

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?

Refills for E-cigarettes (nicotine only devices or devices capable of containing nicotine)

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?

We have no recommendations to make on exemptions

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)?

We ask that the Scottish Government consider the powerful effect tobacco advertising had on non-smokers/smokers prior to the ban on national advertising in the UK (2000). We know there is a clear relationship between tobacco advertising and consumption and in light of the substantial amount of evidence that has proven that advertising and promotion of tobacco products along with product placement has a strong correlation to smoking prevalence, therefore we would recommend that bold and robust measures in curtailing all forms of advertising of E-cigarettes (unless medicinal) to non-smokers (including children, young people and vulnerable adults), must be taken.

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 ☐

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?

No comment

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?

We recommend that the Scottish Government consults with organisations to develop national guidance. This would ensure a consistent approach across the country. This will take time to develop a cohesive national approach and as an interim measure we would ask that the Scottish Government support and encourage organisations to agree their own policies on the restriction and appropriate use of E-cigarettes (i.e. medicinal only). We further recommend that the development of local interim guidelines is informed by the most up to date information provided by the relevant national bodies.

We acknowledge that the evidence is limited on the harmful effects (if any) of E.cigarette use indoors and therefore would ask that research is undertaken to explore these effects to inform future generations, and we would recommend that any local interim guidelines should adopt a cautious approach of the possibility of long term harmful effects of the E.cigarette balanced with the possibility that this product also has the potential to significantly reduce the harm caused by tobacco smoke.

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

No comment

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 ☒ 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?

No comment

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?

No comment

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?

We consider that where a vehicle is a person's home i.e. a mobile home that this should be exempt and we consider that this legislation should only be applied to mobile vehicles where this vehicle is used for business or for recreational purposes only, and therefore by definition is not a home.

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

No comment

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

We believe that by focussing legislation only on hospital grounds where there are clear lines of delineations and where there is good evidence of public support, that under these circumstances legislation would be easily adopted. This would further support the public profile of the NHS as being an exemplar in promoting public health.

We do not support legislative measures where there is no clear delineation of grounds as this will lead to confusion and ambiguity. We have concerns that where the NHS and other agencies share grounds and premises or where other health professional are being sub-contracted to deliver services on behalf of the NHS (i.e. dental practices), this could lead to ambiguities for staff and service users of these premises, and therefore a greater likelihood of non-compliance of any proposed legislation.

We consider the option for extending policies beyond NHS sites or on shared sites, could be considered within local decision-making and planning.

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)?

We consider that mental health facilities and sites where there are long stay patients, this needs to be considered carefully at a local and national level. We would recommend that if legislation were to be applied also on grounds of mental health facilities that a longer lead-in time is considered.

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

We support national legislation for hospital grounds only and therefore this would strengthen the role of staff to be able to challenge possible breaches on NHS premises. We would consider visitors and users of hospital grounds also might feel able to challenge possible breaches, and that this would be further supported by other statutory agencies (Police Scotland and Environmental Health and Trading Standards).

Research and information from the implementation of The Smoking, Health and Social Care (Scotland) Act 2005, would suggest that the wider public is supportive of these legislative measures in protecting public health.

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

We consider that a penalty for breaching smoke free hospital grounds, that this should be equivalent to the fixed penalty agreed for in The Smoking, Health and Social Care (Scotland) Act 2005

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?

We consider that local tobacco control planning and partnerships working towards our 2034 Smoke Free aim, would act as important champions and supporters of local and national policies.

Therefore these partnerships would have an important role to build local engagement and agreement and would be key to supporting legislative measures for hospital grounds but also encouraging decision making on extending smoke free grounds to other areas through non-legislative measures.

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 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** c ☒
- d. Other actions. Please specify in the box below**

We would encourage local partnerships and organisations to take forward national policies and guidelines, however we also consider that local planning should be able to develop their own responses as to how national recommendations will work in practice. Therefore we do not support extending smoke free grounds beyond hospital grounds unless it is through community involvement and agreement.

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

Areas where children and young people play

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?

We consider that only the registered retailer should be able to authorise that a young person under 18 may be able to sell these products to potential customers. This will mean that the registered retailer must be present for this sale and that the responsibility of being able to challenge proof of age must lie with the registered retailer.

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)?

We find that the proposed changes will be of greater short and long term advantage to children and young people and therefore will create greater equality in long term health outcomes particularly for those who experience inequality.

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

We do not foresee the changes will have a substantial negative effect however in Scotland we have a number of retailers who are currently selling the E.cigarette to young people with no restrictions therefore we consider retailers must be given adequate lead-in time to make any necessary adjustments.

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

No comment

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?

We see the financial implications as being material costs for the appropriate signage and training along with resources in terms of staffing and patient information being readily available for all users of NHS premises.

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

No comment

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

We consider the lead in time for the 2005 legislation was helpful in preparing at a local and national level a change, and this may have contributed to high compliance figures and very few breaches, and therefore would recommend similar.

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

No comment

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.

We have no direct or indirect affiliations to the Tobacco industry.