

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?

All products which are not registered as medicines under the MHRA from 2016 should have restrictions placed 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 ☒ 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?

Any e-cigarettes which become subject to MHRA regulation as part of a

smoking cessation programme could be exempted from the advertising and promotion regulations, though as medicines their promotion would be subject to other controls.

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 specific comment

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 specific comment

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?

N/A

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?

E-cigarettes should be subject to the same restrictions as tobacco, unless new evidence of absence of harm comes to light.

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

N/A

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?

A paper published by the American Industrial Hygiene Association "*White paper; Electronic Cigarettes in the Indoor Environment*"ⁱⁱ highlights a number of concerns, including the lack of regulation and quality control of the devices; chemical exposures to bystanders, and the lack of good evidence about exposure to many of the flavourings etc, employed in e-cigarettes. The paper concludes that while they may carry lower risks than tobacco cigarettes, there is not enough evidence of their safety.

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?

N/A

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?

N/A

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?

Vehicles which are also people's homes should only be exempted provided the vehicle is stationary, being used as a home, and not a vehicle being used for travel.

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

No specific 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

Given the practical difficulties of enforcement and the need to respect vulnerable people who may be addicted and under stress, it may be better to legislate that Health Boards can make large areas of grounds non-smoking, but have discretion to have limited areas, well away from entrances where smoking might be permitted.

The great variation in the size and arrangement of NHS grounds make it

necessary for the legislation to be flexible according to the local circumstances. Such areas could also be used for e-cigarette use.

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)?

In long-stay facilities, including long-stay mental health care and care of the elderly wards, it may be necessary to provide some facilities for cigarette and e-cigarette use, provided this has no impact on staff or other people in the facility.

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

NHS Staff and staff of private contractors in PFI facilities, if necessary by the employment of security staff with a remit to enforce the regulations.

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

Penalties as for smoking in enclosed public places.

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

No specific comments

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

All areas which are primarily for use by children.

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?

A responsible manager present in the store at the time of 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)?

No specific comment

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

No specific comment

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

No specific 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?

No specific comment

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

No specific comment

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

Six months and a public information campaign

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

No specific 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.

The Royal College of Physicians of Edinburgh has no links to the tobacco industry

ⁱ https://www.aiha.org/government-affairs/Documents/Electronic%20Cig%20Document_Final.pdf