

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?

In vending machines age verification and access controls should be put in place to ensure that minors do not have access to this adult product. Accessories such as USB mains chargers and spare batteries should not be restricted.

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

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

E-cigarettes are products for adult smokers. Therefore, their advertising and promotion should be regulated to protect non-smokers, especially minors,

while allowing adult smokers to receive information and e-cigarette businesses commercial freedom to compete in the marketplace. Following transposition of the Tobacco Products Directive advertising in mass media will be prohibited, thus significantly limiting e-cigarette advertising and promotion. E-cigarettes should continue to be allowed to be advertised and promoted at points of sale, on billboards that are not placed in the vicinity of venues for minors (e.g., schools, playgrounds), and at events and activities that do not have any particular appeal to minors. In line with the recent CAP e-cigarette advertising rules, if more than 25% of the audience is under 18 years of age, the medium should be prohibited. Furthermore free distribution of product samples should be permitted at venues restricted to adults only. All advertising and promotional materials should carry a health warning that the product contains 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)?

E-cigarettes – which do not combust tobacco - offer a potential reduced risk alternative to smoking, and whilst (like any nicotine containing products) they are not entirely risk free, they could play an important role in helping the Scottish Government achieve its tobacco control objectives¹. Most recently a Cochrane review of the available evidence across two randomised controlled clinical trials concluded that 9% of those who use e-cigarettes were able to quit smoking after one year and amongst those who didn't quit 36% reduced their cigarette consumption by half². We therefore recognise that a balance needs to be struck between protecting minors and non-smokers from exposure to advertising, and the need to ensure adult smokers have awareness of the potential benefits of these products compared to a combustible cigarette.

Existing data shows that e-cigarette use is mostly restricted to existing smokers:

- *Adult smokers:* a YouGov poll commissioned by ASH Scotland from March 2014 highlighted that an increasing amount of current adult smokers had tried e-cigarettes (7% in 2010 compared to 45% in 2014) and that a majority of smokers

¹ Hajek P, Etter J-F, Benowitz N, McRobbie H (2014) Electronic cigarettes: review of use, content, safety, effects on smokers, and potential for harm and benefit. *Addiction*. In Press.

² McRobbie H, Bullen C, Hajek P. Electronic cigarettes for smoking cessation and reduction. *Cochrane Database of Systematic Reviews* 2012, Issue 11. Art. No.: CD010216. DOI: 10.1002/14651858.CD010216

(55%) believe e-cigarettes will be good for public health. Only 1% of never smokers had tried e-cigarettes in 2014.³

- **Underage Access:**
 - The latest Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) – which provided the first statistically robust data on under-18 cigarette use – showed that e-cigarette use was confined to existing smokers. Only 4% of those who had never smoked had tried an e-cigarette.⁴
 - ASH Scotland report (2014): this showed that use of e-cigarettes in the 13-18 year old cohort was low (2% of non-regular smokers) and largely restricted to existing smokers (15%).⁵

Thus, concerns that e-cigarettes are acting as a gateway to smoking, or are facilitating its re-normalisation, are not supported by the available evidence. The aforesaid results from Scottish-specific data are replicated on a UK-wide basis, with new data from the Office for National Statistics confirming that those who use e-cigarettes are almost invariably current or former smokers.⁶ The British Lung Foundation stated this finding should "alleviate the fears expressed by some over an e-cigarette gateway effect".⁷

In England (which has the most comprehensive data) 15% of attempts to stop in the past year have involved e-cigarettes⁸. The most common reasons for using e-cigarettes are to stop smoking completely and to reduce smoking⁹.

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?

In order for the public health potential of e-cigarettes to be harnessed, adult smokers need to have access to information about the potential benefits of

³ ASH Scotland., 'Use of electronic cigarettes soars in Scotland', 28/03/14. See: <http://www.ashscotland.org.uk/media-and-comment/press-releases-and-comments/yougov-e-cig-results.aspx>

⁴ NHS National Services Scotland., *Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS). Smoking – Among 13 and 15 year olds in Scotland 2013* (2014). See: http://www.isdscotland.scot.nhs.uk/Health-Topics/Public-Health/Publications/2014-11-25/SALSUS_2013_Smoking_Report.pdf

⁵ ASH Scotland., *Young people and e-cigarettes in Scotland: Report on a survey of young people* (2014). See: <http://www.ashscotland.org.uk/media/6155/e%20cig%20Final%20report%2007.14.pdf>

⁶ Roberts, M., 'E-cigarette 'lure' fears might be unfounded', *BBC News*, 25/11/14. See: <http://www.bbc.co.uk/news/health-30192181>

⁷ <http://www.bbc.co.uk/news/health-30192181>

⁸ ASH (2014) Briefing on Electronic Cigarettes. May 2014.

⁹ Brown J, West R, Beard E, Michie S, Shahab L, McNeill A. Prevalence and characteristics of e-cigarette users in Great Britain: Findings from a general population survey of smokers. *Addictive Behaviours* 2014;39:1120-5. doi: 10.1016/j.addbeh.2014.03.009. Epub 2014 Mar 12

e-cigarettes (relative to combustible cigarettes) and manufacturers need to be able to market their products. Without this, the ability and likelihood of smokers switching to e-cigarettes will be inhibited and the sales and public health potential of products will be diminished. In what is one of the fastest growing categories in Scottish convenience store retailing, the impact on retailers will undoubtedly be significant. Other policy interventions, such as education programs around the potential health benefits of e-cigarettes as an alternative to combustible cigarettes, should also be part of efforts to support the Scottish Government's Tobacco Control Strategy.

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 – 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?

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

We understand and acknowledge this is a valid concern, however many public health experts and organisations have concluded that e-cigarettes are likely to be significantly less hazardous for by-standers. This is logical given the data on the significant reductions in harmful constituents, the fact that e-cigarette aerosols dissipate very rapidly compared with cigarette

smoke, and the fact that e-cigarettes do not produce side-stream emissions.

We believe that restrictions on use of e-cigarettes in public places should be considered in light of (1) the science which shows a clear distinction between cigarette smoke and e-cigarette vapour, (2) the need to encourage smokers to switch from cigarettes to less risky substitutes, (3) the desire not to expose minors to adult products, and (4) concerns regarding use of e-cigarettes in places where they could present a hazard (such as at a petrol station). We believe that when in doubt vaping in enclosed public spaces is a matter of courtesy and etiquette and that organisations should be free to pursue their own policies based on particular circumstances.

E-cigarettes are adult products and therefore their use should be restricted in educational and other facilities designated primarily for minors; in hospitals and healthcare facilities, except for designated areas; in public modes of transportation, except in designated areas; and in petrol stations and other places where their use may present a hazard.

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?

Please see previous answer.

Additional References:

McRobbie H, Bullen C, Hajek P. Electronic cigarettes for smoking cessation and reduction. Cochrane Database of Systematic Reviews 2012, Issue 11. Art. No.: CD010216. DOI: 10.1002/14651858.CD010216

Quality, safety and efficacy of unlicensed NCPs, UK Medicines and Healthcare Products Regulatory Agency (MHRA), Commission on Human Medicines, Working Group on Nicotine Containing Products, 2013, <http://www.mhra.gov.uk/home/groups/comms-ic/documents/websiteresources/con286839.pdf>.

Czogala, J., Goniewicz, M. L., Fidelus, B., Zielinska-Danch, W., Travers, M. J., & Sobczak, A. (2013). Secondhand exposure to vapors from electronic cigarettes. *Nicotine & Tobacco Research*, ntt203.

Hajek P et al. Electronic cigarettes: review of use, content, safety, effects on smokers and potential for harm and benefit. *Addiction* 2014; doi: 10.1111/add.12659

Konstantinos E. Farsalinos and Riccardo Polosa, Safety evaluation and risk assessment of electronic cigarettes as tobacco cigarette substitutes: a systematic review, *Therapeutic Advances in Drug Safety*, 13 February 2014, <http://taw.sagepub.com/content/early/2014/02/12/2042098614524430>.

Stephen S. Hecht, Ph.D.*, Steven G. Carmella, B.S., Delshanee Kotandeniya, Ph.D., Makenzie, E. Pillsbury, B.S., Menglan Chen, M.S., Benjamin W.S. Ransom, B.A., Rachel Isaksson Vogel, M.S., Elizabeth Thompson, B.S., Sharon E. Murphy, Ph.D., and Dorothy K. Hatsukami, Ph.D., Evaluation of Toxicant and Carcinogen Metabolites in the Urine of e-Cigarette Users Versus Cigarette Smokers, September 2014

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?

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?

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 ☐
b. Only hospital grounds b ☐
c. Only within a designated perimeter around NHS buildings c ☐
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)?

Comments

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

Comments

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

Comments

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

Comments

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

Comments

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-medicinal 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?

We support activities that support retailers enforcing adult only sales, and strongly agree that e-cigarettes are adult products intended for smokers. It is, however, unclear the extent to which under 18 selling is an issue. Retailers will be best placed to respond if universal action is required.

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)?

Comments

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

Comments

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

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?

Excessive regulation in the form of blanket prohibitions will restrict our commercial freedom to communicate with adult smokers. This will also likely

reduce the appeal of e-cigarettes for current smokers, diminish the value proposition and thus reduce the number of smokers who try e-cigarettes and fully switch from combustible cigarettes to them.

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

Comments

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

Ban on sale of e-cigarettes to minors should be implemented immediately. The remaining measures should be implemented in conjunction with UK's transposition of the Tobacco Products Directive.

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

We welcome the Scottish Government's stated open mindedness and responsiveness to feedback on these proposals. Any subsequent move to action in areas should be open to a full business impact assessment.

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.

Nicocigs was acquired by Phillip Morris International in June 2014.