

## **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 ☐

Member of our research centre (which covers 13 Universities) have authored a number of reviews of the existing evidence on electronic cigarettes, including for Public Health England and a recent Cochrane review. Existing studies clearly

illustrate that use of ecigarettes is much safer than smoking and there is promising evidence in relation to their effectiveness for smoking reduction and cessation.

Currently there is very little evidence that non smoking young people are using e-cigarettes in substantial numbers<sup>i</sup>. However, there are no reasons for promoting use of a nicotine containing product to young non smokers and on these grounds we understand that an age of sale law is a practical step at this time. Importantly, a common approach should be adopted across the UK and we note that the Westminster government are introducing similar proposals to prevent under-18s purchasing nicotine containing products such as e-cigarettes.

## **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 ☒

We believe there would be considerable practical difficulties involved in trying to differentiate between nicotine and non nicotine devices and refills and therefore age of sale regulations should apply to both. Some other countries (such as Canada) have tried to ban only nicotine containing e-cigarettes with limited success.

## **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 responsibility for enforcing this law should be on the retailer selling the e-cigarette. The offence should only apply to the retailer.

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

Yes ☒ No ☐

The experience of tobacco vending machines in the past is that these could in some circumstances be accessed by young people under the age of sale. If e-cigarettes and refills are available via self-service vending machines this may undermine an age of sale restriction.

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

Yes ☐ No ☒

There are a wide range of e-cigarette accessories available. There are no scientific grounds for restricting their sale and so our view is that this cannot be supported at the current time.

**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 ☒ No ☐

We have conducted some research on the proxy purchase of cigarettes in Scotland as part of a wider study looking at youth access to tobacco<sup>ii</sup>. We found that proxy purchases still continued and as far as we are aware, there have been no prosecutions under the tobacco proxy purchase legislation in Scotland. Proxy purchase laws are there to support restrictions on age of sale. Thus if an age of sale restriction is to be introduced for e-cigarettes then a proxy purchase law should also be introduced. However, enforcement is important as our previous research shows.

### **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 ☐

Despite the fact that existing evidence suggests that e-cigarettes are far safer than tobacco, we believe there should be some restrictions on their advertising and promotion. This is about balancing the potential benefits of some forms of promotion (to encourage smokers to switch to e-cigarettes) with the disadvantages, which are primarily around uptake by non smokers, particularly non smoking children.

Our view differs from that of other tobacco control researchers who believe (based on evidence from tobacco advertising) that partial restrictions are ineffective and only a complete ban that treats e-cigarette advertising in the same way as tobacco advertising will be effective. We do not regard this as a pragmatic approach. To argue for a ban on all forms of advertising and promotion fails to recognise the benefits of e-cigarettes as a harm reduction tool and as a safer alternative to smoking.

What is required is a proportionate response. The recent Advertising Standards Authority Committee of Advertising Practice guidelines go some way towards this

although we recognise that their enforcement can be limited and that their standards have already been challenged by existing e-cigarette advertisements.

Any proposed restrictions in Scotland should not cover nicotine containing devices that are to be licensed by the Medicines and Healthcare products Regulatory Agency (MHRA).

**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 ☐

We note that promotion of e-cigarettes through sponsorship (particularly sports sponsorship) is a form of promotion where the benefits of regulation may outweigh the risks. We also note that brand-stretching and free distribution of e-cigarettes are also areas that merit further regulation to prevent children using e-cigarettes.

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

- |   |  |
|---|--|
| <b>a. Bill boards</b>   | <b>a</b> <input type="checkbox"/>            |
| <b>b. Leafletting</b>   | <b>b</b> <input type="checkbox"/>            |
| <b>c. Brand-stretching (the process of using an existing brand name for new products or services that may not seem related)</b> | <b>c</b> <input checked="" type="checkbox"/> |
| <b>d. Free distribution (marketing a product by giving it away free)</b>  | <b>d</b> <input checked="" type="checkbox"/> |
| <b>e. Nominal pricing (marketing a product by selling at a low price)</b>   | <b>e</b> <input type="checkbox"/>            |
| <b>f. Point of sale advertising (advertising for products and services at the places where they were bought)</b>                | <b>f</b> <input type="checkbox"/>            |
| <b>g. Events sponsorship with a domestic setting</b>  | <b>g</b> <input checked="" type="checkbox"/> |

There is currently not enough evidence to be able to say which forms of e-cigarette advertising and promotion may increase the appeal of the products to non smoking young people. However, a number of points are fairly clear. The first is that there is a narrow window of time to introduce restrictions before the implementation of the European Tobacco Products Directive in 2016. Article 20 of this Directive applies to electronic cigarettes and makes clear that marketing restrictions will be applied and will vary depending on the nicotine content of the device.

We have some concerns about how feasible or useful it would be for the Scottish government to try and apply restrictions in advance of TPD implementation. However, if this is possible then what should be avoided is any promotion that links e-cigarettes to tobacco. As some e-cigarettes are now made by tobacco companies, this is a risk and for that reason brand stretching should not be permitted. We also believe that the risks of free distribution or events sponsorship in terms of appealing to non smoking young people outweigh the potential advantages of this type of marketing to encourage current smokers to try these products. The exception is for products that may become licensed by the MHRA where free distribution on prescription by a health professional should be encouraged.

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

See above.

**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)?**

UKCTAS researchers have published several reports on ecigarette marketing that we understand the Scottish government is already aware of but we provide references here<sup>iii</sup>, <sup>iv</sup>

**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?**

E-cigarettes are not tobacco. Including them in the register merely lumps them into the same category as a far more harmful product and may well

serve to limit the number of outlets that sell these products. This would be counter-productive in terms of realising the health gains that could be achieved if more smokers switched to e-cigarettes.

### **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?**

n/a

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

Any extension of existing smokefree laws needs to be based on scientific evidence relating to the harms of exposure. There is insufficient evidence to suggest that e-cigarette vapour is harmful to bystanders, as we have set out in a previous report<sup>v</sup>. Concerns have been expressed that e-cigarette use indoors may ‘renormalise’ tobacco smoking (due to some e-cigarettes looking like cigarettes or the similar hand to mouth action) but we know of no evidence to support this.

**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?**

We include references to a number of relevant studies here and would be happy to provide further suggestions for studies to examine if helpful, particularly as new research is being produced on a regular basis.<sup>vi,vii,viii</sup>

### **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?**

All drivers smoking in vehicles carrying someone under the age of 18

**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?**

N/A

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

N/A

**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           |                                       |

Making NHS grounds smoke-free is crucial to the success of measures to help people who use NHS services to stop smoking. The case for this was outlined in NICE guidance PH48<sup>ix</sup>, which we fully endorse.

**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. We are currently involved in implementing comprehensive smoke-free policies in mental health trusts in England which, while at an early stage of implementation, appear to be being implemented well e.g. [www.slam.nhs.uk/our-services/smokefree](http://www.slam.nhs.uk/our-services/smokefree). Additionally, Cheshire and Wirral Partnership Trust (a mental health trust) went comprehensively smoke-free in February 2014.

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

NHS premises staff supported by environmental health officers

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

This should be for government to decide but it should be consistent with the penalty for non-compliance with existing smokefree laws.

**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

Voluntary or partial restrictions in nursery and school grounds and playparks (which is how we interpret children's outdoor areas) are unlikely to be successful and may not be consistently enforced. National policies are needed.

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

See above. Our centre was involved in developing NICE guidance on smoking prevention in schools<sup>x</sup> and from the evidence reviewed it was clear that smokefree environments (indoors and on school grounds) have an important role to play in smoking prevention. In nurseries and play areas, children should not be exposed to second hand smoke, even outside, and removing smoking from these environments will also assist with a) temporary abstinence by adults which is helpful in promoting smoking cessation and b) denormalisation of tobacco smoking.

### **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 ☐

The 'Challenge 25' approach is a mechanism for promoting compliance with age of sale restrictions, initially introduced for alcohol. If an age of sale restriction is to be introduced on e-cigarettes then this scheme could be useful for enforcement.

**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 ☒

No. As stated above, e-cigarettes are not tobacco. If a penalty is to be applied it should be considerably lower.

### **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?**

Yes to these categories.

**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 believe others are better placed than we are to comment on equality considerations.

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

As above

**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?**

Not relevant for our organisation

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

N/A

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

N/A

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

No

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 links or funding.

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<sup>i</sup> ASH (2014) Use of electronic cigarettes in Great Britain, [http://www.ash.org.uk/files/documents/ASH\\_891.pdf](http://www.ash.org.uk/files/documents/ASH_891.pdf)

<sup>ii</sup> Amos, A, Bauld, L, Eadie, D, Pringle, B, Donaghy, E and McKell, J. (2013) A qualitative study of how young Scottish smokers living in disadvantaged communities get their cigarettes. *Nicotine & Tobacco Research*. doi: 10.1093/ntr/ntt095

<sup>iii</sup> De Andrade, M and Hasting, G (2013) The marketing of e-cigarettes, Cancer Research UK, London. [http://www.cancerresearchuk.org/prod\\_consump/groups/cr\\_common/@nre/@pol/documents/generalcontent/cr\\_11599\\_1.pdf](http://www.cancerresearchuk.org/prod_consump/groups/cr_common/@nre/@pol/documents/generalcontent/cr_11599_1.pdf)

<sup>iv</sup> Bauld, L, de Andrade, M and Angus, K (2014) *E-cigarette uptake and marketing: a report published by Public Health England*. Institute for Social Marketing, University of Stirling. <https://www.gov.uk/government/news/public-health-england-publishes-independent-evidence-papers-on-e-cigarettes>

<sup>v</sup> Britton, J and Bogdanovica, I (2014) Electronic cigarettes: a report for Public Health England.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/311887/E-cigarettes\\_report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311887/E-cigarettes_report.pdf)

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<sup>vi</sup> King, A et al. (2014) Passive exposure to electronic cigarette (e-cigarette) use increases desire for combustible and e-cigarettes in young adult smokers. *Tobacco Control* doi:10.1136/tobaccocontrol-2014-051563

<sup>vii</sup> Czogola et al (2013) Secondhand Exposure to vapors from electronic cigarettes. *Nicotine and Tobacco Research* doi: 10.1093/ntr/ntt203

<sup>viii</sup> Williams M, Villarreal A, Bozhilov K, Lin S, Talbot P (2013) Metal and silicate particles including nanoparticles are present in electronic cigarette cartomizer fluid and aerosol. *PLoS ONE* 8(3): e57987. doi:10.1371/journal.pone.0057987

<sup>ix</sup> NICE (2013) Smoking cessation in secondary care: acute, maternity and mental health services. NICE Guidelines PH48, <http://www.nice.org.uk/guidance/ph48>

<sup>x</sup> NICE (2010) School-based interventions to prevent smoking, NICE Guidelines PH23, <http://www.nice.org.uk/guidance/ph23>