

## **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?**

**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 ☐

Neither Yes or No. Please refer to our extended response.

**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 ☐

For further information, please refer to our extended response.

**10. If you believe that regulations are required, what types of domestic advertising and promotion should be regulated?**

- |   |  |
|---|--|
| <b>a. Bill boards</b>   | <b>a</b> <input type="checkbox"/>            |
| <b>b. Leafleting</b>  | <b>b</b> <input type="checkbox"/>            |
| <b>c. Brand-stretching (the process of using an existing brand name for new products or services that may not seem related)</b> | <b>c</b> <input checked="" type="checkbox"/> |
| <b>d. Free distribution (marketing a product by giving it away free)</b>  | <b>d</b> <input type="checkbox"/>            |
| <b>e. Nominal pricing (marketing a product by selling at a low price)</b>   | <b>e</b> <input type="checkbox"/>            |
| <b>f. Point of sale advertising (advertising for products and services at the places where they were bought)</b>                | <b>f</b> <input type="checkbox"/>            |
| <b>g. Events sponsorship with a domestic setting</b>  | <b>g</b> <input checked="" type="checkbox"/> |

For further information, please refer to our extended response.

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

Imperial Tobacco believes that exemptions should apply to flavourings.

Flavourings are a vital component of e-cigarettes: without them, the products are simply unusable and their absence will severely diminish their acceptance in the market. Manufacturers should be permitted both to use them and to mention their inclusion in factual terms on labelling and marketing material. However, as part of our responsible approach to youth protection, we believe that flavours should not be particularly appealing to young people, and therefore would agree with a ban on overtly fruity or candy flavours such as cola or bubble-gum.

Furthermore, the advertising of e-cigarettes cigarettes which are licensed as medical devices should not be subject to e-cigarette specific regulation. Advertising of such products should instead comply with the relevant regulation for medical devices.

**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)?**

We invite the Scottish Government to consider the proposals set out in our response to the CAP and BCAP consultation (appended). Please also refer to our extended response.

**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?**

Please refer to our extended response.

**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?**

We do not agree with the proposal and therefore we do not agree that offences and penalties should reflect those already in place for the Scottish Tobacco Retailers Register. Please refer to our extended response for further information.

**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?**

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

There is no evidence to support a ban on the use of e-cigarettes in enclosed public places.

Imperial Tobacco believes that e-cigarettes are fundamentally different to tobacco cigarettes or other tobacco products. Any future questions linked to the regulation of e-cigarette use should be supported by solid, independent research or studies.

Please refer to our extended response for further information.

**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?**

Please refer to the answer given to question 19 of our extended response.

**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?**

We do not agree with the proposal and therefore we do not agree that offences should apply. Please refer to our extended response for further information.

**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?**

We do not agree with the proposal. Please refer to our extended response for further information.

**26. Do you agree that there should be an exemption for vehicles which are also people's homes?**

Yes ☐ No ☐

Neither Yes or No. We do not agree with the proposals at all. Please refer to our extended response for further information.

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

We do not agree with the proposals. Please refer to our extended response for further information.

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

We do not agree with the proposals. Please refer to our extended response for further information.

**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

We do not agree with this proposal. Please refer to our extended response for further information.

**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)?**

We do not agree with this proposal. Please refer to our extended response for further information.

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

We do not agree with this proposal. Please refer to our extended response for further information.

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

We do not agree with this proposal. Please refer to our extended response for further information.

**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?**

Imperial Tobacco believes that education and awareness raising campaigns can support enforcement of, and compliance with, existing smoke-free policies.

Education and awareness programmes such as the Welsh Assembly Government's 'Fresh Start' campaign or the Scottish Government's 'Take Seven Steps' campaign - which aim to reduce smoking in the presence of children - are likely to be more effective in changing behaviours than introducing further legislation.

Please refer to our extended response for further information.

### **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 25, 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

We do not agree with the proposals. Please refer to our extended response for further information.

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

We do not agree with the proposals. Please refer to our extended response for further information.

### **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 ☒

We do not agree with the proposals. Please refer to our extended response.

**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?**

Imperial Tobacco believes that each sale made by an under-18 should be authorised by the holder of a premises licence, the designated premises supervisor or any individual aged 18 or over who is authorised by such a holder or supervisor.

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

**a. the penalty**

a ☒

**b. the enforcement arrangements**

b ☒

Imperial Tobacco agrees with the penalty and enforcement proposals provided that tobacco penalties and enforcement arrangements are dealt with by separate regulations to e-cigarettes. Please refer to our extended response for further information.

**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)?**



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

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

**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?**

We would not comment on financial implications at this stage, but we would be happy to meet with officials of the Scottish Government to discuss in greater detail any financial implications and any other impacts.

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

We would not comment on financial implications at this stage, but we would be happy to meet with officials of the Scottish Government to discuss in greater detail any financial implications and any other impacts.

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

We would be happy to meet with officials of the Scottish Government to discuss the necessary lead-in times should any of the aforementioned measures be implemented.

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

Existing tobacco control policies have never been subjected to proper evaluation and require full and thorough assessment before new measures are introduced. We suggest that the Scottish Government evaluates the impact of current tobacco control measures as listed below, before the

consultation is progressed further.

The existing regulatory context includes:

- The ban on advertising and promotion (2002 & 2004);
- One of the most punitive tobacco tax regimes in the world;
- The ban on smoking in public places (2006);
- The use of pictorial health warnings (2007);
- Age of Sale of Tobacco Products increased from 16 – 18 years (2007);
- The ban on the sale of tobacco from automated machines (2013);
- Tobacco Retailers' Register implemented and a ban on proxy purchasing for tobacco products;
- The ban on the display of tobacco at the point of sale - (2012 - smaller shops and 2015 - larger premises)<sup>1</sup>;
- Proposed Tobacco Products Directive agreed in May 2014 (to be implemented by May 2016) and which will include a number of measures including a ban on 10s packs and packs under 30g, plus a ban on menthol products; and
- Proposed standardized (plain) packaging of tobacco products in Scotland.

Before any further restrictions are proposed, we recommend that a thorough assessment of the impact of the current regulation in Scotland be conducted, to identify whether any of the legislation achieved its objectives.

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.

This response is submitted by Imperial Tobacco UK. Imperial Tobacco UK ("ITUK") (together with ITG "Imperial Tobacco") is the Bristol-based trading operation of ITG which distributes Imperial Tobacco's products to the UK market. ITUK is market leader, holding approximately 45 per cent market

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<sup>1</sup> <http://www.telegraph.co.uk/news/politics/3463980/Tories-to-oppose-tobacco-restrictions.html>;  
[http://www.24dash.com/news/Central\\_Government/2008-12-09-Tobacco-display-ban-nanny-state-going-too-far-Lamb](http://www.24dash.com/news/Central_Government/2008-12-09-Tobacco-display-ban-nanny-state-going-too-far-Lamb)

share. ITUK's leading UK cigarette brands include Lambert & Butler, JPS, Richmond, Embassy and Regal. ITUK also distributes tobacco products on behalf of Philip Morris Ltd.

Imperial Tobacco supports sound, evidence-based, reasonable and practicable regulation of tobacco products and encourages the Scottish Government to respect the principles of adult choice, freedom of competition and international law when doing so.