

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 ☐ Please see page 11 for further comment

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?

Comments

Proxy purchase for e-cigarettes

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

Yes ☐ No ☒ Please see page 11 for further comment

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 ☐ Please see page 11 for further comment

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 ☒ Please see page xx for further comment

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 <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?

The current regulations set by the ASA are sufficient.

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)?

See page 11 for further comment

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?

See page 11 for further comment

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?

None. – In respect of both questions 14 & 15, e-cigarettes and refills are NOT tobacco products and should not be treated as such. If you are trying to group them as tobacco products because they CAN contain nicotine, then this is wrong in the same way as tomatoes and other nicotine containing vegetables and NRT products are not tobacco products. To treat these devices and their components as tobacco products would in effect take away any competitive edge they may have against higher risk tobacco.

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?

None

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

E-cigarettes pose little or no health risk to vapers and no risk whatsoever to bystanders. There is now enough research to prove this. The current estimate is that e-cigarettes are somewhere between 95 & 99% safer than lit tobacco TO THE USER. Therefore it follows that there is even less risk to the non-using bystander. Why would you want to apply the same restrictions to this life-saver? To do so would discourage people from switching to a much safer alternative.

Please bear in mind that the Big Tobacco companies WANT these kind of restrictions placed on e-cigarettes. The more restrictions you put on these devices, the more you are actually promoting the smoking of lit tobacco. These products should be welcomed, embraced and allowed to flourish if we are to see a decline in smoking.

These products are indeed a "gateway" product – a gateway OUT of smoking. To remove or restrict this gateway would be a criminal act in my opinion. These products work where NRT and other methods fail. Do not restrict the use of these products – they are proven to be harmless. There is no combustion and the vapour produced is quite simply that – water vapour. There may be a slight odour, but again it's harmless. There is practically no nicotine in the exhaled vapour and it dissipates within seconds therefore posing no risk either indoors or outdoors. Furthermore, nicotine is no more harmful than caffeine – would you also want to ban the fumes coming from hot coffee?

Another reason i have heard of for banning the indoor use of e-cigarettes is that it "re-normalises" smoking. How can this be? Vaping is NOT smoking. Vaping normalises NOT smoking. What normalises smoking can be seen by every man, woman and CHILD every day in towns and cities all over the country – namely groups of smokers who have been forced out into the open outside of pubs, work places & public buildings etc. In full view of every passing person.

Furthermore, why should a non-smoker be forced to go and stand outside with the smokers? This is just plain wrong and defeats the object of switching from harmful lit tobacco to much safer e-cigarettes. We need to encourage people to make the switch, not demonise them for doing so. Again, you have to think of the damage this will do – the unintended consequences are severe on so many levels.

The bottom line is that allowing or dis-allowing the use of e-cigarettes indoors should be down to the building owners. The public can then decide to visit or not visit an establishment based on that if they so choose. I understand that some establishments have already decided to ban these products on their premises – that's fine and is their choice to do so. As a vaper, I can also decide whether or not i am willing to enter those premises

– this is how it should be. Freedom of choice.

Furthermore, banning something on the premise that it LOOKS like something else is just plain wrong. Where will it end?

Please understand that e-cigarettes are potential life savers. If you saw someone drowning and threw them a lifebelt, you would not expect to hear people shout “don’t use that, because it might be dangerous”. This is exactly what is happening with e-cigarettes and the tobacco companies are loving it. Every move you make to attack these products plays into the hands of those who want to see people keep on smoking. When you pass any legislation on these products, please think – first do no harm.

If you really want to give smokers a fighting chance to quit, then encourage them to switch to e-cigarettes as a method, don’t put obstacles like this in their way. It’s difficult enough to stop smoking as it is, don’t make it even harder.

It is also worth noting that even organisations like ASH do not want indoor bans on e-cigarettes. They can see that this would discourage people from switching.

I could go on at length here and will happily discuss this further given the opportunity to do so. It is extremely important to get this legislation right and Scotland could in fact be leaders in actually seeing a marked reduction in smoking prevalence by not making the mistakes that others appear to be heading for. Dare to be different and examine ALL of the possibilities and probabilities before acting.

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?

There is plenty of evidence which concludes that vaping in enclosed places poses no threat to the public. I would be more than happy to sit down and discuss this at any time. By way of a single example, please see this article by Farsalinos & Polosa -

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4110871/>

As a bare minimum, I believe that legislators should familiarise themselves with the data in the article well before they consider any restrictions on e-cigarettes. Not to do so would be negligent in the extreme.

Furthermore, I have found that when i am in places that allow vaping, i am approached by smokers interested in what i am doing. Many ask to try it and several have switched as a direct result of this. I know that this will be considered to be anecdotal, but it has happened a lot to me personally.

Again i say, it normalises NOT smoking & is a gateway OUT of tobacco. If you force vapers outdoors then this effect is lost and you put non-smokers at risk by forcing them be in the vicinity of smokers when it is completely unnecessary.

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

Patients and visitors have a hard enough time as it is. Why add to their problems by preventing them from smoking in the open air? As a volunteer driver for the league of hospital friends, I would withdraw my services if this draconian measure were to be put in place. Why on earth can there not be places where smokers can smoke?

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-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?

As per supermarket age of sales regulations. The legal age is 18, not 25. In respect of question 38, where does 25 come into it? If its 18 it is not 25. The public are sick to death of what we know as the slippery slope. This is just another example of sliding in further bans and regulations under the radar.

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?

Comments

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?

Comments

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

Comments

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.

I have no conflict of interests whatsoever.

In respect of **question 1**, there is already a voluntary code of practice by most UK vendors of e-cigarettes not to sell to people under the age of 18. I agree that this should be mandatory, but, In response to **question 7** I chose "No". It is my firm belief that this would be catastrophic in the extreme. Picture this – A parent's son or daughter takes up smoking at a very young age and is trying to find a way out. Should a parent not be allowed to help his/her child without becoming a criminal? If that parent were me, I would do all i could for my child to get free from smoking. If this means being criminalised then that would be a tragic consequence, but one that i would quite happily accept to save my child. Currently, NRT is allowed for 12 year olds – I would EXTEND this to ALL child smokers of ALL ages under parental guidance. It is now clear that e-cigarettes are at least as effective as NRT – in my case and an estimated 1.3M cases in the UK alone, e-cigarettes have proved to be the most effective method of giving up smoking. Should this not be extended to children who smoke? Or do we want to force them to continue smoking at least til they are 18 years of age and only then allow them a quit attempt using e-cigarettes? Quit or die does not work. E-cigarettes DO work in many cases. If even one single child smoker dies because he/she is denied this opportunity to get free of smoking then this restriction in itself will be murderous and the full extent of the law should come down on whoever implemented it. I would not be surprised if legal cases are forthcoming at a future date against implementers of this draconian proposal.

In respect of **questions 8, 9, 12 & 13**, yes, children should be protected against this, but adults shouldn't. The very definition of an adult suggests that they really ought to be able to make informed decisions for themselves. The question here is - what constitutes targeting children? I understand that the ASA have measures in place which will protect children from un-suitable adverts – this is enough. We should also allow parents to be parents – too much government interference is not helpful. Please do not be fooled by the people who say that flavours in e-cigarettes are targeting children. This is simply not the case. Adults like flavours, and, again in my personal experience, the flavours in e-cigarettes play a major role in making them work, FOR ADULTS. The diversity in flavours mean that more adults are finding an e-cigarette that is right for them. Very few choose tobacco flavour quite simply because they want to get as far away from their previous smoking habit as possible. This goes some way towards de-normalising smoking and normalising not smoking. I have to add that i know of no cases where a non-smoker has decided to try e-cigarettes just because they saw an advert for it – that just wont happen. Again – vaping is a gateway OUT of smoking and any adverts that i have seen to date are only targeting smokers. The more smokers who see the adverts the better – and they need to be attractive to entice smokers to make a quit attempt. Apparently I can use the word “quit”, but advertisers can't. This is bonkers – quit attempts are what e-cigarettes are all about and not to advertise that is just plain nuts !!