

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?

All recognised e-cigarette paraphernalia should be subject to this restriction.

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. 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?

N/A

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)?

Whilst exposure to e-cigarette advertising should be minimised in respect of minors and adult non-smokers, we firmly believe that disproportionate regulation in this area may discourage the further growth of the e-cigarette market in Scotland and prevent existing adult smokers from switching to e-cigarettes from conventional tobacco products. Lowering smokers' awareness of e-cigarettes, and consequently access to such products, will have a detrimental impact on public health in Scotland.

As these products are relatively new, it is absolutely vital that adult smokers have access to relevant information about e-cigarettes. As a potentially reduced-risk alternative, e-cigarettes should not be wrongly conflated with traditional cigarettes and therefore ought to be regulated in a different manner. Communication to existing adult smokers should not be restricted by the Scottish Government, particularly as 73% of smokers would like to quit and 41% had already tried to quit on at least three occasions.¹

There is no evidence to support the statement in the consultation *"there is real concern that a possible modelling of smoking behaviour can occur as the use of e-cigarettes mimics the use of tobacco"* or that e-cigarette use *"could lead to tobacco use amongst non-smokers, particularly young people."* The general consensus from the public health community is that e-cigarettes are significantly less harmful than conventional cigarettes and that they are confined to existing adult smokers:

- For adult smokers, a YouGov poll commissioned by ASH Scotland in March 2014 showed that only 1% of never smokers had tried e-cigarettes in 2014.²
- The UK Centre for Tobacco and Alcohol Studies rejected suggestions that using e-cigarettes would lead to nicotine addiction or act as a gateway to smoking for non-smokers: *"no evidence suggests that either of these outcomes is occurring to an appreciable degree."*³
- In terms of underage access, the latest Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS), which provided the first statistically robust data on under-18 e-cigarette use, showed that

¹ Scottish Government., *Scottish Health Survey 2012* Edition (2013). See: <http://www.scotland.gov.uk/Resource/0043/00434590.pdf>

² 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>

³ Bogdanovica, I, Bauld, L & Britton, J., 'What you need to know about electronic cigarettes', (March 2014). See: <http://www.rcplondon.ac.uk/commentary/what-you-need-know-about-electronic-cigarettes>.

e-cigarette use was limited to existing smokers. Only 4% of those who had never smoked had tried an e-cigarette.⁴

- The aforesaid Scottish specific data is 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.⁵

A recent analysis undertaken by a team of experts led by Professor Peter Hajek of Queen Mary University not only concluded that e-cigarettes were likely to be less harmful than conventional cigarettes but that e-cigarettes do not encourage young people to move onto conventional smoking habits: *“regular use of EC [electronic cigarettes] by non-smokers is rare and no migration from EC to smoking has been documented...The advent of EC has been accompanied by a decrease rather than increase in smoking uptake by children.”*⁶

Thus, concerns that e-cigarettes are acting as a gateway to smoking, or are facilitating its re-normalisation, lack credibility. The Scottish Government should avoid any regulation which may jeopardise any potential public health gains in preventing adult smokers who would otherwise continue smoking conventional cigarettes from switching to e-cigarettes.

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?

The electronic cigarette market is of increasing importance to Scottish retailers and is delivering one of the fastest growing categories in convenience store retailing in recent years. This will supply a vital new income stream to retailers from consumers seeking an alternative to traditional cigarettes. Retailers clearly stand to benefit from selling these products to adult consumers in a socially responsible manner.

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 ☐

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.org/Health-Topics/Public-Health/Publications/2014-11-25/SALSUS_2013_Smoking_Report.pdf

⁵ Office for National Statistics., *Adult smoking habits in Great Britain*, 2013 (2014). See: http://www.ons.gov.uk/ons/dcp171778_386291.pdf

⁶ Hajek, P et al., 'Electronic cigarettes: review of use, content, safety, effects on smokers and potential for harm and benefit', *Addiction*, 109 (2014). See: <http://onlinelibrary.wiley.com/doi/10.1111/add.12659/pdf>

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?

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?

N/A

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

Those seeking restrictions in this area have a fundamental misunderstanding of the nature of e-cigarettes: e-cigarettes use a completely different principle of operation compared to conventional cigarettes. Equating the two in smoke-free legislation would falsely paint e-cigarettes as possessing a similar risk profile to conventional tobacco products.

The Scottish Government should not take action to curb the use of e-cigarettes in enclosed public places on the basis of theoretical fears. The available scientific shows an obvious distinction between smoke from conventional cigarettes and e-cigarette vapour. For example, as Professor Robert West of the University of London's Department of Epidemiology and Public Health has argued, e-cigarette vapour *"contains nothing like the concentrations of carcinogens and toxins of cigarette smoke. In fact, toxin concentrations are almost all well below 1/20th that of cigarette smoke."*⁷

Indeed, it is interesting that ASH Scotland have commented that a ban on using e-cigarettes in enclosed public spaces would require *"a clear scientific consensus that harm from 'second-hand' e-cigarette emissions is likely. This is not the situation to date, so we don't consider a blanket ban is appropriate at this time."*⁸

An approach whereby e-cigarettes are treated in the same manner as

⁷ West, R & Brown, J., 'Electronic cigarettes: fact and fiction', *British Journal of General Practice* (September 2014). See: <http://bjgp.org/content/bjgp/64/626/442.full.pdf>

⁸ Sheila Duffy quoted in Wilson, L., 'Is this a ban too far?' *The Courier*, 08/04/14.

combustible tobacco products in terms of smoke-free legislation defies all reasonable logic.

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?

Consideration of any restriction on e-cigarette use in enclosed spaces must be viewed in the context of: (a.) the evidence demonstrating a clear distinction between cigarette smoke and e-cigarette vapour; and (b.) the need to encourage smokers to switch from conventional cigarettes to less-risky alternatives such as e-cigarettes.

There is an abundance of scientific evidence that clearly demonstrates that e-cigarette vapour poses a much lower risk than cigarette smoke:

- Professor Peter Hajek et al maintain that based on the available data, *“long term use of EC [electronic cigarettes], compared to smoking, is likely to be much less, if at all, harmful to users or bystanders. This is because unlike cigarettes, EC do not deliver combustion-generated toxicants that are linked to cancer, chronic lung disease and cardiovascular disease (CVD).”*⁹
- T.R. McAuley and his colleagues concluded that *“electronic cigarettes produce very small exposures relative to tobacco cigarettes”* and that their study indicated *“no apparent risk to human health from e-cigarette emissions based on the compounds analyzed.”*¹⁰
- Konstantinos E. Farsalinos and Riccardo Polosa contended that the risks of passive vaping were small in comparison to second hand tobacco smoke: *“it is safe to conclude that the effects of EC use on bystanders are minimal compared with conventional cigarettes.”*¹¹
- The UK Centre for Tobacco and Alcohol Studies note the *“risks associated with passive exposure to e-cigarette vapour are far less than those associated with passive exposure to tobacco smoke.”*¹²

As cessation is one of the three pillars of the Scottish Government's Tobacco Control Strategy, it is difficult to envisage how the aspiration for a tobacco-free generation by 2034 could be realised without the continued uptake of e-cigarettes. The Scottish Government should be proactively promoting the use of e-cigarettes, as evidence has shown their usefulness for tobacco harm reduction, and should not be treating them in the same

⁹ Hajek, P et al., 'Electronic cigarettes: review of use, content, safety, effects on smokers and potential for harm and benefit', *Addiction*, 109 (2014). See <http://onlinelibrary.wiley.com/doi/10.1111/add.12659/pdf>

¹⁰ McAuley, T.R., Hopke, P.K., Zhao, J & Babaian, S., 'Comparison of the effects of e-cigarette vapor and cigarette smoke on indoor air quality', *Inhalation Toxicology* (October 2012), Vol. 24, No. 12. See: <http://informahealthcare.com/doi/abs/10.3109/08958378.2012.724728>

¹¹ Farsalinos, K.E & Polosa, R., 'Safety evaluation and risk assessment of electronic cigarettes as tobacco cigarette substitutes: a systematic review', *Therapeutic Advances in Drug Safety*, (February 2014). See: <http://taw.sagepub.com/content/early/2014/02/12/2042098614524430>.

¹² Bogdanovica, I, Bauld, L & Britton, J., 'What you need to know about electronic cigarettes', (March 2014). See: <http://www.rcplondon.ac.uk/commentary/what-you-need-know-about-electronic-cigarettes>.

manner as conventional cigarettes:

- As the UK Centre for Tobacco and Alcohol Studies have stated, *“switching completely from tobacco to e-cigarettes achieves much the same in health terms as does quitting smoking and all nicotine use completely”* and that e-cigarettes *“appear to be providing smokers with a valuable alternative route to smoking cessation.”*¹³
- Another important study concludes that because e-cigarettes have a far greater reach and acceptability to smokers than NRT, as well as having no greater risk of adverse effects, *“e-cigarettes also have potential for improving population health.”*¹⁴
- The first Cochrane review examining e-cigarettes discovered that they could assist smokers to reduce or stop smoking: *“ECs [electronic cigarettes] appear to help smokers unable to stop smoking altogether to reduce their cigarette consumption when compared with placebo ECs and nicotine patches.”*¹⁵

Prohibiting the use of a product in enclosed spaces which is considered to be a less harmful alternative to smoking for adult consumers, as well as having the potential to help smokers quit or cut down, runs contrary to the Scottish Government’s goal of reducing smoking rates in Scotland.

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?

24. Do you agree that Police Scotland should enforce this measure?

Yes ☐ No ☐

¹³ *Ibid*

¹⁴ Bullen, C et al., ‘Electronic cigarettes for smoking cessation: a randomised controlled trial’, *The Lancet*, Volume 382, No 9905, (September 2013). See: <http://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2813%2961842-5/abstract>

¹⁵ McRobbie H, Bullen C, Hartmann-Boyce J & Hajek, P., ‘Electronic cigarettes for smoking cessation and reduction (Review)’, *Cochrane Database of Systematic Reviews* (2014), Issue 12. See: <http://onlinelibrary.wiley.com/doi/10.1002/14651858.CD010216.pub2/pdf>

25. If you answered 'no' to Question 24, who should be responsible for enforcing this measure?

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?

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

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 ☐

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?

Manager or Owner

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)?

None.

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

N/A

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

No.

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?

The financial impact of the majority of these proposals is likely to be minimal as similar equivalent legislation is already in place for tobacco products.

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

We remain concerned that any prohibitive regulation in terms of domestic advertising could discourage the sale of electronic cigarettes in Scotland and therefore affect the income of our members.

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

Maximum consistent with the introduction of these proposed measures. Notices from the Scottish Government should be provided to the retailers for display on their premises, together with appropriate media announcements.

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

No.

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.

Comments