

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?

The sale of all e-cigarette accessories should be restricted to those 18 years and over.

We want to draw the Scottish Government’s attention to two recent studies which investigate e-cigarette use among young people. A recently published paper highlights that even among 10-11-year-olds, having used an e-cigarette is associated with intentions to smoke (1). These findings are disconcerting because they suggest that e-cigarettes represent a new form of childhood experimentation with nicotine and that their use is associated with weaker anti-smoking intentions (1). Another paper by Moore and colleagues (2) currently under review shows that young people do not seem to be using e-cigarettes as a cessation device and suggests that there is potential for e-cigarettes to become normalised within the youth population due to use across all socio-demographic groups (2).

(1) Moore G, Littlecott HJ, Moore L. (in press): E-cigarette use and intentions to smoke among 10-11 year old never smokers in Wales. Tobacco Control.

(2) Moore G, Hewitt G, Evans J, Littlecott H, Ahmed N, Holliday J, Moore L, Murphy S, Fletcher A et al. (under review): E-cigarette use among young people in Wales: evidence from 2 cross sectional surveys. BMJ Open.

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 type="checkbox"/> |
| b. Leafleting | 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 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 type="checkbox"/> |

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

Rather than advocating for “young people and adult non-smokers [to] be protected from any form of advertising and promotion of e-cigarettes”, we suggest that any form of advertising and promotion of e-cigarettes should not be targeted at young people and adult non-smokers.

We therefore think that rather than restricting specific advertising and promotion outlets, regulating the content and context of e-cigarette advertising and promotion might be more appropriate. Such legislation should ban any form of advertising and promotion of e-cigarettes targeted at young people and non-smoking adults. While we think that simple and plain product advertisement and supply of information about the product (e.g. content, point of purchase, etc.) should be allowed, we support legislation to ban any form of advertising and promotion of e-cigarettes which associates e-cigarette use with positive images (e.g. freedom, emancipation, independence, “coolness” etc) or promotes e-cigarette use as a positive lifestyle.

We are in favour of regulation, because evidence shows that voluntary agreements, like the recently updated CAP/BCAP rules on the marketing of e-cigarettes (1), do not work. Prior to the UK ban on tobacco promotion, the existence of the Committee for Monitoring Agreements on Tobacco Advertising and Sponsorship (COMATAS) did not prevent the recurrence of notified advertising breaches for traditional cigarettes. Systematic and opportunistic surveys concluded: ‘Breaches of the UK voluntary agreement are common but monitoring is generally non-existent. A voluntary agreement does not provide adequate protection for children’. It was noted that even those knowledgeable of the Voluntary Agreement did not complain to COMATAS or other bodies as they were ‘cynical after a decade of dismissed complaints and inaction over repeated breaches’ which offered only a ‘façade of action’ (2).

(1) Committee of Advertising Practice (2014): New rules for the marketing of e-cigarettes. CAP's and BCAP's joint regulatory

statement, London: Committee of Advertising Practice.
(2) Mindell JS (1993): The UK voluntary agreement on tobacco advertising: a comatose policy? Tobacco Control, 2, 209-214.
doi:10.1136/tc.2.3.209.

12. Are you aware of any information or evidence that you think the Scottish Government should consider in relation to regulating domestic advertng in relation to impacts on children and adults (including smokers and non-smokers)?

See above

13. Are you aware of any information or evidence that you think the Scottish Government should consider in relation to regulating domestic advertng in relation to impacts on business, including retailers, distributors and manufacturers?

Comments

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?

We note that the current Tobacco Control Strategy includes a commitment to a review of the Scottish Tobacco Retailers' Register in 2015 and strongly support consideration of registration of retailers selling e-cigarettes within the terms of the review.

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?

With regard to the use of e-cigarettes in public spaces, we strongly encourage the government to follow a precautionary principle approach where e-cigarettes are regulated in the same way as cigarettes. Therefore, the same legislative rules that apply to tobacco smoking in enclosed public spaces should apply to e-cigarettes. Given that there is currently a lack of evidence about the harmfulness of second hand vapour and the potential of e-cigarette use in public places to re-normalise cigarette smoking, particularly among young people, we think that such a precautionary approach is the most sensible option at present.

Our response to this question, and also to the questions on the legal limits on age of purchase (including via proxy purchases), is informed by our view that the regulation of e-cigarettes should facilitate their potential contribution to harm reduction at an individual level, while minimising risks at a population level.

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 used of e-cigarettes in enclosed spaces, that you think the Scottish Government should consider?

The Scottish Government may be interested in what action is being taken on this issue in other jurisdictions e.g. in Utah, USA (Indoor Clean Air Act) (http://www.tobaccofreeutah.org/pdfs/shs_hookah-e-cigarette.pdf) and Nova Scotia, Canada (<http://www.cbc.ca/news/canada/nova-scotia/e-cigarettes-to-be-banned-in-public-indoor-places-in-nova-scotia-1.2811355>).

The WHO has also made recommendations on this issue:
http://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_10-en.pdf

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?

Comments

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?

We would like to raise the following issues with regard to prohibiting smoking in cars carrying children aged under 18:

We think that vehicles which are also people's homes should be excluded from the restrictions at the time when they are static and not being driven but stopped with the engine turned off and used as a home, rather than a mode of transport.

Several studies have illustrated the high levels of tobacco smoke that accumulate in vehicles. Children and young people exposed to SHS in vehicles are at an elevated risk of harm to their health for several reasons, including smaller airways, faster rates of breathing, and less developed immune systems. Children are also less likely to be able to choose whether or not someone else in the vehicle is smoking or to alter the ventilation in a car.

In addition to a recent survey which shows that 86% of 8–15 year olds

supported legislation to prohibit smoking in vehicles carrying children (1), our most recent research analysing media coverage on the issue highlights the considerable support which such legislation receives in the media (2). We therefore assume that legislation to prohibit smoking in cars carrying children aged under 18 would be a measure that would receive widespread public support.

- (1) British Lung Foundation (2012): Passive Smoking. Policy Statement. London: British Lung Foundation.
- (2) Hilton S, Wood K, Bain J, Patterson C, Duffy S, Semple S. (2014): Newsprint coverage of smoking in cars carrying children: a case study of public and scientific opinion driving the policy debate, BMC Public Health: 14: 1116.

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 ☐
- b. Only hospital grounds b ☐
- c. Only within a designated perimeter around NHS buildings c ☐
- d Other suggestions, including reasons, in the box below

Comments

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

Comments

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

Comments

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

Comments

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 chose to not answer Q29-34.

Smoke-free (tobacco) children and family areas

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

Yes ✓ No ☐

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

a. Further voluntary measures at a local level to increase the number of smoke-free areas a ✓

b. Introducing national legislation that defines smoke-free areas across Scotland b ☐

c. That the Scottish Government ensures sufficient local powers to allow decisions at a local level as to what grounds should be smoke-free c ✓

d. Other actions. Please specify in the box below

Comments

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

The Scottish Government should support the development of local policies based on a community empowerment approach. Local communities should be consulted in and participate (co-produce) in the development of such policies that are appropriate to local circumstances e.g. identification of relevant settings/locations. This assets based approach is more likely to achieve community ownership of these policies, and effective implementation and sustainability through community self-enforcement.

Having local authorities make their own designation as to the smoke-free areas within their jurisdiction would also allow for more appropriate designation and local control. Tobacco Control Alliances or Community Health and Care Partnerships could designate smoke-free areas as part of their local tobacco control plans.

Given that there is a risk that this approach may increase inequalities in that more affluent communities may be more likely to respond to this approach, some mechanism should be implemented to ensure that the development and coverage of such policies reduces rather than increases inequalities in coverage.

Areas should be identified by local communities and would be likely to include public playgrounds, play areas, amusement parks etc.

Age verification policy 'Challenge 25' for the sale of tobacco and electronic cigarettes

38. Do you agree that retailers selling e-cigarettes, refills and tobacco should be required by law to challenge the age of anyone they believe to be under the age of 25?

Yes ✓ No ☐

39. Do you agree that the penalties should be the same as those which are already in place for selling tobacco to someone under the age of 18?

Yes ✓ No ☐

Unauthorised sales by under 18 year olds for tobacco and electronic cigarettes

40. Do you agree that young people under the age of 18 should be prohibited from selling tobacco and non-medicinal e-cigarettes and refills unless authorised by an adult?

Yes ✓ No ☐

41. Who should be able to authorise an under 18 year old to make the sale, for example, the person who has registered the premises, manager or another adult working in the store?

The same regulations should apply as those for the sale of alcohol, i.e. an adult member of staff should be required to authorise each sale.

42. Do you agree with the anticipated offence, in regard to:

- a. the penalty
- b. the enforcement arrangements

a ✓
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)?

Comments

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

Comments

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

Tobacco use in Scotland is strongly patterned by socioeconomic position. While this highlights the importance and value of effective tobacco control measures for lower socio-economic groups, it also reinforces the need to consider how new regulations may unintentionally stigmatise or otherwise constrain already vulnerable groups. In general, we support measures that restrict the activities of the tobacco industry, reduce smoking uptake in young people, and support smokers to quit. Where regulations are aimed at reducing adult role-modelling of smoking or limiting exposure to second-hand smoke, we believe there is a particular need to be sensitive to the risks of stigmatising or potentially 'blaming' smokers from lower socio-economic groups.

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?

Comments

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

Comments

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

The same as is usual for this type of legislation.

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

The threat of black market development in e-cigarettes should be considered as a consequence of regulation. More importantly, in considering potential business or regulatory impacts of any proposed regulations, it will be important for the Scottish Government to honour the UK's commitments under Article 5.3 of the WHO FCTC (reiterated in the 2013 Tobacco Control Strategy for Scotland) "to protect [public health] policies from commercial and other vested interests of the tobacco industry". Tobacco companies (including e-cigarette producers owned by tobacco companies) must not be allowed to influence the development of health policy, including via attempts to challenge the economic or legal basis of proposed regulation. The Scottish Government has shown impressive commitment to this principle in its pursuit of measures such as the ban on point-of-sale displays, and we urge the Government to maintain this commitment in developing regulations on e-cigarettes. In this context, we note the recent decision by the Conference of Parties to the FCTC highlighting the importance of protecting tobacco control from "vested interests" in e-cigarettes and other electronic nicotine delivery systems, and their recognition that such interests extend beyond those of the tobacco industry (1).

(1) Decision FCTC/COP6(9). Electronic nicotine delivery systems and electronic non-nicotine delivery systems. Sixth Session; 13-18 October; Moscow, Russian Federation 2014.

http://apps.who.int/gb/fctc/E/E_cop6.htm

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 direct or indirect links to, nor have received funding from, the tobacco industry.