

Electronic Cigarettes and Strengthening Tobacco Control in Scotland

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
√	

Due to the addictive nature of Nicotine and with no standardised level of nicotine in the e-liquids we do not feel it is appropriate to sell e-cigarette devices and refills to children under the age of 18. Therefore we support the proposal to set the minimum age of sale for these products at 18.

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
	√

All devices. Age of sale regulations should be extended to all vapour devices, not just those using nicotine (the regulations also need to apply to liquids sold separately from any device) as this would simplify guidance.

3. Whom should the offence apply to:

The retailer selling the e-cigarette	
The young person attempting to purchase the e-cigarette	
Both	√

Consistent with current tobacco sales legislation

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

Yes	No
√	

Consistent with the removal of tobacco vending machines.

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?

All products associated with e-cigs for clarity and for future generations of these devices.

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
√	

There are concerns about advertising directed at young people, defined as those under 18, any deliberate appeal to adolescents is both unethical and commercially unnecessary.

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?**

Bill boards	√
Leafleting	√
Brand-stretching (the process of using an existing brand name for new products or services that may not seem related)	√
Free distribution (marketing a product by giving it away free)	√
Nominal pricing (marketing a product by selling at a low price)	√
Point of sale advertising (advertising for products and services at the places where they were bought)	√
Events sponsorship with a domestic setting	√

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

On the basis of those listed above – no exemptions.

12. **Are you aware of any information or evidence that you think the Scottish Government should consider in relation to regulating domestic advertng in relation to impacts on children and adults (including smokers and non-smokers)?**

Tobacco advertising was banned to try and help prevent people from taking up smoking. Advertising of e-cigs should be treated in the same way as the use of them imitates smoking and can have an impact on people's behaviour in that it can normalise it which could have a major influence, particularly on young people. The imagery and slogans used in advertising are very often aimed at the younger generation and may be seen as a fashionable thing to do amongst their peers.

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. We currently have very little reliable information about the size and nature of the retail environment for e-cigarettes. Tobacco display ban comes into effect in April 2015 to include smaller retail premises. This should also include e-cigs.

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
√	

Yes. We currently have very little reliable information about the size and nature of the retail environment for e-cigarettes.

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

Yes	No
√	

Yes as this would simplify compliance and enforcement

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

N/A

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?**

All the stakeholders agreed that the Scottish Government should take action on the use of e-cigarettes in enclosed public places as outlined in the following comments (by individuals/ organisations):-

The same regulations as apply to other forms of smoking. There are several reasons. Nicotine is an addictive drug and much of the harm done relates to it leading to addiction, which affects people in many ways. While those using e-cigarettes may be making a choice for reasons beneficial to them personally, they may also be triggering very powerful reminders of smoking for others addicted to that drug. E-cigarettes are thought to potentially reduce the other harmful effects of smoking, although there is insufficient evidence use of e-cigarettes are harmless at the moment. It may make implementation of the ban on smoking in public places exceptionally difficult because it may not always be clear which kind of cigarette someone smoking is using.

Treat e-cigs in the same way as tobacco products are regulated – doing otherwise would create confusion and as we do not know what harm e-cigs cause, to allow it and then have to ban it at a later date would create problems which could be avoided if it falls in line with current legislation.

As per present restrictions. People would be confused as to whether you could smoke tobacco or not as the vape gives of a smoke cloud just like tobacco and it would normalise smoking to younger people. Causes confusion, normalises behaviour, harm caused not known, not enough evidence.

Legislation should be the same as for cigarettes due to the associations of e-cigarettes with smoking and the potential influence on glamorisation of cigarettes and therefore impact on smoking uptake.

Some e-cigarettes devices can be adapted for use with other drugs such as Cannabis (due to the heating mechanism). Potential for adapted devices to be used anywhere without consequence is of concern.

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

N/A

- 20. Are you aware of any evidence, relevant to the used of e-cigarettes in enclosed spaces, that you think the Scottish Government should consider?**

A lot of hard work has gone on in recent years to create a climate in Scotland where smoking is not glamorous. If e-cigs are allowed to be used it could start to normalise smoking again as the public just see it as smoking – they do not differentiate between a cigarette and e-cigarette.

There have been reports in the media in relation to explosions or fire being started by e-cigarettes.

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
√	

Smoking causes harm both to the smoker and to others especially in an enclosed space such as a vehicle, children are particularly vulnerable because of the hazards posed by second hand smoke. Evidence of the harm of inhaling second hand smoke is well established and exposure to the pollutants and carcinogens in second hand smoke increases the risk of acute and chronic health conditions and hospital admissions.

Smoking in a car can create pollution levels 35 times greater than those deemed safe by the World Health Organisation. Banning smoking in vehicles will protect passengers (in particular children) from the dangers of second hand smoke. Children are strapped into the rear seating of a vehicle and are unable to avoid breathing in second hand smoke particles.

A ban may also help road traffic safety by preventing the driver from being distracted while going through the action of lighting and smoking a cigarette, similar to the ban on use of mobile phones while driving.

- 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?**

To any individual smoking in a vehicle when another individual under the age of 18 is present.

- 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

No – only when the vehicle is used as a home/accommodation i.e. when stationary and not on the road.

Yes – when the vehicle is being used as a vehicle on the public highway

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

No comment

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

No comment.

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?**

All NHS grounds (including NHS offices, dentists, GP practices)	√
Only hospital grounds	
Only within a designated perimeter around NHS buildings	
Other suggestions, including reason, in the box below:	

All grounds as this will be clear and unambiguous, people will not get confused as to where they can/cannot smoke depending on which part of the NHS they are visiting/attending. If you differentiate then it gives people an excuse to say they didn't think it applied at those grounds.

Smoke free NHS grounds has been included in NHS policy since 2006 but the challenge is with compliance. With the increase focus and effort over the last year to raise awareness of the policy has demonstrated that local arrangements with no enforcement powers has had no impact on the numbers smoking on NHS Grounds.

Local research (April 2014) with patients and visitors found that two thirds of all smokers asked stated that they had smoked on NHS grounds or in NHS buildings in the last year.

Recent developments around the procurement of a new contract for managing car parking at one of our main hospital sites afforded NHS Fife the opportunity to include responsibility to raise awareness of the no smoking

policy across the whole site (including the grounds) within the contract. The contractor agreed to have an additional staff member positioned at the new Phase 3 entrance (two main entrances in close vicinity of each other including maternity). The staff member recorded all interactions with patient, staff and visitors (during normal working hours across Monday to Friday). Data collected over 7 months has shown that on average 1500+ individuals have been reminded about the smokefree policy EACH month.

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)?

Current exemptions have been in place now for some considerable time (almost nine years) and there seems to be an appetite now to move towards smoke free mental health sites and facilities with long stay patients. Some NHS Boards have already implemented smokefree mental health sites.

Stop smoking support needs to be routinely offered along with appropriate pharmacological medication to support smoke free implementation within these areas.

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

All the stakeholders offered different options of enforcement as outlined below:

- A combination of local policy and implementation SOPs, including training of staff. Ultimately this will come down to staff consistently implementing the policy – the serve-wise campaign re alcohol adopted this approach and was successful, although I understand there is additional applicable legislation and licensing.
- Local authorities – as is currently done for tobacco within Smoking, Health and Social Care (Scotland) Act 2005. Fife Trading Standards enforce this legislation.
- Police or security on site.
- Government and NHS boards, estate staff, everyone's responsibility.

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

The NHS is already held accountable to Government and there would be opportunities for reviewing policy and effective implementation which could lead to remedial action if necessary. Individuals who smoke on NHS premises could be held legally accountable for their actions where it is clear there is a no smoking policy in place and they refuse to abide by it.

- Fixed Penalty Notices – as is currently done for tobacco within Smoking, Health and Social Care (Scotland) Act 2005.
- Disciplinary and fines for staff and fines for public. £30 fine.

Recent local research (May 2014) with staff identified the following fines:

- £30 initially increasing to £60 if not paid quickly (in the same manner as parking ticket)
- £50 fine (similar to fines on trains or for littering in the street)

All participants, including those who currently smoked, felt that £50 would act as a deterrent.

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?

- No 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
√	

Removing smoking from outdoor areas that are frequented by children reduces the exposure of children to adult smoking behaviour and will encourage reinforcement of non smoking norms.

36. If you answered 'yes' to Question 35, what action do you think is required:

Further voluntary measures at a local level to increase the number of smoke-free areas	
Introducing national legislation that defines smoke-free areas across Scotland	√
That the Scottish Government ensures sufficient local powers to allow decisions at a local level as to what grounds should be smoke free	
Other actions. Please specify in the box below:	
Legislation to include (b) – defining smoke-free areas across Scotland.	

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

- Play parks, Astroturf pitch areas, skate parks etc.
- Any public outdoor area frequented by children.
- All swing parks and parks in general.
- Schools, all children's play areas and children's venues, anywhere that is obviously a designated children's play area.

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?

People under the age of 18 should only be allowed to sell tobacco, e-cigarettes and e-cigarette accessories when authorised by an adult in the retail location such as an adult in a management/supervisory position who is responsible for the legal sale of products on those premises.

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

The penalty	√
The enforcement arrangements	√

Yes. Penalties consistent with other age restrictions on tobacco and e-cigarettes devices and products.

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)?**

Changes should apply to all – no special considerations are given in relation to tobacco products.

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

We believe there won't be any negative implications - there are an extensive range of services available for those who may struggle to change their addictive behaviour with regard to smoking.

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

- No 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?**

- Funding for enforcement of the legislation to ensure sufficient officers were in post.
- Changes to service and operational delivery.

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

Perhaps people addicted to nicotine will be discouraged from smoking and in addition to gaining any associated health benefits will have more disposable income to spend in more potentially beneficial ways!

Costs associated with the practical issues of enforcement such as:- printing of fixed penalty notice books etc.

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

The absolute minimum practically possible.

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

No 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.

No direct or indirect affiliation with the tobacco industry