

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. Evidence exists that despite the voluntary trade ban on sales of e-cigarettes to persons under 18, there is still a significant number of sales to that age group. Applying the same age restrictions to e-cigarettes as are currently applied to alcohol and tobacco would make it easier for consumers and businesses alike to understand.

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 - The restriction should apply to only those devices/refills that contain nicotine. Clear labelling requirements may also have to be introduced so that those devices which contain nicotine can be clearly differentiated from those e-cigarette related devices that do not.

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 X

Again, applying the offences to both would maintain the consistency with alcohol and tobacco.

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?

No

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

N/A

Proxy purchase for e-cigarettes

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

Yes. Again this would be consistent with the provisions relating to alcohol and tobacco.

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. The same protections for those under 18 that apply to tobacco products should apply to e-cigarettes as well. If the purpose of e-cigarettes is to offer smokers an alternative to tobacco or to help them stop smoking or reduce their consumption, e-cigarettes should not be marketed so that they appeal to those under 18 or to non-smokers.

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. Point-of-sale advertising would have to be regulated in line with tobacco.

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 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 ☐

g. Events sponsorship with a domestic setting

g ☐

All of the above should be regulated.

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

Exemptions similar to the exclusions contained the Tobacco Advertising and Promotions Act 2002 and in the Tobacco and Primary Medical Services Act 2010 should be applied to e-cigarettes.

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)?

None

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?

None

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. There is a burgeoning business in e-cigarettes and the current number of retailers is unknown and increasing. Requiring them to register in the same way as tobacco retailers would allow those enforcing the regulations to know where to direct their business advice and enforcement activities. However, the register would need to be maintained and up-to-date if it is to prove to be a robust enforcement tool.

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

Yes. Again consistency with the provisions of the Tobacco and Primary Medical services (Scotland) Act 2010 would help consumers and businesses alike, including the ability of enforcers to issue Fixed Penalty Notices.

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

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?

Currently there appears a general concern of employers as to whether e-cigarettes are permissible in the workplace. There appears to be significant concern about potential health risks associated with fumes generated by e-cigarettes. It would be in accordance with Scottish Government's health improvement strategy by taking a firm stance. The current legislation (on smoking in enclosed public spaces) should be amended to include e-cigarettes, so that not only would health concerns be addressed but also clarity established as to control of smoking activity.

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?

See 18.

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?

No

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

Recommend that offence should be smoking in vehicle carrying under 18s.

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?

Comments

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 | |

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)?

None

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

Local Authority

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

Fixed penalty

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?

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

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

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. This is already common practice in the sales of alcohol and tobacco and was piloted and promoted by business in the first place.

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-medicinal e-cigarettes and refills unless authorised by an adult?

Yes. This is good practice and can prevent peer-pressure sales by those under 18

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?

It should be the business owner, manager or other specifically designated person who is over 18 such as the person who is registered with the Scottish Government to supply e-cigarettes at that particular address.

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

a. the penalty YES

b. the enforcement arrangements YES

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 comment

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

No comment

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?

Enhanced business advice and enforcement activities will obviously incur costs to those services charged with the work. Quite what those costs will

be cannot be accurately defined at this stage. There will also be costs associated with promoting these changes to the general public.

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

As per 46.

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

6 months notice of introduction of measures, public informed through channels as per smoking control legislation

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

Clear definitions of e-cigarette devices, refills and accessories will be required in the proposed legislation to allow it to be enforced effectively.

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.

None