

## **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

**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?**

b While there may be difficulties in accurately specifying all devices to the standards required in a criminal prosecution, on balance we think this is required as otherwise the legislation will be incapable of enforcement.

**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 ☒

The licensing legislation makes the retailer liable rather than the under age purchaser. It has been a consistent complaint of the licensed trade that this has been an insufficient deterrent to persons trying to purchase.

In general terms the legislation on e-cigarettes needs to be the same as for normal cigarettes

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

Yes

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

Yes

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

All products relating to e-cigarettes should have restriction on them.

**Proxy purchase for e-cigarettes**

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

Yes. There also needs to be an offence of agent sales similar to the licensing regime.

**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

**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

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

a. Bill boards

a ✓

b. Leafleting

b ✓

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

c ✓

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

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

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

f. Point of sale advertising (advertising for products and services at the places where they were bought) f ✓

g. Events sponsorship with a domestic setting g ✓

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

As with ordinary cigarettes, no exemptions should apply.

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)?

NO

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

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

Yes

**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

**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?**

The Scottish Government should extend the smoking ban in enclosed public spaces to include e cigarettes. They should do this for the following reasons: a) the unquantified health risks of second-hand nicotine vapours; b) the risk of rebirthing a smoking culture; c) the possibility of confounding the enforcement of existing smoke free legislation.

**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?**

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

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

Yes

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

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

Yes

**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, where vehicles are people's homes, e.g. caravans etc, these should be exempt.

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

Comments

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

Apply the same defences as apply in relation to smoking and licensing legislation as at present.

**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

**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 x <input type="checkbox"/> |
| b. Only hospital grounds   | b x <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           |                              |

The big issue relates to enforcement. Would this be a criminal offence enforced by the police or would the burden of enforcement fall on the NHS?

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

There are challenging aspects regarding long-stay patients and mental health facilities – should consider a complete ban on smoking tobacco but perhaps allow e-cigarettes to be used in these premises, that could be medically subscribed.

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

Environmental Health and the Police, subject to suitable funding been put in place

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

Fixed penalty system in accordance with existing smoking in enclosed public spaces regime.

**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

**36. If you answered 'yes' to Question 25, 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**

cx ☐

**d. Other actions. Please specify in the box below**

Local authorities should have power, but not a duty to designate smoke free areas. It is important that local authorities have power to achieve outcomes tailored to local needs rather than a one-size fits all, centrally imposed solution.

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

All playgrounds, nurseries, schools, community play areas and such other public areas as Local Authorities may designate.

**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

**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

**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

**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?**

Manager or other adult worker.

**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)?**

Overall there would be positive impacts on young people through reducing exposure to harmful substances.

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

N/A

**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?**

For Environmental Health & Trading Standards there will be increased complaints initially; and start-up investment may be required. . If compliance is to be enforced other than by criminal offences, there will be enforcement costs for both Health Boards and local authorities.

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

No other significant financial implications envisaged.



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

Measures should go live April 2016. TV and radio ad campaign.

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

The tax regime has been one of the most effective means of reducing smoking. A similar tax regime should be applied to e cigarettes as to normal cigarettes.

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.

No links to the tobacco industry and receive no funding from them.