

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 ☐

Cancer Research UK believes that electronic cigarettes (e-cigarettes) are almost certainly much safer than tobacco cigarettes and may help smokers to cut down or quit smoking. However, the full health effects are unknown and the evidence suggests that exposure to nicotine is particularly dangerous for younger people and use in adolescence and may cause lasting adverse consequences for brain development.¹

Currently there is little evidence that children are using e-cigarettes. In particular among children in Great Britain who have never smoked, only 1% have used an e-cigarette once or twice.² However given that this is a growing market it is important that adequate protections are put in place to prevent individuals aged under-18 from purchasing e-cigarettes. Furthermore, recent statistics from the Welsh Government suggested the need for caution as more 10-11 year olds had tried e-cigarettes (6%) than tobacco cigarettes (2%).³

We support the introduction of an age restriction on the purchase of e-cigarettes to prevent young people under the age of 18 from purchasing them. The measure will also bring Scotland in line with the rest of the UK who are introducing similar proposals to prevent under-18s purchasing nicotine containing products such as e-cigarettes.

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 ☒

We believe that with respect to e-cigarettes and similar devices a precautionary approach is valid in preventing uptake amongst under-18s. There is a wide range of e-cigarette products available. While many contain nicotine, there are some products (e.g. 'shisha pens' and nicotine-free e-cigarettes) which typically do not (although some are contaminated with low levels of nicotine).⁴ Despite not containing nicotine, these products may not be risk free.

There is a consensus that e-cigarettes are almost certainly much safer than smoking tobacco cigarettes, however, the full health implications of e-cigarette use are currently unknown. The level of toxicants found in e-cigarette vapour is generally substantially lower than that found in tobacco cigarette smoke.⁵ Furthermore, the health implications of long-term exposure to nicotine and propylene glycol/glycerine, the main chemicals in e-cigarette vapour are also not fully understood.

Further research is needed to understand the risks associated with long-term exposure to both nicotine and propylene glycol/glycerine and the other chemicals found in e-cigarette vapour. For the moment, we consider that it is reasonable to prohibit the sale to under-18s of any product that can be used for the consumption of a vapour via a mouth piece or any component or refill of that product.

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 ☒

We believe that the responsibility for enforcing this law should be primarily on the retailer selling the e-cigarette. However, we note that currently as the law stands in Scotland it is an offence for under-18s to purchase tobacco and for retailers to sell tobacco to under-18s. To aid enforcement of the regulations we believe it may be appropriate to make it an offence for both the retailer selling e-cigarettes to under-18s and the individual under 18 attempting to purchase the e-cigarette.

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

Yes ☒ No ☐

We recommend banning the sale of e-cigarettes, refills and any component of an e-cigarette through self service vending machines. The experience of tobacco cigarettes has demonstrated that vending machines have been used by under-18 smokers to purchase cigarettes.⁶ There is currently no evidence to demonstrate purchases of e-cigarettes by under-18s from vending machines, in part because there appears to be few such machines. However, if a ban on the sale of e-cigarettes to under-18s was introduced, there is a genuine risk that under-18s may circumvent the law by purchasing them directly from vending machines. Therefore permitting the

sale of e-cigarette devices or refills or any component of an e-cigarette from self service vending machines may undermine a ban on the sale of e-cigarettes to under-18s.

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

Yes ☒ No ☐

We believe that it is reasonable to apply the same restrictions on the sale of e-cigarettes and refills to e-cigarette accessories. A consistent approach should be applied to all e-cigarettes products and components that can be used to enable vaping. Restricting the sale of components and accessories may be necessary to prevent under-18s gaining access to e-cigarettes or building their own device.

Any other type of accessory which is not directly used for vaping should be permitted for sale without further restriction. Further research is needed to examine young people's perceptions of e-cigarettes and what role, if any, e-cigarette accessories have on behaviour.

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

We recommend restricting the sale to under-18s of the following items: e-cigarettes, e-liquids, refills, e-cigarette components and accessories (e.g. e-cigarette tanks, atomizers, 'clearomizers', e-cigarette batteries) and any device or component designed primarily to enable vaping.

Proxy purchase for e-cigarettes

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

Yes ☒ No ☐

We believe that proxy purchases of e-cigarettes should be prohibited. As with cigarettes we note that allowing proxy purchasing of e-cigarettes is irresponsible. Prohibiting this practice could help prevent under 18s using e-cigarettes. Introducing this measure would also bring Scotland in line with the rest of the UK who are implementing these measures. The full effect of this measure however would also require the provision of resources for local authorities who would be tasked with enforcing it on the ground.

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 ☐

We note that e-cigarettes are almost certainly far safer than tobacco cigarettes. Nevertheless, the full health implications of e-cigarette use, particularly the health

implications of long term use, are currently unknown. There have also been concerns about what impact, if any, e-cigarettes and e-cigarette marketing has on efforts to denormalise tobacco use and reduce smoking. E-cigarette marketing may potentially help to renormalise smoking (for example, by mirroring behaviours that imitate smoking). But some marketing may help denormalise smoking if it encourages people to stop using tobacco. Currently there is insufficient evidence to conclude whether e-cigarette marketing renormalises or denormalises smoking. Given this uncertainty we believe that the appropriate response is to protect young people and non-smokers or non-nicotine users from e-cigarette marketing.

We do note however, that e-cigarettes have the potential to help smokers quit.⁷ We therefore recognise that there may be value in some forms of promotion which increases smokers' awareness of e-cigarettes and encourages them to quit smoking. As with many aspects of e-cigarettes, there is a need for further research to understand the impact of e-cigarette marketing on perceptions amongst young people, smokers and non-smokers. As detailed below we are also aware that the EU Tobacco Products Directive will introduce new marketing restrictions, but we believe that further action is also justified. A proportionate response to the marketing of e-cigarettes should seek to minimise young people and non-smokers exposure to marketing and the appeal of e-cigarettes without disproportionately restricting promotion.

It is also important to note that any further restrictions to e-cigarette marketing should not apply to e-cigarettes which are licensed by the Medicines and Healthcare products Regulatory Agency (MHRA). Products which are licensed by the MHRA will be treated as medicinal products and will be subjected to specific restrictions on the content of marketing communications and advertising as set out in Committees of Advertising Practice (CAP) codes. The new rules on e-cigarette marketing recently developed by CAP will also apply to these products. Therefore further restrictions on the marketing of these licensed products will be unnecessary so long as these advertisements adhere to the CAP codes.

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 ☐

We are pleased that Scottish Government is exploring whether further regulations of domestic advertising and promotion of e-cigarettes are necessary beyond those set out in the Tobacco Products Directive (TPD).

We wish to minimise the promotion of e-cigarettes to young people and non-smokers. However, a cautious approach is necessary given the lack of evidence around the impact of e-cigarette marketing on these groups. It is important that the need to protect young people is balanced against the potential for these products to help smokers cut down or quit smoking. We also believe that to maximise the impact of any regulation, close cooperation must take place between all UK Governments to achieve a single approach to the marketing of e-cigarettes in the UK. Also, as previously stated, any further regulations should not apply to any products which are licensed as medicinal products by the MHRA.

We support the decision by the Advertising Standards Agency's Committees of Advertising Practice to prohibit marketing communications and advertisements from encouraging non-smokers and non-nicotine users from using e-cigarettes. We also support their rule to prohibit marketing communications and advertisements from appealing to under-18s. These new rules which have recently come into force are an important step in protecting young people and adult non-smokers from the advertising and promotion of e-cigarettes. Such rules are necessary given that a study conducted by Stirling University and funded by Cancer Research UK demonstrated that some e-cigarette advertisements could appeal to children and young people.⁸ In particular one of the strategies used by independent e-cigarette manufacturers was to promote e-cigarettes as a 'must have' lifestyle accessory. Currently there is no evidence to determine whether the new rules in the CAP codes will be enough to prevent these advertisements appealing to young people and non-smokers.

These rules will restrict the content of e-cigarette advertisements, they will not effectively address the exposure of young people and non-smokers to such marketing. The CAP and BCAP rules primarily address the content of e-cigarette marketing communications and advertising. But there are few mechanisms under these rules to restrict the media in which advertisements can be broadcast or promoted. The current restrictions on e-cigarettes will only prevent these advertisements being broadcast during or adjacent to shows aimed at under-18s. The rules also prohibit marketing communications directed at people under-18s through the selection of media or the context in which they appear. Therefore e-cigarette advertisements cannot be shown in some forms of media if more than 25% of its audience is under 18 years of age. However, popular family shows may have such a large audience that less than 25% can still represent a large number of children. Therefore, we believe the new CAP rules are necessary but not sufficient to address all the above concerns.

We welcome Article 20 of the TPD whilst noting that there are risks inherent with the dual approach set out in the Directive that must be mitigated. We note that the TPD will include measures to restrict the marketing of e-cigarettes on television, radio, in print media and online. This should help prevent mass media campaigns which could expose a great proportion of young and adult non-smokers to e-cigarette promotions. Without further evidence it is difficult to justify restricting the promotion of e-cigarettes in other media. Moreover, it is possible that excessive regulation of e-cigarette marketing may reduce awareness of e-cigarettes among smokers and may undermine the potential for e-cigarettes to be used by smokers who wish to cut down or quit smoking.

However, there are areas where further regulation is justified. We note that e-cigarette sponsorship (particularly sports sponsorship) is a form of promotion where the benefits of regulation may outweigh the risks. We would also welcome regulation to prohibit celebrity endorsement of e-cigarettes. Prohibiting free distributions of e-cigarettes and restricting brand stretching may also reduce the potential for these products to appeal to (or be used by) non-smokers.

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

- | | |
|---|--|
| a. Bill boards | a <input type="checkbox"/> |
| b. Leafletting | b <input 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 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"/> |

There is currently insufficient evidence to show which forms of marketing have the biggest impact on young people's awareness of e-cigarettes and which forms of marketing increase the appeal of e-cigarettes. We recognise that 'above the line' forms of promotion such as TV, radio and press may appeal to children. Outdoor billboard advertising represents a further form of 'above the line' promotion which can be used as part of national outdoor marketing campaign. However, currently there is insufficient evidence to justify a restriction in the marketing of e-cigarettes in that medium. But given the rapid pace at which evidence is being produced, we urge the Scottish Government to monitor any new evidence on e-cigarette marketing and, if necessary, reassess this matter.

We do not believe that it is necessary to restrict the marketing of e-cigarettes through leaflets given that these are not normally viewed by a large proportion of the public. Therefore we believe the risk of exposure to young people and non-smokers is likely to be relatively low. However, as above, this should be closely monitored.

We believe that it is necessary to limit brand-stretching to e-cigarettes. We note that in the UK it is illegal under the Tobacco Advertising and Promotions Act (2002) for tobacco brands to be used on any other product. However, to minimise the appeal of these products to young people, we encourage the Scottish Government to consider the feasibility of restricting the use of brands on e-cigarettes that might appeal to children and those which are associated with unhealthy products such as confectionary, sugary drinks and alcohol. We also welcome consideration of restrictions on the use of e-cigarette brands on non-e-cigarette products in order to reduce their appeal among non-smokers.

We believe that free distribution of e-cigarettes should be prohibited. Free distribution of e-cigarettes may enable non-smokers including young people to gain access to e-cigarettes or initiate use. Exceptions should be made for the provision of e-cigarettes which are licensed by the MHRA and which are provided freely by a health practitioner to smokers to aid smoking cessation or harm reduction.

We believe that no additional regulation of e-cigarette marketing on the basis of nominal pricing is necessary. We recognise that e-cigarette use has a great potential to help smokers to cut down and quit. One reason that has been cited for smokers using e-cigarettes is that they are considered to be cheaper than tobacco cigarettes.¹ As a result promotions based on price may appeal to smokers but are unlikely to appeal to young people and non-smokers. Therefore regulating e-cigarette marketing on the basis of nominal pricing is likely to be counter-productive from a public health perspective.

We also do not support any additional regulation of e-cigarette marketing at the point of sale. There is no evidence to suggest that e-cigarettes displays at the point of sale appeals to young people or non-smokers, or influences e-cigarette use in this group. Further research of the impact of e-cigarette marketing at the point of sale is necessary. We also recognise that the display of e-cigarettes at the point of sale may have the potential to act as a prompt for smokers to quit smoking tobacco. In particular, given the introduction of the ban of tobacco displays at the point of sale in April 2015, the relatively superior prominence given to e-cigarettes may encourage more people to make a quit attempt through the use of e-cigarettes.

We believe e-cigarette sponsorship and promotion at sporting events should be prohibited. Sponsorship is a form of marketing which can lead to mass exposure to a product. During the FIFA 2014 World Cup four in five alcohol references during the match programmes (including advertising breaks) were from the electronic boards on the pitch.⁹ This suggests that sponsorship, particularly of sports, can bypass restrictions on promotion on television and online. In addition, American studies show that the most popular alcohol brands among underage drinkers are also those most likely to be associated with American sports, music and entertainment.¹⁰ Moreover, the experience of tobacco marketing demonstrated that young people were still aware of tobacco advertising after restrictions on TV advertising, and it was thought that this was partially due to tobacco sponsorship of sporting events and teams.¹¹ A number of examples of e-cigarette sponsorship have been identified including in motor racing and football, including Scottish Premier League football clubs.^v Sponsorship of sporting events by e-cigarette manufacturers may increase the appeal of these products amongst non-smokers and in particular young people. Further research is needed to understand the relationship between e-cigarette sponsorship and appeal to young people. However, we believe that there is sufficient concern to pursue further regulation of e-cigarette sponsorship.

We would also add that whilst not specifically identified in the consultation, regulations should be included to prohibit the promotion of e-cigarettes through the use of celebrity endorsement. We believe that celebrity endorsements can be used to make the products appeal particularly to young people without infringing any elements of the current CAP and BCAP rules for non-licensed e-cigarettes.

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

As noted above we do not believe that any additional regulation is needed of e-cigarette advertising and promotion on billboards, leaflets, on nominal pricing or at the point of sale.

We also believe that any restrictions of the marketing or promotion of e-cigarettes should not apply to e-cigarettes which have been licensed by the MHRA for use to help a person cut down or quit smoking.

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)?

As previously stated we would like to draw attention to the study by the University of Stirling that demonstrates that some e-cigarette marketing strategies may appeal to children and which identifies the different forms of e-cigarette marketing.⁵ We also note that this is a growing area of research and that the Scottish Government should monitor new e-cigarette research to inform its policy.

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

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 ☒

One of the main reasons the Scottish Tobacco Retailer Register was established was to provide trading standards with information on the density of tobacco retail outlets to help control illicit tobacco and reduce inequalities. The current evidence on e-cigarettes suggests that they are almost certainly far safer than tobacco. In addition, they may help some smokers to cut down or quit smoking. Therefore, given the relative harm of e-cigarettes compared to tobacco cigarettes, it is not reasonable to treat the products identically without a clear rationale.

It is possible that registering may improve enforcement of restrictions on the sale of e-cigarettes, refills and accessories to under-18s. It may also improve compliance with other e-cigarette regulations. However, we note that the market in e-cigarettes is substantially different to that of tobacco. For example, compared to tobacco, a high proportion of sales of e-cigarettes, refills and components are conducted online.¹² It is unclear whether registering with the Scottish Tobacco Retailers Register will have any impact on compliance amongst these retailers.

Therefore, on balance we do not believe that there is sufficient evidence or reasons to justify requiring e-cigarette retailers to register on the Scottish Tobacco Retailers Register.

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?

As stated above we do not believe that it would be a proportionate response to require all retailers of e-cigarettes to be registered on the Scottish Tobacco Retailers Register.

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?

n/a

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

Cancer Research UK does not believe that there is sufficient justification or evidence at this time to introduce a legal ban on the use of e-cigarettes in enclosed public spaces or workplaces on the basis of harm from exposure to e-cigarette vapour or from the risk of e-cigarette renormalizing smoking. The decision to permit or restrict the use of e-cigarettes within premises should be made by individual businesses or organisations.

The introduction of the smokefree legislation was to protect people from the harms of second hand smoke and was supported by strong evidence of these harms. We believe that any expansion of the smokefree legislation should be based on independent peer reviewed evidence.

However, the evidence shows that e-cigarette vapour is likely to be far less harmful than second hand tobacco smoke. E-cigarette vapour does contain toxicants however this is usually at levels which are far lower than those found in tobacco cigarettes.¹³ E-cigarette vapour has also been shown to include 'particulate matter'¹⁴, a known carcinogen.^{15 16}

The consensus is that any harm from e-cigarettes is likely to be far less than that from tobacco. Therefore, we believe that there is currently insufficient evidence to justify a ban on the use of e-cigarettes indoors and in enclosed public spaces on the basis of harm from second hand vapour. But more studies are needed to understand the impact of exposure to e-cigarette vapour particularly in the long term.

We recognise that the growth of e-cigarette use may present some

challenges for individual businesses and organisations. However, so far there remains very little evidence of systematic problems around the enforcement of the current ban on smoking which has high compliance rates. Therefore, we recommend the provision of further information and guidance to businesses and other organisations to help them decide how best to approach the use of e-cigarettes on their premises. Such guidance should be developed with expert organisations.

One of the consequences of the smokefree legislation was to 'denormalise' smoking which helped to facilitate quit attempts.¹⁷ It has been suggested that the introduction of new behaviours that imitate smoking (such as vaping) may undermine the denormalisation of smoking. But there is currently no evidence to support this. Moreover, recent data shows that use of e-cigarettes is very low among never smokers in Great Britain.¹⁸ Conversely, prohibiting e-cigarette use in areas covered by smokefree legislation may have unintended consequences which may affect genuine quit attempts by smokers.

We also recognise that there remains some uncertainty on the issues relating to the use of e-cigarettes indoors and encourage further monitoring of use and research into e-cigarettes. The decision to restrict or permit the use of e-cigarettes on premises should rest with individual businesses or organisations given the current evidence.

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

As noted above, we believe that there is insufficient evidence to justify regulation on the use of e-cigarettes in smokefree areas on either the basis of harm or on the potential to renormalize smoking.

A recent study has suggested that passive exposure to e-cigarette use may increase the urge to smoke among young adult daily smokers.¹⁹ However, it is unclear to what extent e-cigarette use will increase urges to smoke in a real world context. Moreover, there is insufficient evidence that exposure to e-cigarette use influence young people and non-smokers attitudes to either using e-cigarettes or smoking tobacco, and more importantly that exposure to e-cigarette use increases smoking prevalence.

We note that given the complexity of this issue there is a need for further monitoring and e-cigarette research.

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 ☐

We fully support a ban on smoking in private vehicles carrying children, as indeed we do any measure that can reduce the exposure and harm caused by carcinogenic second-hand smoke, particularly to children. Support for the measure is high, owing to its design as a child protection measure.²⁰ We believe that the potential to fine under-18s might jeopardise the support for the measure. Therefore in the circumstances when a child is the smoker in a car, it would be sensible if only the driver received a fine for the offence of failing to prevent smoking in the vehicle.

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

Yes ☒ No ☐

We believe the regulations should include an age-related exemption. The inclusion of an age-related exemption would make it clear that responsibility needs to be taken by the driver of the vehicle as the person 'having management or control' of the smoke-free vehicle.²¹

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

n/a

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

Yes ☒ No ☐

We agree that enforcement of the measure should in the most part be the responsibility of police officers, as part of their general duties in relation to road safety, with the support of authorised officers²² from local authorities who can take part in campaigns to promote compliance with the regulations.

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

n/a

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

Yes ☒ No ☐

Caravans and motor vehicles are a residence for some people, including in particular, the travelling community. Smoking inside private residential dwellings is not against the law and it is right that this should extend to caravans and motor homes when they are functioning as dwellings, and when they are both stationary and not on the road²³. We would suggest that the use of the Road Traffic Act to define a road, which also includes public car parks and lay-bys²⁴, is a sensible and

practical approach.

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

n/a

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

n/a

Smoke-free (tobacco) NHS grounds

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

We support the principle that patients should not be exposed to carcinogenic second-hand smoke in the very place they have gone to get well. A number of Health Boards across Scotland already have completely smokefree policies²⁵, as recommended in the 2005 guidance issued by the Scottish Government.²⁶ However they do not have the legislative mandate to enforce the guidance. We note the recommendations of the World Health Organisation which highlights that compliance with smokefree legislation requires three components; good legislation, a good enforcement strategy and; a good communications and outreach strategy.²⁷ This supports the case that compliance with Health Boards' smokefree policies would be improved through the granting of a legislative mandate. However, there are a number of issues which need to be considered, in relation to the enforcement and communications and outreach aspects:

- Under current legislation, we note the smokefree exemptions for adult hospices in Scotland "For humanitarian reasons". Extending a ban will impact on terminal patients not covered by this exemption, which could create a disparity in how smokefree policies are being applied and to whom they affect.
- There are also issues of enforcement to which need to be confronted, one of the most pressing is the size of some NHS facilities, which are not 'contained', but rather are separated by trunk roads and alike. It will be extremely difficult to prevent enforcement across such large areas becoming an arbitrary exercise.
- The responsibility of that enforcement is unclear. The Royal College of Nursing, for example, have been explicit that nursing staff should not be expected to enforce complete smokefree bans.²⁸

Finally, the practicality and success of any such restrictions requires the provision of 'gold standard' stop smoking services in secondary care, which includes patients being offered nicotine replacement therapy during their hospital stay.

Therefore, while we support the principle we do not believe that the regulations as currently proposed would be enforceable. As a result whilst we support the principle of legislation for smokefree hospitals we are unable to support the specified

regulations as currently proposed. We are so therefore unable to respond to the specific questions raised below.

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

n/a

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)?

n/a

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

n/a

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

n/a

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?

n/a

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

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

Local authorities responsible for the provision of children's outdoor areas should be consulted to ensure a definition is reached which accommodates all of the following; their expectations, their needs and; considerations of the practicalities of enforcement. We support the principal that local powers should be granted to ensure that any purpose built area with equipment formally for the provision of children to play, can be made smokefree at their discretion

As is mentioned in response to Q29, the World Health Organisation highlights that compliance with smokefree legislation requires three components; good legislation, a good enforcement strategy and; a good communications and outreach strategy.²⁹ If the Scottish Government decides to grant local authorities the powers to create smokefree outdoor areas for children, they must provide the support to enable those authorities to effectively meet these components.

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 ☐

We believe that using 'Challenge 25' approach is likely to be a useful way to improving compliance with any ban on the sale of e-cigarettes to under-18s. While legislation may not be necessary, it could ensure an 'even playing field' so that all retailers have a high level of compliance with any ban on the sale of e-cigarettes to under-18s.

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 ☒

E-cigarettes are almost certainly far safer than tobacco cigarettes. While there is uncertainty about the long term risks from e-cigarette use, the harms are likely to be substantially less for e-cigarettes compared to tobacco. Therefore we do not believe that it is proportionate to employ the same penalties for the selling of e-cigarettes to under-18s as those for tobacco.

Penalties should be primarily based on what can best aid enforcement. But consideration should be given to what is an acceptable level for penalties for this offence. The level of the penalty should be high enough to encourage compliance, but should ideally be lower than the current penalty (£2,500) for selling tobacco in order to distinguish between the relative harms.

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?

We believe that restrictions on the sale of tobacco products and non-medicinal e-cigarettes by a person under the age of 18 should be consistent with those on tobacco.

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)?

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?

Smoking contributes substantially to the exacerbation and perpetuation of health inequalities by geography, ethnicity and socioeconomic deprivation³⁰. Smoking also disproportionately affects groups with mental health problems^{31,32}, the lesbian, gay, bisexual and transgender communities³³ and those with substance abuse issues; among others³⁴.

Incidence of lung cancer – the second most common cancer in the UK – is strongly related to deprivation and there is a clear trend of increasing rates with increasing levels of deprivation in the UK³⁵. Smoking accounts for 86% of lung cancer cases in the UK³⁶. In 2011, there were 43,463 cases of lung cancer in the UK. The European age-standardised incidence rates are significantly higher in Scotland compared with the other constituent countries of the UK for both males and females.³⁷ Smoking is a greater source of health inequality than social position, underlining that without reducing smoking prevalence in the most deprived groups (as well as reducing the number of smokers overall), policies designed to reduce health inequalities will have limited success³⁸.

A comprehensive tobacco control programme is required to tackle the burden of tobacco use and the associated inequalities it is responsible for. We welcome this consultation on a range of measures to reduce tobacco use and exposure to tobacco products – particularly for young people – which are a vital element toward Scotland's 2034 'tobacco-free ambition'.

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?

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

A number of provisions outlined in the consultation are likely to require increased enforcement capacity, or redistribution, to meet the new obligations; which will largely fall on local Trading Standards. A 2013 report from *Audit Scotland* highlighted that councils spend less than £7 a year on protecting each consumer, or 0.3% of councils' total expenditure³⁹. The report also highlights the inconsistencies which exist in Trading Standards staff resources across councils; staff numbers per 1,000 businesses vary by a factor of five⁴⁰. In a time of economic transition and strain, it is vital that Trading Standards have the financial resources they need to continue the excellent work they already do, including tackling the illicit tobacco trade, as well as to meet the additional responsibilities placed on them by new legislation.

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

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

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.

¹ Office of the Surgeon General (2014) 2014 Surgeon General's Report: The Health Consequences of Smoking—50 Years of Progress. http://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm?s_cid=cs_692

² ASH (2014) Use of electronic cigarettes in Great Britain, http://www.ash.org.uk/files/documents/ASH_891.pdf

³ Welsh Government (2014) Exposure to secondhand smoke in cars and homes, and e-cigarette use among 10-11 year old children in Wales: CHETS Wales 2 <http://wales.gov.uk/docs/caecd/research/2014/141203-exposure-secondhand-smoke-cars-ecigarette-use-among-10-11-year-olds-chets-2-main-en.pdf>

⁴ FDA (2009) Evaluation of e-cigarettes. <http://www.fda.gov/downloads/drugs/ScienceResearch/UCM173250.pdf>

⁵ Goniewicz et al. (2013) Levels of selected carcinogens and toxicants in vapour from electronic cigarettes. *Tobacco Control*, doi:10.1136/tobaccocontrol-2012-050859

⁶ Smoking, drinking and drug use among young people in England in 2006. The Information Centre for Health & Social Care, 2007

⁷ Brown, J et al. (2014) Real-world effectiveness of e-cigarettes when used to aid smoking cessation: a cross-sectional population study. *Addiction*. Vol. 108:1 pp. 1531-1540. DOI: 10.1111/add.12623

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⁹ Alcohol Concern (2014) Alcohol Marketing at the FIFA World Cup 2014: A Frequency Analysis. http://www.alcoholconcern.org.uk/wp-content/uploads/2014/10/Alcohol-Marketing-at-the-FIFA-World-Cup-2014_pdf.pdf

¹⁰ Belt, O (2014) Vested interests in addiction research and policy. Alcohol brand sponsorship of events, organizations and causes in the United States, 2010-2013. *Addiction*. 2014 Dec;109(12):1977-85. doi: 10.1111/add.12727.

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¹² <http://www.conveniencestore.co.uk/news/e-cigarette-sales-hit-a-wall-in-grocery-stores/511008.article>

¹³ Czogola et al (2013) Secondhand Exposure to Vapors From Electronic Cigarettes. *Nicotine Tobacco Research* doi: 10.1093/ntr/ntt203

¹⁴ Williams M, Villarreal A, Bozhilov K, Lin S, Talbot P (2013) Metal and Silicate Particles Including Nanoparticles Are Present in Electronic Cigarette Cartomizer Fluid and Aerosol. *PLoS ONE* 8(3): e57987. doi:10.1371/journal.pone.0057987

¹⁵ Loomis, D et al. (2013) The carcinogenicity of outdoor air pollution. *Lancet Oncol*. 2013 Dec;14(13):1262-3

¹⁶ Grana, R, Benowitz, N, Glantz, S (2013) Background Paper on E-cigarettes (Electronic Nicotine Delivery Systems). Prepared for World Health Organization Tobacco Free Initiative. December 2013.

¹⁷ Hammond et al, (2006) Tobacco Denormalization and Industry Beliefs Among Smokers from Four Countries. *American Journal of Preventative Medicine* 2006;31(3):225–232

¹⁸ Office of National Statistics, *Adult Smoking Habits in Great Britain*, 2013

¹⁹ King, A et al. (2014) Passive exposure to electronic cigarette (e-cigarette) use increases desire for combustible and e-cigarettes in young adult smokers. *Tobacco Control* doi:10.1136/tobaccocontrol-2014-051563

²⁰ All Party Parliamentary Group on Smoking and Health (2011). *Inquiry into smoking in private vehicles*. ([pdf](#))

²¹ This is the same wording as contained in Section 8(4) of the 2006 Health Act implemented in England and Wales : Person having management or control of smoke-free premises or vehicle fails to stop a person from smoking there.

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- 22 This may encompass officers engaged in enforcement work for existing smokefree legislation, including Environmental Health Officers, Licensing Officers, Technical Officers etc.
- 23 [Section 192 of the Road Traffic Act 1988](#).
- 24 Ibid
- 25 http://www.nhsgrampian.co.uk/nhsgrampian/gra_display_simple_index.jsp;jsessionid=0F632C439D87600011EB4DD11E7018B0?pContentID=9042&p_applic=CCC&p_service=Content.show&
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- 40 Ibid