

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 ☒

There is an argument for both option a or b. Option a could be limited to products that contain only addictive material. Option b provides better support for the wider aim of reducing the uptake of smoking.

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 ☐

If the offence applied to young people it would make test purchasing an illegal activity.

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

Yes ☒ No ☐

Unless age verification can be implemented e.g. the purchase of a token.

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

Yes ☒ No ☐

However, this should only be the case if option 2b is implemented.

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

The restrictions should apply to products which promote, facilitate or ‘glamorise’ smoking behaviour.

Proxy purchase for e-cigarettes

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

Yes ☒ No ☐

This would be consistent with other age restricted products and supports the aim of preventing the uptake of smoking.

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 ☐

This would support the aim of preventing the uptake of smoking.

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 type="checkbox"/> |
| g. Events sponsorship with a domestic setting | g <input checked="" type="checkbox"/> |

Point of sale advertising should be available to assist smokers who wish to use these products to quit smoking.

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

Medical publications and settings where the promotion is to assist smokers who wish to quit.

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)?

Not aware of any.

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?

Not aware of any.

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 ☐

This would facilitate enforcement and ensure effective implementation of the legislation.

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

Yes ☒ No ☐

This would ensure consistency.

16. If you answered 'no', to question 15, what offences and penalties should be applied?

Comments

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 ☐

This would help prevent the 'normalisation' of smoking type behaviour.

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?

The controls should be similar to those for tobacco smoking.

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?

Not aware of any.

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 ☐

Agree in principle but exposure in cars is liable to be a small proportion of the daily exposure, although it would be a concentrated period of exposure.

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?

This should also apply for HGV drivers who sleep in the cab, but only whilst the vehicle is parked up for the night.

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 ☒

The NHS should use internal disciplinary provisions to 'enforce' this for their employees if they want to prevent their employees smoking in the grounds of NHS property. Introducing legislation to prevent members of the public smoking in NHS grounds has no risk basis; it is being suggested on aesthetic grounds. If there is evidence that there is a risk basis for this proposal then it should be applied to all areas.

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

Whilst not supporting this proposal, it should be remembered that not all GP properties are owned by the NHS.

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)?

Whilst not supporting this proposal, if it is introduced there should be exemption for smokers undergoing long term care.

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

Whilst not supporting this proposal it would make sense that it was enforced by Environmental Health officers as they have experience of this area. However, any extension to the scope of the smoking ban and an

expectation of rigorous enforcement would need to be resourced.

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

Whilst not supporting this proposal it would be sensible for any penalty to be consistent with existing penalties.

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?

The NHS should follow the example of some councils and extend workplace smoking ban to the grounds surrounding offices etc. This is then 'enforced' using internal disciplinary systems.
Promotion of non-smoking environments should be directed at visitors and appropriate patients to encourage them not to smoke in NHS grounds.

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 ☒

Provisions exist to allow councils to introduce this type of environment.

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

Comments

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

If any action is planned it should be limited to those spaces that are enclosed and have designated entry points. Public places per se should not

be included as this would discriminate against smokers who have intentionally left their home and smoke and are possibly walking their dog.

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?

The person registered, the manager or the adult who is in charge at the time of the sale.

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

a. the penalty

a ☒

b. the enforcement arrangements

b ☒

It is appropriate for Trading Standards to be allocated the enforcement of these provisions however any enhanced enforcement would require to be resourced.

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)?

Young people will be protected from potential adverse health affects.

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

Not aware of any.

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

No additional comments.

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?

Implementation of the legislation will add to the enforcement duties of Environmental Health and Trading Standards. No attempt has been made to quantify this and it is understood that this will be carried out later. This process will need to be carried out accurately to reflect the true costs to local authorities and to reflect the level of enforcement anticipated.

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

Not aware of any for Environmental Health or Trading Standards.

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

A period of 1 year would be appropriate.

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

The recently announced Public Health review should be aware of this consultation if it is considering any change to the existing structures for the provision of public health interventions and enforcement.

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 links to the tobacco industry.