



## **CONSULTATION ON ELECTRONIC CIGARETTES AND STRENGTHENING TOBACCO CONTROL IN SCOTLAND – COSLA RESPONSE**

COSLA welcomes the opportunity to respond to this consultation and supports the examination of options aimed at managing the potential impact e-cigarettes or Electronic Nicotine Delivery Systems (ENDS) will have on smoking behaviours and avoiding undermining the good progress we have been able to make in Scotland during the past 20 years.

Scottish local government is a key stakeholder in the tobacco control agenda and councils are keen to continue building on the progress made toward minimising the impact smoking has on the health of our communities. COSLA is committed to taking forward the actions set out in the current national strategy *“Towards A Generation Free From Tobacco”* and is generally supportive of the objectives of this latest consultation. However, we suggest that the proposals outlined in the consultation will need to be properly resourced if we are to continue to make progress.

We have set out our comments within the structure of the consultation document below and have added additional commentary in the body of the paper where relevant.

It should be noted that while we have worked with our member councils and professional associations to develop our response, we have not had an opportunity to discuss this matter at any of our committees, and therefore our response should be considered with that caveat.

Cllr Peter Johnston  
COSLA Health and Well-being Spokesperson

## **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 ☒

*This would be consistent with the wider tobacco control legislation. However, we also believe that we need to be careful to avoid the criminalisation of potentially large numbers of young people, particularly in disadvantaged communities.*

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

Yes ☒ No ☐

*Unless some form of age verification can be established perhaps through use of a token.*

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

Yes ☒ No ☐

*Any accessories that are solely designed to support e-cigarettes should also be restricted.*

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

*The restrictive framework should be applied to all related accessory products which aid or promote the use of e-cigarettes.*

**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 checked="" type="checkbox"/> |
| b. Leafleting  | b <input checked="" 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 checked="" type="checkbox"/> |
| d. Free distribution (marketing a product by giving it away free)  | d <input checked="" type="checkbox"/> |
| e. Nominal pricing (marketing a product by selling at a low price)   | e <input checked="" 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 checked="" type="checkbox"/> |

*There is an argument that smokers who wish to use e-cigarettes to help them quit smoking might benefit from ‘point of sale’ advertising. However, the wider marketing of these products could actually encourage take-up, which would clearly be an undesirable outcome.*

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

Notwithstanding the fact that the long-term health benefits of ENDS is uncertain there may be an argument to allow the promotion of these products purely as an aid to assist smoking cessation.

**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)?**

Please see following links.

[http://www.ash.org.uk/files/documents/ASH\\_715.pdf](http://www.ash.org.uk/files/documents/ASH_715.pdf)

<http://jama.jamanetwork.com/article.aspx?articleid=1911300>

<http://www.cdc.gov/media/releases/2014/p0825-e-cigarettes.html>

**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 see following links.

<http://www.mhra.gov.uk/home/groups/comms-ic/documents/websiteresources/con454361.pdf>

#### **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?**

We believe that a national policy position, developed jointly by the Scottish Government and COSLA, could provide the requisite direction on this issue.

We do not believe that there is a strong case to legislate to ban the use of e-cigarettes in enclosed public spaces. The damage caused by passive smoking created a clear argument from a health protection perspective that smoking tobacco should be banned from enclosed public spaces. However, while we agree with the argument that e-cigarettes normalises smoking behaviours, a policy framework rather than legislation seems to us to be a more proportionate response.

Such a policy framework is needed because we are currently trailing behind developments in the use of e-cigarettes and there is a risk that further delay which allows the on-going use of these devices in enclosed public spaces could undermine the work already done to de-normalise smoking behaviours.

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

**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?**

**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?**

Any person travelling in a vehicle carrying someone under the age of 18

**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?**

**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 ☐
- b. Only hospital grounds b ☐
- c. Only within a designated perimeter around NHS buildings c ☐
- d Other suggestions, including reasons, in the box below

At this time it is unclear whether legislation is necessary or indeed practicable. Actions to achieve this outcome are currently being progressed

by health boards and local authorities as part of the existing national smoke free strategy. Further time is needed to identify effective local approaches to this within a context of nominal resources.

Organisations like health boards and local authorities may use internal disciplinary provisions to 'enforce' this policy for their employees if they want to prevent their employees smoking in the grounds of NHS property.

We support a more flexible and localised approach which builds on public support rather than prohibition.

**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)?**

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

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

**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?**

**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

Local authorities are already committed to working with local partners to introduce appropriate measures to make children's outdoor areas smoke free through actions set out in the current national tobacco control strategy. However, the effectiveness of local authorities will be increased if additional powers are made available which allow specific children's outdoor areas to be designated as smoke free. Local authorities will want to use any additional powers in consultation with local communities and therefore a national approach we believe would not work.

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

Many play parks are already fenced to prevent the entry of dogs and defining these as smoke free may be straight forward. Areas designed for use by children such as play parks, skate parks etc. should be included.

#### **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-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?**

As with tobacco products, another responsible adult employed at the store.

**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)?**

The potential legislative changes intimated above will have an impact in terms of equality for people aged under 18 insofar as making the sale of electronic cigarettes an offence subject to legal sanctions.

This is outweighed by the public health improvements which would be achieved through safeguarding the reduction in smoking and nicotine consumption rates.

**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?**

Local authorities signed up to a number of actions set out in the revised national smoking strategy, with no additional financial support, on the basis that there was a degree of local flexibility and that costs were anticipated to

be nominal; this was within a context where Trading Standards and Environmental Health services are under severe financial pressures.

The proposals outlined above are likely to require additional funding from Scottish Government if we are to be empowered make sufficient national progress toward the targets set out in the strategy.

Increased staff costs for monitoring and enforcing the policy are likely. Implementation of any new legislation and powers will add to the enforcement duties of Environmental Health and Trading Standards. This will need to be quantified accurately to reflect the true costs to local authorities and to reflect the level of enforcement anticipated.

The Scottish Government should also consider which, if any, of the above proposals should be eligible for Primary Authority Partnerships which will be incoming for devolved matters as a result of the Regulatory Reform Act (Scotland) 2014. Where appropriate this could support coherent and consistent introduction of the proposals developing from this consultation.

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

Additional signs and amendments to existing public notices will be required.

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

Appropriate lead-in times might range from 18 months to 2 years; more precision will depend on the details of the final proposals.

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

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.

COSLA has no direct or indirect links to, nor do we receive funding from, the tobacco industry