

## **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 X ☐ 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 X ☐

**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 ☐

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

Yes X ☐ No ☐

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

Yes X ☐ No ☐

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

1. Any paraphernalia intended to facilitate nicotine use should be age restricted like other tobacco products. This measure could be introduced at the same time as measures restricting the sale of smoking paraphernalia by retailers who are not licensed to sell tobacco. Currently sales of items such as cigarette papers are restricted in licensed retailers but are sold freely in other settings such as pound shops. Studies in the UK where the e-cigarette or ENDS phenomenon is new show little strong evidence of a gateway effect. However, SALSUS (2014) data for Grampian suggests that 6% of 13 year olds and 15% of 15 year olds either tried or use e-cigarettes. This is substantially higher than the 1% of 13 year olds and 5% of 15 year olds who sometimes smoke. This could show a worrying reversal of the trend in recruitment to nicotine use. Also, an American study (the ENDS phenomenon is longer established in America) gives ground for concern.. More than a quarter-million youth who had never smoked a cigarette used e-cigarettes in 2013 according to the Centre for Disease Control and Prevention. (<http://www.cdc.gov/media/releases/2014/p0825-e-cigarettes.html>). This supports the idea that age restriction is a sensible precaution until the ENDS industry has conclusively demonstrated the absence of harm.

**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?**

- |   |  |
|---|--|
| <b>a. Bill boards</b>   | <b>a</b> <input checked="" type="checkbox"/> |
| <b>b. Leafletting</b>   | <b>b</b> <input checked="" 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 checked="" 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 checked="" type="checkbox"/> |
| <b>g. Events sponsorship with a domestic setting</b>  | <b>g</b> <input checked="" type="checkbox"/> |

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

In general advertising of ENDS should be regulated in the same way as other tobacco products. Failing that, advertising of ENDS should be allowed only in respect of their application as an aide to smoking cessation or a harm reduction tool for established smokers, and then only when efficacy has been established.

Advertising is known to be a powerful way to change behaviour. In general, any e-cigarette advertising which associates the product with health or glamour should be prevented because it promotes the use of nicotine (a highly addictive substance).

**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)?**

The evidence which pertains to this specific aspect of the ENDS phenomenon is limited. This is because the phenomenon is new and used of the ENDS has increased so rapidly as to outstrip the development of knowledge about it or its impact. However the impact of addiction to other forms of nicotine, smoked and chewed, has been a catastrophic increase in the global burden of disease. This is particularly true where young people are recruited and become addicted. Nicotine is so addictive that people use it enthusiastically long after it is clearly harmful to individual and population health. In considering regulation of advertising the Scottish Government should be mindful that the absence of evidence of harm is not the same as the absence harm. Advertising of ENDS should be limited solely to their application as a harm reduction tool for established smokers, and then only when their efficacy has been established in that respect. Advertising should not suggest ENDS use as a cool or glamorous lifestyle choice.

**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?**

The tobacco industry is now very involved in the ENDS market and is demonstrated to have knowingly engaged in commercial activity that caused catastrophic harm on a global scale in the past. The industry is currently keen to be associated with a harm reduction paradigm in some parts of the world while actively promoting smoking in others. For this reason regulation should prevent the industry from selling ENDS to the National health Service. It would be quite unethical for NHS budgets to be invested in this multinational industry which is still causing an international epidemic of tobacco related harm.

**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?**

ENDS and all related paraphernalia should be regulated through the same measures that apply to other tobacco products in Scotland and the penalties should be the same. A more complex arrangement will be more complex to enforce.

**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 X ☐ 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?**

Many public health professionals fear that the modelling of smoking behaviour entailed in ENDS use undermines public health anti-smoking measures and may contribute to a gateway effect. The limited evidence available doesn't strongly support this. However, absence of evidence is not the same as absence of harm. Until the ENDS industry can provide conclusive evidence of the absence of harm that Scottish Government should continue with its current policy of treating ENDS use in enclosed public spaces in the same way as cigarette smoking.

The ENDS phenomenon is new and evidence about the long term impact of use is limited. However, anecdotal evidence from NHS smoking cessation services observes higher level of chest infection in e-cigarette users and studies have identified a link to lipoid pneumonia.

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

The limited evidence available doesn't support demonstrate that that indoor ENDS use does harm. The limited evidence available does show that toxins are present in vapour (albeit in relative small amounts). However, absence of evidence is not the same as absence of harm. Until the ENDS industry can provide conclusive absence of harm that Scottish Government should

continue with its current policy of treating ENDS use in enclosed public spaces in the same way as cigarette smoking.

**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 X☐ No ☐

**22. Do you agree that the offence should only apply to adults aged 18 and over?**

Yes X☐ 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 X☐ 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 X☐

**27. If you think there are other categories of vehicle which should be exempted, please specify these?**

There should be no exemptions. Any exemption could only apply to vehicles in which no passenger could be carried. There are rare any exemption would simply serve to make enforcement difficult.

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

The only defences could be; a) the defendant didn't realise that they were smoking, or b) that the defendant didn't realise child was present. Since both are unlikely, there should be no defence

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

As well as NHS grounds this legislation should be extended to Local Authority grounds, including school grounds, recreation areas and play parks. It could also be usefully extended to premises for higher and further education to address the worrying level of smoking in 16-24 year olds. The ban on smoking in enclosed public spaces has been effective in improving public health because it can be enforced.

**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 general mental health facilities should not be exempt from a ban on smoking. However, any legislation should take account of the fact that some patients may not be able at times to understand that they cannot smoke. Trying to enforce a ban in these circumstances could lead to a very difficult situation which carries disproportionate risk for both patient and staff. One isolated incident of smoking would have very little impact on public health whereas one violent incident can have a serious and lasting impact on all involved. It would be quite unreasonable to have a policy which left staff with no room to manoeuvre around such a situation.

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

Initially NHS Boards and Local Authorities through their community safety arrangements. Police and Local Authority officers are the most likely to enforce in person. Integration of health and social care may make the local Integrated Body the sensible lead agency.

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

Penalties should be in keeping with those for littering and use of mobile phones when driving. Alternatives is the requirement to take and pass a course of tobacco awareness training.

**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?**

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

The ban on smoking in enclosed public places is effective in improving public health because it can be enforced. The other options look attractive but are not an effective response to behaviour driven by a grindingly addictive behaviour.

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

School Grounds, play parks, sports and recreation grounds.

**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?**

It would be sensible to make these match arrangements under current regulations for tobacco sales, now and in future. Clearly responsibility should fall on the person (s) running and taking profit from the business

**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)?**

The measures seem likely to protect people in each of these categories from tobacco related harm. It's important that none of the measures unfairly penalise anyone lacking the capacity to understand what is meant by any regulation. Conversely though, a person's lack of capacity to understand the consequences of tobacco use should not be a defence for enabling that person to use tobacco products. Continuing to administer cigarettes to

someone whose capacity to make a sensible health choice has been reduced is ethically difficult to justify.

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

Any regulation should assume that everyone has the right to the best possible health.

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

Any regulation should assume that everyone has the right to the best possible health.

### **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?**

Any cost or financial implications are likely to be justified by the reduction in health costs and compensated for by increased wellbeing.

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

There may be a cost to small, local traders in areas of deprivation. This must be set against the health benefits that will accrue. Integrated joint bodies could use their health improvement budgets to fund health improvement programmes through these small, local traders in areas of deprivation. This alternative revenue stream might off-set any cost from reduced tobacco sales.

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

One year following enactment of the legislation. There should be a high impact communication campaign using a mix of popular media

**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.

NHS Grampians Tobacco Policy 2014 Section 4.1 makes it clear that NHS Grampian will not profit from tobacco sales, sponsorship, research grants or donations from tobacco interests.