

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

a ☒

b. the young person attempting to purchase the e-cigarette

b ☐

c. both

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 ☒

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?

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)?

Yes. There has recently been a new set of rules for advertising ecigs from Committees of Advertising Practice (CAP) here:

<http://www.cap.org.uk/Advice-Training-on-the-rules/Advice-Online-Database/Electronic-cigarettes.aspx#.VKWsTHvpW2U>

It would be a pointless waste of time and money to duplicate this just for Scotland. If you wanted to create some really useful legislation you could allow ecig ads to tell the truth about vaping - that it is orders of magnitude safer than smoking and that it will help you quit. That way ads could more directly target current smokers and avoid 'glamour'.

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?

Overregulation of ecig advertising will give an unfair advantage to tobacco companies who produce ecigs. Tobacco companies are used to advertising restrictions and have years of experience in working around them. Small independent companies (the majority in the vaping marketplace) will be less able to compete.

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?

Comments

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

We have a smoking ban in enclosed public spaces because of the harm caused by second-hand smoke. According to ALL available evidence, vaping causes no such harm to bystanders. The default should be that activities are allowed in public in the absence of evidence of harm. Individual premises are free to set their own rules on whether vaping is appropriate in the same way they can set rules on eating and drinking, dress codes etc. ASH have produced useful and evidence-based guidance for premises making these decisions here:

http://www.ash.org.uk/files/documents/ASH_900.pdf

These guidelines are endorsed by ASH Wales, Trading Standards Institute, UK Centre for Tobacco & Alcohol Studies and Chartered Institute for Environmental Health. No further legislation is necessary.

Vaping is not 'smoking behaviour' it is quitting behaviour. It normalises the switch to something many times less harmful than smoking.

Vaping does not undermine smoke-free legislation because it is not smoking.

The effect of banning vaping in enclosed public spaces would be to send a lot of people who have recently quit smoking to stand outside with the smokers. Here, they are at serious risk of relapse as well as subject to second hand smoke with all its known health risks.

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?

Yes.

Igor Burstyn: Peering through the mists: systematic review of what the chemistry of contaminants in electronic cigarettes tells us about health risks

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

Conclusion: '...the aerosol generated during vaping as a whole (contaminants plus declared ingredients) creates personal exposures that would justify surveillance of health among exposed persons in conjunction with investigation of means to keep any adverse health effects as low as reasonably achievable. Exposures of bystanders are likely to be orders of magnitude less, and thus pose no apparent concern.'

'Evidence conflicts with the view that electronic cigarettes are undermining tobacco control or 'renormalizing' smoking, and they may be contributing to a reduction in smoking prevalence through increased success at quitting smoking' (Professor Robert West: Trends in e-cigarette use, presentation to European Conference on Tobacco or Health)

<http://www.rjwest.co.uk/downloadfile.php?filename=uploads/Trends%20in%20ecigarette%20use%20in%20England%20Mar%202014%20c.pptx>

The BMA was asked over a year ago to supply evidence to support their call for a ban on vaping in public. They have not yet responded in spite of repeating their call to Welsh and Scottish governments:

<http://www.senseaboutscience.org/blog.php/75/should-we-ban-electronic-cigarettes-we-askforevidence>

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?

I do not agree that it should be an offence for an adult to smoke in a vehicle carrying someone under the age of 18. It's not a good idea to smoke in a car (or anywhere

else) around children. However, this is the start of a very slippery slope - Deborah Arnott of ASH has already expressed a desire to ban smoking in all cars.

It's also about as enforceable as the phone ban while driving. Laws that everybody ignores are bad laws.

It is clear from the way these questions are posed that you are already committed to this policy however if you are able to reconsider I would ask that you look to what is happening in the US, where smokers are being denied jobs, housing and access to their own children. As we all know, smokers are much more likely to be poor and to have mental health issues. It is frankly despicable that a government (any government) that makes such a huge sum of money off the backs of addicts to a legal product should simultaneously treat them with such contempt.

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

Smoke free NHS grounds are an abject failure.

In most cases, these bans are poorly enforced and result in groups of smokers congregating around building entrances because there are no longer any smoking shelters or indications of where people should go if they need to smoke.

Where the ban is effectively enforced it results in vulnerable patients standing just outside hospital grounds, often in areas where they are not safe because of traffic or crime. This also affects staff who work unsociable hours.

Whether properly enforced or not, 'smoke-free' NHS grounds impose additional stress on some of the most vulnerable groups of people in the country at a time that is already stressful for them as patients or as relatives.

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?

Bring back clearly signposted smoking shelters within hospital grounds. They should be easily accessible by frail patients yet far enough away from the entrances to avoid non-smokers.

At the same time, ensure support is readily available for those who want to quit, including support to use ecigs in NHS settings.

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

What is the point of this proposal? Second hand smoke poses no health risks in large outdoor spaces. It won't protect children from seeing smoking - the streets are full of people smoking because they can no longer do so inside. Situating children's play areas away from busy roads would have a far greater health impact.

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?

A trained staff member over the age of 18

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)?

age - smokers under the age of 18 should not be denied harm reduction options such as ecigs.

disability - people with severe mental health conditions and others who require long-term hospital care should not be forced to quit smoking in order to access treatment.

race - if smoking is banned in vehicles which are also people's homes this would have a disproportionate impact on Roma and other traveller communities.

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

avoid criminalising children and their parents - keep any penalties for underage sale of ecigs for vendors only.

Continue to allow long term NHS patients to smoke in designated areas while providing support to quit, including ecigs.

Don't ban smoking in vehicles which are also homes.

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?

Question 3 - It's a sad fact that most smokers start as children and the laws on underage sale of tobacco are so badly enforced. It would be very wrong to prosecute a child for attempting to reduce the harm caused by an addiction that society has failed to protect them from.

Question 7 - it would also be very wrong to prosecute a parent for helping their child reduce harm. If I had a child who smoked I would break this law to enable them to make the switch to something far less harmful

Question 14 - Ecigs are not tobacco products and should not be regulated as such. The illegal (as well as legal) sale of tobacco products causes immense harm. This is not the case with vape products and they should not be regulated in the same manner because it gives a false impression that ecigs are as harmful as smoking and so prevents harm reduction.

Question 39 - penalties should be proportionate to potential harm caused. Selling tobacco to children causes many times the harm of selling them ecigs. This proposal would send the message that ecigs are as harmful as lit tobacco. The result is that fewer smokers will switch and more will die from smoking.

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.

None