

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 X 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 X

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 X

b ☐

c ☐

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

Yes X No ☐

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

Yes X No ☐

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

Save E-cigs supports a ban on the sale of e-cigarettes, e-liquids, and all related paraphernalia to those under the age of 18.

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 ☒

It is vitally important that e-cigarette companies are allowed to advertise their products so that smokers can then make an informed decision about switching to a less harmful alternative. That said, such advertising must be proportionately regulated and must not intentionally target those under the age of 18 or former/current smokers/vapers.

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 ☒

As far as Save E-cigs is concerned the new rules for the advertising of e-cigarettes, drawn up by the Committee of Advertising Practice are more than adequate.

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"/> |

Totally Wicked does not believe this question to be applicable (see answer to question nine).

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

Save E-cigs is firmly of the opinion that overly draconian rules for the advertising of e-cigarettes would be bad for public health. Save E-cigs believes the current rules work as was demonstrated by the recent banning of three e-cigarette adverts.

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)?

Save E-cigs does not think it necessary for the Scottish Government to introduce any new rules for the domestic advertising of e-cigarettes as Save E-cigs believes that the existing regulations are more than adequate.

Furthermore Save E-cigs does not accept the premise of this question as there is enough freely available evidence from organisations such as ASH and independent experts such as Professor Robert West to conclude that e-cigarette use amongst children is rare and that e-cigarette advertising is not leading to any increase in the take up of vaping amongst children. The latest research also makes clear that 99.9 per cent of vapers are former or current smokers, so again there is no problem to tackle.

With this question Save E-cigs believe that the Scottish Government are worrying about problems that do not exist and if advertising rules are drafted with this concerns in mind then they are likely to be disproportionate and lead to fewer people making the switch from smoking to vaping.

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?

Save E-cigs is a campaign organisation not an e-cigarette business.

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 and e-liquids are not tobacco products.

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?

Save e-cigs strongly supports the proposed ban on the sale of e-cigarettes to those under the age of 18.

However, Save E-cigs does not believe that retailers selling e-cigarettes and e-liquid should be required to register on the Scottish Tobacco Retailers Register as they are not selling a tobacco product.

Having looked at the penalties available to trading officers for retailers who fall foul of the terms of the Scottish Tobacco Retailers Register, Save E-cigs would support the issuing of fixed penalty notices to retailers found selling e-cigarettes and e-liquids to those under the age of 18. Save E-cigs would also support repeat offenders being banned by the courts from selling electronic cigarettes and e-liquids for up to 24 months.

Save E-cigs would though like to make it crystal clear that they do not support any other offences and penalties contained within the Scottish Tobacco Retailers Register also being used for retailers of e-cigarettes and e-liquids.

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.

Save E-cigs does not believe that the Scottish Government should introduce a ban on the use of e-cigarettes in enclosed public places as there is no evidence that such a ban is necessary or that such a ban would result in a wider public health gain. Importantly, Save E-cigs believes such a ban, if introduced, would lead to fewer people making the switch from vaping to smoking.

Presently, there is a 97 per cent compliance rate with the smoking ban and there is no evidence to suggest that vaping in enclosed public spaces is undermining the ban. Importantly there is no evidence demonstrating that passive vaping is a problem to the health of non vapers.

We know that 99.9 per cent of vapers are current or former smokers. A ban

on vaping of this nature would force vapers outside to vape alongside smokers. Not only would this be bad for the health of the vaper, it would also put them in temptations reach. We speak to vapers all the time and many have stated that faced with a ban like this they would revert to smoking.

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?

A major scientific study undertaken by Dr Konstantinos Farsalinos and Professor Riccardo Polosa concluded that the “effects of e-cigarette use on bystanders are minimal compared with conventional cigarettes.” A review of the available literature conducted last year by researchers at the Drexel University School of Public Health in Philadelphia concluded that “exposures of bystanders pose no apparent concern.” Finally the US Food and Drug Administration conclude that all other substances measured for e-cigarettes were far below allowable levels for human inhalation. They state that levels are so low that it is more hazardous to an individual’s health to breathe the air in any major metropolitan city during rush hour.

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?

N/A

22. Do you agree that the offence should only apply to adults aged 18 and over?

N/A

23. If you answered ‘no’ to Question 22, to whom should the offence apply?

N/A

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

N/A

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?

N/A

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

N/A

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

N/A

Smoke-free (tobacco) NHS grounds

29. Should national legislation be introduced to make it an offence to smoke or allow smoking on NHS grounds?

N/A

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

N/A

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)?

N/A

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

N/A

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

N/A

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?

N/A

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?

N/A

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**

N/A

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

N/A

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 X 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 X 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 X 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 member of staff aged over 18 who had been authorised by the store manager to authorise such sales.

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

- | | |
|----------------------------------------|------------|
| a. the penalty | a X |
| b. the enforcement arrangements | b X |

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)?

N/A

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?

N/A

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?

N/A

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

N/A

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

Save E-cigs would like to see the ban on the sale of e-cigarettes and e-liquids to those under the age of 18 introduced as soon as possible. This

should be relatively easy as most responsible retailers already have such a policy in place.

Save E-cigs would like to see further consultation if the Scottish Government intended to bring in new rules for the domestic advertising of e-cigarettes and e-liquids.

Save E-cigs strongly oppose any proposals to implement a public vaping ban in Scotland as there is no evidence that such a ban is needed, furthermore, with the introduction of medically licensed e-cigarettes such a ban would be unwarrantable. However, if the Scottish Government were minded to ignore the independent evidence and introduce such a ban, then the very least they should do is give those businesses impacted the same lead-in time that businesses were given to comply with the smoking ban when it was introduced.

Save E-cigs does not see any reason why retailers of e-cigarettes and e-liquids should have to register with The Scottish Tobacco Retailers Register as these products are not tobacco products in any way, shape or form. Again, if the Scottish Government were minded to go against this obvious fact and compel retailers of electronic cigarettes and e-liquids to register with The Scottish Tobacco Retailers Register then at the very least such individuals and businesses should be given the same lead-in time as retailers of tobacco products were when The Scottish Tobacco Retailers Register was first introduced.

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

For 2.1 million people, e-cigarettes provide a viable alternative to smoking tobacco cigarettes, an alternative that is independently recognised as being 95 times less harmful.

The rise of e-cigarette sales (three per cent of adult smokers in Scotland in 2010 – 14 per cent of adult smokers in Scotland in 2014) is directly contributing to a decline in cigarettes sales. In the words of Professor Robert West: “What is the problem that requires further regulation?” What public health gain does the Scottish Government hope to achieve with the proposals contained in this consultation?

Save E-cigs fully supports a ban on the sale of e-cigarettes and e-liquids to those under the age of 18, but has severe reservations about the other proposals affecting e-cigarettes, believing them to lack an evidence base and to be ultimately counterproductive.

Where bans on the use of e-cigarettes in public have been introduced, vaping related businesses have been negatively impacted, but far more importantly, the smoking rates have risen.

With a ban on the advertising of e-cigarettes soon to be introduced, following the passing of the Tobacco Products Directive, where are smokers

to find out about e-cigarettes, particularly if they are banned in public and if draconian advertising rules are introduced domestically? Smokers need to see people using e-cigarettes in public and to see them openly advertised. They need to be able to go up and speak to vapers so that they can find out further information and then hopefully make the switch to a safer alternative.

Save E-cigs is clear that neither e-cigarettes nor e-liquids are tobacco products and therefore should not be subjected to any of the same regulations as tobacco products.

In its approach the Scottish Government are going against the precautionary principle as it was originally intended, they are trying to mitigate for risks that have yet to be proven and in doing so may do more harm than good.

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.

Save E-cigs is a campaign group for vapers, their friends, and their families, it has no direct or indirect links to the tobacco industry.