an increasing number of e-cigarette companies are owned by tobacco companies (who have obvious commercial interests in the promotion of imagery that has the result of increasing interest in, maintaining the use of or encouraging the uptake of, tobacco smoking or maintaining the impression of existing brand-related intellectual property), this is an issue of great concern. Because of this, we believe that regulations should be strengthened to include a prohibition of any features of design, colour, imagery, or style that could reasonably be expected to confuse viewers between e-cigarettes and tobacco cigarettes or could reasonably be viewed as promotion of 'smoking' behaviour. Tobacco products should not be presented in ways which increase their appeal, and e-cigarettes should be subject to similar restrictions with a view to avoiding initiation.

d. Free distribution (marketing a product by giving it away free); YES, except in a tobacco amnesty or exchange scheme.

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

f. Point of sale advertising (advertising for products and services at the places where they are bought); No, requiring a focus on information, rather than broader advertising though, would remain a valid public health goal.

g. Events sponsorship within a domestic setting? YES

Events, such as those sponsored by E-lites (which has entered into partnership agreements with both Rangers and Celtic FC), should be monitored under the strict parameters of a code of practice.

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

We believe that the Tobacco Retailers Register should be extended to include those selling electronic cigarettes and accessories. The feedback from trading standards bodies has been that that Register has helped with understanding the tobacco retail market, with enforcement of regulations and with providing support and advice to retailers, without imposing a significant financial or administrative burden. We would look for similar benefits from the registration of e-cigarette retailers.

It would remain necessary to distinguish between the more and less harmful products and we believe that this would be best achieved by a move towards positive licensing of tobacco retail outlets as this would provide a stronger incentive for tobacco retailers to comply with the law compared to the banning orders under the current registration system.

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. Smoking in cars causes harm in at least four ways:

- harm to the smoker from inhaling tobacco smoke;
- harm to other adults and children in the vehicle from inhaling secondhand smoke;
- harm to children and young people of witnessing smoking by adults, which is known to make it more likely that they will themselves begin to smoke; and
- harm because of the greater risk of accidents resulting from driver distraction and inattentive blindness.

Evidence of the harm of inhaling secondhand smoke is well established. Secondhand smoke contains a cocktail of carcinogens including arsenic, cadmium, formaldehyde and benzene. Exposure to these and the other pollutants within secondhand smoke, especially fine particles, increases the risk to the individual of illness, hospital admission and death. 1

The Royal College of Physicians estimates that each year in the UK exposure of children to secondhand smoke causes:

- over 20,000 cases of lower respiratory tract infection
- 120,000 cases of middle ear disease
- at least 22,000 new cases of wheeze and asthma
- 200 cases of bacterial meningitis
- 40 sudden infant deaths – one in five of the total. 2

Exposure to secondhand smoke in cars can reach levels far higher than levels experienced in buildings. A single cigarette smoked in a stationary car with its windows closed can produce a level of secondhand smoke eleven times higher than the level found in an average bar where smoking is permitted. In a moving car, the level of secondhand smoke produced by this single cigarette is still exceptionally high at seven times the average level of the smoky bar. 3

Children and young people are also affected by witnessing smoking as a normal adult behaviour. For example, children who live with parents or siblings who smoke are up to 3 times more likely to become smokers themselves than children of non-smoking households. 4 In 2012, 26% of 11-15 year olds reported being exposed to secondhand smoke in their family's car and 30% in someone else's car. 5

Since smoking rates remain markedly higher among poorer social classes it follows that smoking in private vehicles is likely to be a significant contributor to health inequalities. In addition, we know that children and young people are influenced by the behaviour that they see around them. Therefore reducing their levels of exposure to environmental tobacco smoke may also impact upon their propensity to take up smoking.

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

ASH Scotland suggests that by law, a person under the age of 18 should be liable for committing an offence of smoking in a vehicle with another person under 18 present. While the prohibition of behaviour that is harmful to a child should be clear in law, we are at the same time reluctant to criminalise those who are children themselves and recognise that before an offender under the age of 18 is referred to court or prosecuted, due consideration should be given as to whether or not it is in the public's interest to do so.

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

ASH Wales views the bulk of enforcement responsibility being upheld by local police officers as the preferable and reasonable choice. The highly effective performance of UK police forces in enforcing seat belt and mobile phone laws suggests that this can be done.

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

ASH Wales supports the principle that smoking in private vehicles with children present should be unlawful, whereas smoking in the home is a private matter, although it should be strongly discouraged, particularly in homes where children are present. Therefore, where vehicles have a dual use as temporary or permanent homes, the law should distinguish

between occasions when they are used as homes and occasions when they are used as vehicles.

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

ASH Wales believes that in some instances, such as playgrounds, voluntary bans are effective. However, we believe that this is not the case for hospital grounds, as the voluntary bans that have now been in place in Wales for at least the last three years have been widely ignored by patients, visitors and staff. Concerns have been raised by the latter who have no wish to become involved in a confrontation with someone who is smoking on the hospital estate. The message that people (patients, visitors and staff) should not expect their smoking behaviour to be facilitated by the NHS therefore needs to be reinforced in an unambiguous way. It should be made clear that you cannot come to NHS premises and expect to smoke, given that smoking is the single largest avoidable cause for many serious illnesses. We would therefore welcome the prospect of legislation in this area in order to ensure that this issue is taken seriously by staff, patients and visitors alike.

With regard to hospital grounds, NICE guidance makes it clear that non-smoking should be the norm in all NHS premises and grounds. The guidance states that hospitals should ensure that there are no designated smoking areas or staff-facilitated smoking breaks for anyone using secondary care services. The Welsh Government may wish to adopt a similar approach.

Having said this however, ASH Wales is only in favour of national legislation banning smoking on hospital grounds being introduced if it is accompanied by adequate support for long-term smokers and other vulnerable groups, through medicines management and cessation advice, to help them cope with the ban.

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

We fully support further action to make children's outdoor areas tobacco free and welcome the chance to explore the best mechanism to ensure this. Removing smoking from children's outdoor areas would support the reduction of children's exposure to adult smoking behaviour and reinforce a culture change in which tobacco is no longer part of everyday life.

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

ASH Wales is in favour of ensuring sufficient local powers to allow decisions at a local level as to what grounds should be smoke-free. This has worked in Wales with regards to playgrounds. ASH Wales has, over the last 18 months, conducted a highly successful campaign to introduce smoke-free playgrounds across all local authority areas in Wales. As of December 2014, 21 of 22 councils had implemented smoke-free playgrounds. Feedback from councils has suggested that these voluntary bans are starting to raise awareness of the issue and change attitudes towards smoking in these areas. With regard to school grounds and especially around school gates, during the school run, it would be beneficial to try this gentler awareness-raising approach in the first instance.

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. Although everyone agrees that tobacco should not be sold to children it is still the case that underage smokers can sometimes purchase tobacco products. According to the most recent SALSUS results, 15% of 13 year olds and 31% of 15 year-olds who regularly smoke report that they buy tobacco from shops¹.

We believe that more can be done to enforce existing restrictions on selling tobacco to young people and therefore support the principle that retailers selling tobacco and/or e-cigarettes equipment should be required by law to challenge the age of anyone they believe to be under the age of 25. This should help clarify the situation around such transactions and will be of benefit to responsible retailers who already work within the law. It would also be beneficial if the guidelines were accompanied by proposals to simplify the guidance around test purchasing, to make tests more like real life purchasing situations, and make it more difficult for subjects to identify them.

1. Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS), 2014. Smoking: Among 13 and 15 year olds in Scotland 2013, NHS National Services Scotland. www.isdscotland.org/Health-Topics/Public-Health/Publications/2014-11-25/SALSUS_2013_Smoking_Report.pdf [Accessed 01 December 2014]