

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 ☐

We would support the restriction of sales to minors as a measure intended to reduce the risk of initiation of nicotine use in young people. However, it is a fact that young people can and do access lit tobacco products which are more dangerous by several orders of magnitude. It seems likely that many young people who would otherwise initiate lit tobacco use will instead choose the safer product if it is available to them. There is currently no evidence that young people are taking up the regular use of e-cigarettes in significant numbers, or that they are progressing from them to smoking lit tobacco.

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 ☐

Neither. The regulation should apply to the sale of a nicotine containing device or refill only.

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 ☐

We are not aware of any e-cigarette vending machines but since it would be impossible to age verify this would seem prudent.

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

Yes ☐ No ☒

Since many accessories are multi use items (such as lanyards, batteries, cotton wool and wire) this would be impossible to enforce.

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

None

Proxy purchase for e-cigarettes

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

Yes ☐ No ☒

See our comments at 1. Adults (for example parents) should not be prevented from purchasing harm reduction products for young people who already smoke, or who would smoke if such products were unavailable to them. NRT is available to people as young as 12 and there is no reason to place greater restrictions on e-cigarettes.

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 ☐

We consider it important that both young people and adults, whether they smoke or not but particularly if they do, are aware of the benefits of switching from smoking to e-cigarettes. Advertising should be allowed but should be responsible and not target non-smokers or young people.

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 ☒

Other than the requirement for advertising to be responsible.

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?

Comments

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 Government should consider the requirements of the CAP code on advertising e-cigarettes which would be a good starting point:

<http://www.cap.org.uk/Advice-Training-on-the-rules/Advice-Online-Database/Electronic-cigarettes.aspx#.VKQWD29ybMN>

However we disagree with the CAP advice that advertisers must not state that e-cigarettes are safer than cigarettes since that statement is factually correct on current evidence and is an important message to convey to smokers.

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?

Comments

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 ☒

E-cigarettes are not tobacco products. We would support a register for retailers of alternative nicotine products provided that registration is neither onerous or costly.

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?

Whilst any offences and penalties should act as a deterrent to non compliance the level of such penalties should reflect the relative safety of e-cigarette products when compared to lit 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?

Comments

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

The ban on smoking in enclosed public spaces was said to be in order to protect workers and the public from the supposed harmful effects of second hand smoke. There is no evidence that the use of e-cigarettes is in any way harmful to bystanders and indeed there is evidence that it is not. Please see the following paper by Igor Burstyn (Peering through the mist) which

concludes: "Exposures of bystanders are likely to be orders of magnitude less, and thus pose no apparent concern."

<http://www.biomedcentral.com/1471-2458/14/18>

There is no evidence to support the contention that e-cigarette use in enclosed public spaces (or anywhere else) either renormalises smoking, or that it undermines smoke free legislation. In fact it normalises the use of a very much safer alternative and encourages smokers to switch, or reduce their tobacco consumption by using an e-cigarette when they would otherwise go out to smoke.

Nicotine delivery is still very much slower from e-cigarettes than tobacco cigarettes, so forcing e-cigarette users to go out to vape, often to places where they will be among smokers, will simply encourage them to smoke instead. If indoor usage bans are implemented the Scottish government will not only be removing one of the advantages which the safer product has over the incumbent, much more dangerous product (tobacco cigarettes) but it will create a situation whereby for the consumer it will be easier to achieve the desired nicotine level by smoking for the limited time they may have outside than to vape.

The ability to use e-cigarettes in enclosed public spaces is an important factor in many smokers' decision to try e-cigarettes, and leads many to switch completely. Usage bans in enclosed public spaces are, of course, appropriate in some situations, but this should be a decision made by the owner or operator of the space, not a legislative decision.

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?

See Burstyn paper referenced above.

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 <input type="checkbox"/> |
| b. Only hospital grounds | b <input type="checkbox"/> |
| c. Only within a designated perimeter around NHS buildings | c <input type="checkbox"/> |
| 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 ☒

Although it would be prudent on a voluntary basis.

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?

Any adult employee at the registrant's discretion

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

a. the penalty

a ☐

b. the enforcement arrangements

b ☐

We would prefer to see a fine not exceeding level 3 in relation to non-tobacco products such as e-cigarettes.

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.

We declare that we have no vested interests or affiliations whatsoever with any industry, including the tobacco industry.

Kindly note that we have only responded to those questions which relate to our areas of competence, i.e. reduced risk nicotine products such as e-cigarettes. We do not have a formal position on the wider issues of general tobacco control.