

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?

Given the tobacco industry owns a significant share of e-cigarette production and given its drive for increasing market share and profit through innovation and marketing, deploying a range of tactics is necessary to prevent the range of accessories from continuing to evolve into new products. Thus, wording chosen to cover these accessories should be comprehensive to ensure any legislation is ‘future proofed’.

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 checked="" 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?

No exemptions for any e-cigarettes regulated as consumer products. Products that are regulated by the MHRA as medically approved products could be treated differently and advertising allowed as products to aid smoking cessation.

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)?

Exposure to tobacco advertising and promotion (eg promotional displays) influences smoking uptake rates in young people and undermines smokers' attempts to quit.^{1,2,3} More receptivity or awareness of tobacco advertising among non-smoking young people results in greater likelihood of becoming smokers.⁴ Regulating advertising is effective - recall of promotional displays dropped significantly post-implementation of point-of-sales display bans in Ireland⁵, and interventions to restrict access to tobacco, especially if actively enforced at all levels and combined with other prevention and protection interventions, are effective for retailer compliance and ultimately impacting on sales/access among young people.^{6,7} Among adults, a comprehensive set of tobacco advertising bans can reduce tobacco consumption while a limited set has little or no effect.⁸

1. Paynter J, Edwards R. The impact of tobacco promotion at the point of sale: A systematic review. *Nicotine & Tobacco Research* (2009). 11(1):25-35. <http://ntr.oxfordjournals.org/content/11/1/25.abstract>

2. Patel B, et al. Policy summary: Ban on tobacco displays at the Point-of-sale. *The Lancet UK Policy Matters*. <http://ukpolicymatters.thelancet.com/?p=1750>

3. Robertson L, et al. A Systematic Review on the Impact of Point-of-Sale Tobacco Promotion on Smoking. *Nicotine Tob Res* (2014)1-16. <http://ntr.oxfordjournals.org/content/early/2014/09/19/ntr.ntu168.abstract>

4. Lovato C, Watts A, Stead LF. Impact of tobacco advertising and promotion on increasing adolescent smoking behaviours. *Cochrane Database of Systematic Reviews* 2011, Issue 10. <http://onlinelibrary.wiley.com/doi/10.1002/14651858.CD003439.pub2/abstract>

5. <http://tobaccocontrol.bmj.com/content/early/2010/11/18/tc.2010.038141.abstract>

6. www.nice.org.uk/PH14

7. Stead LF, Lancaster T. Interventions for preventing tobacco sales to minors. *Cochrane Database of Systematic Reviews* 2005, Issue 1. <http://onlinelibrary.wiley.com/doi/10.1002/14651858.CD001497.pub2/abstract>

8. Saffer H, Chaloupka F. The effect of tobacco advertising bans on tobacco consumption. *Journal of Health Economics*, Vol.19, Issue 6, Nov 2000, pgs 1117-1137

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?

Contrary to pre-legislation fears, regulating advertising has not resulted in hefty implementation costs, increase in service times (standardised packaging legislation)⁹ or a decline in tobacco sales beyond seasonal fluctuations and downward trends (point-of-sale legislation)¹⁰. However, the latter is not the

intention of such legislation – the benefits are expected to be gradual rather than dramatic as regulation of advertising is unlikely to impact significantly on existing smokers but instead to evolve and accrue with time as a new generation of tobacco-free young people emerge into adulthood as non-smokers.

9. <http://tobaccocontrol.bmj.com/content/23/1/70.abstract>

10. <http://tobaccocontrol.bmj.com/content/20/2/151.abstract>

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?

Scottish Government should consider amending the current smoke-free legislation to enable consistent and fair enforcement of restrictions, in order to prevent undermining the success of existing arrangements and to pursue the national ambition of smoke-free Scotland by 2034 as set out in the tobacco control strategy.

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

Comments

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?

The World Health Organization commissioned review (Dec 2013) provides a good summary of the evidence on health effects and vapours on pgs 39-64 - <http://escholarship.org/uc/item/13p2b72n>, while the recently published White Paper from the American Industrial Hygiene Association (which has considerable credibility in the USA) provides a recent update https://www.aiha.org/government-affairs/Documents/Electronic%20Cig%20Document_Final.pdf.

A critique of the WHO-commissioned report is available at <http://bjgp.org/content/64/626/442.full> and <http://onlinelibrary.wiley.com/journal/10.1111/%28ISSN%291360-0443/accepted> while an insight into the various sides of the debate is available at <http://www.bmj.com/content/349/bmj.g5512>.

Another recent study <http://www.ncbi.nlm.nih.gov/pubmed/25262078> shows that salivary cotinine levels of non-smokers living with an e-cigarette user are almost 3x higher than non-smokers living in a smoke-free home; however, this may be as a result of the increased likelihood of being in traditional smoky environments and thus should be interpreted with caution.

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?

We answered Yes to the question above but are concerned that there should be no ambiguity to the law. There is a disparity between the legal age of driving at 17 and this offence only applying to adults over 18 which could potentially allow a loophole.

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?

If motor homes and caravans are on the public highway then they should not be eligible for any exemption. In other words, agree with the exemption so long as these types of vehicles are static and being used as a home at the time, but are considered on the same terms as other vehicles when in use as a vehicle (ie when children have less opportunity to move away from the confined space). The law shouldn't be ambiguous and allow loopholes.

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

Comments

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 <input checked="" type="checkbox"/> |
| b. Only hospital grounds | b <input type="checkbox"/> |
| c. Only within a designated perimeter around NHS buildings | c <input type="checkbox"/> |
| d Other suggestions, including reasons, in the box below | |

All NHS owned premises should be completely smoke-free. It would be helpful to also include buildings that the NHS leases, particularly in city

centre locations. Staff can frequently be seen smoking outside these buildings, so including a smoke-free perimeter around NHS occupied, but not necessarily owned buildings, may be helpful in establishing parity between different properties across the NHS Scotland estate.

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. Evidence shows that people with mental health problems have poorer physical health due to increased smoking rates and it is important that we address this inequality. Some NHS Boards have Acute and Mental Health units co-located on the same site and have therefore chosen to go completely smoke-free across the whole site.

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

In the first instance, the responsibility to enforce smoke-free grounds should be down to NHS Boards. NHS Boards have a duty to communicate clearly and comprehensively with regard to smoke-free NHS grounds and also to enforce this policy. Raising awareness of the change in policy, what this means, maps showing where people can't smoke on NHS sites, ensuring that the general public are fully aware of smoke-free means and why the NHS is following this policy. Whether there is legislation or not, people who do not comply should be approached and informed of the fact that smoking is not permitted and asked to move outside the grounds or refrain from smoking. Most NHS Boards report that the majority of people approached courteously by enforcement staff do comply. However, there is a small minority that refuse to comply and NHS Boards feel it is important to have some recourse in law so that, as a final sanction, Police Scotland may be called.

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

To be consistent the penalty should be the same as current smoke-free 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?

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

Evidence from pre- smoke-free legislation was that voluntary approaches were not effective, hence the need to bring in legislation. However, introducing national legislation that could encompass all possibilities and local variability would be complex and challenging. Local powers may be easier to implement and potentially these could be guided by local tobacco control plans.

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

Definitely anywhere children are present including play areas, schools, nurseries and recreational areas and sporting areas. Major tourist attractions that receive funding from the Scottish Government should be encouraged to make these smoke-free environments eg Historic Scotland sites, other sites, particularly family or school trip destinations should also be encouraged to be smoke-free spaces. If Scotland is to maintain its leading role as an innovative nation in terms of tobacco control, we need to keep extending the protection of smoke-free areas, not just for children (from the role-modelling and protection of health perspective) but also for the wider public (enabling protection for vulnerable groups such as pregnant women, those with medical conditions who are particularly at risk to second-hand smoke exposure).

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-medical 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?

Supervisor or 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)?

The fair application of legislation particularly protects people who are more liable to discrimination, such as disabled people and pregnant women who may not have a choice about being in a car with a smoker. It may therefore be more feasible to introduce legislation to cover cars altogether (even for lone drivers – from a distraction/protection of other later occupants perspective) rather than simply cars with children.

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

A package of measures should help to shift the culture, and improve public support. Implementation of various aspects of the legislation (eg smoke-free, removal of smoke-free exemptions) may happen in phases, as public support is built. One option would be for the smoke-free cars legislation to focus on the protection of children in the first instance, with additional media communications to strengthen support encouraging the protection of others from a health perspective (and driver from a road safety/distraction perspective).

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

In order to maximise fairness to all and minimise the exacerbation of inequalities, the smoke-free legislation should have its exemptions removed for mental health settings.

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 for NHS Health Scotland.

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

It is difficult to estimate the financial implications of regulatory measures on tobacco use as they are only one element of a comprehensive overall strategy which includes tobacco retailer licensing, age restriction measures and enforcement arrangements. Use of mass media may have upfront financial implications but, it is also an effective tool in achieving acceptance of and strengthening support for legislation as well as successful implementation and self-enforcement.¹¹

Additionally, any financial implications are likely to be offset by public health improvement achieved by smoking cessation for which smoking cessation services are already in place to support and maximise quit attempts. The toll of smoking-related morbidity and mortality is estimated to cost NHSScotland at least £323-500million, accounting for 13,000 deaths (a quarter of all deaths) and 56,000 hospital admissions per year.¹² Any financial impact of tobacco control measures pales or ought to pale into insignificance when compared with the impact of tobacco on the health of the Scotland population – public health ought to be a priority over shareholder interest and commercial profit.

11. www.nice.org.uk/PH10

12. ScotPHO/ISD Scotland. Smoking Ready Reckoner. Glasgow: ScotPHO;2012.

www.scotpho.org.uk/publications/reports-and-papers/868-smokingready-reckoner Uses the method of calculating smoking attributable deaths first developed by Peto, Lopez et al in *Mortality from smoking in developed countries 1950–2000*, 2nd edition.

NHS Health Scotland recognises the achievement of existing tobacco control measures in collectively reducing prevalence of tobacco use and the potential of additional tobacco control measures to complement these and provide consistency of message of the harm caused by tobacco, ultimately contributing to a tobacco-free generation. Legislative, regulatory and fiscal measures are the most likely to have a positive impact on inequalities, especially if incorporated into a package of combined measures, by having the potential to benefit more disadvantaged groups.^{13,14,15} Ultimately, therefore, the measures proposed in this consultation ought to have a positive impact on inequalities, a priority for the Scottish Government, in light of the socio-demographic profile of tobacco use and associated morbidity and mortality.

13. Thomas S, et al. Population tobacco control interventions and their effects on social inequalities in smoking: systematic review. *Tobacco Control* 2008 17: 230-237.]

14. <http://silne.ensp.org/wp-content/uploads/2013/09/adult-policy-report-web.docx>

15. <http://tobaccocontrol.bmj.com/content/early/2013/09/17/tobaccocontrol-2013-051110.abstract>

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

Lead-in time is important to inform and build public support. It is important to acknowledge that wider stakeholders other than just consumers will have to make adjustments. These are likely to require a year to put in place or 6 months at minimum. A national marketing campaign would be required to support and inform of changes and build public support. The extension of tobacco control measures needs to become a wider social movement.

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

As a general comment, we believe that measures to improve public health interest should take priority over financial considerations. If Scotland is to continue to be at the forefront of developing strong tobacco control measures then developing smoke-free environments, particularly where these seek to protect children, young people and the most vulnerable in our society is an important next step. Other countries (eg Spain¹⁶, France¹⁷) have already taken this step or made a commitment to do so. However, it is important that we continue to maintain and build support for this wider social change and there is therefore a continued need to raise awareness, improve knowledge, build the social consensus and clarify the rationale for the proposed legislative measures with the general public.

¹⁶. http://ec.europa.eu/health/social_determinants/docs/policybrief_tobacco_en.pdf

¹⁷. <http://eurohealthnet.eu/media/tobacco-france-carries-out-step-towards-free-tobacco-region>

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.

NHS Health Scotland has no links with the Tobacco Industry.