

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 ☐ No X

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 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 checked="" type="checkbox"/> |
| g. Events sponsorship with a domestic setting | g <input checked="" type="checkbox"/> |

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

Children in Scotland would like to see the same domestic advertising and promotion regulations applied to electronic cigarettes as are applicable to Tobacco. The 2003 Tobacco Advertising and Promotion Act received Royal Assent on 7 November 2002 and came into force on 14 February 2003.

The Tobacco Advertising and Promotion Act 2002 comprehensively bans the advertising and promotion of tobacco products including the use of brand-sharing and sponsorship of cultural and sport events which Children in Scotland believes should now be extended to include electronic cigarettes.

Children in Scotland circulated a survey to all its members as well as to external bodies. All respondents stated they would like the Scottish Government to take further steps to regulate the domestic advertising and promotion of e-cigarettes to young people and adults.

Moreover, Children in Scotland is strongly opposed to any advertising aimed at children and young people which promotes the use of e-cigarettes. Children in Scotland welcomes a proactive and combined mass media advertising approach at a local and national level, including communities and schools focusing of youth smoking prevention and consequently challenging one of the major health issues of inequality in Scotland. This effective method was discussed at the Cross party Group on Tobacco by Professor Amanda Amos, the Convener of the University of Edinburgh Tobacco Research Group.

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)?

Children in Scotland has a long standing history of supporting further regulation of the use and sale of Tobacco and its impacts on children and adults. Children in Scotland believes that there is still a considerable lack of evidence on the effects and passive smoking effects of e-cigarettes and we would welcome further restrictions in light of this. We surveyed our members to gauge their views on this and many shared our concerns, as evidence in the responses below.

“The e-cigarettes are to help people stop smoking and should be targeted at those people who have been smoking for a number of years hence restrict advertisements of these devices to after the watershed. More preventive ads for young people to not start smoking or quit because they have a better chance of reversing the harm caused by smoking.”

“Regulation should allow the promotion of e-cigs to existing adult smokers, as a less harmful alternative to smokers. Need to exclude promotion to non-smokers, particularly children.”

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?

Comments

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?

Comments

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?

Children in Scotland shares the Scottish Government's ambition to make Scotland the best place to grow up. In order to do this, we must endeavour to protect children from harm and promote healthy lifestyle choices. We believe the information available on the chemicals contained in electronic cigarettes is insufficient to infer that children and adults are safe from second hand vapour.

Until there is research and evidence that demonstrates the effects of second hand vapour on children and adults in enclosed and exposed areas, we believe, from a preventative perspective, the Scottish Government should enforce whatever methods it sees fit to protect children and adults from the potential harm of e-cigarette vapour.

From the recent Children in Scotland survey 77.8% of the participants stated they believe the Scottish Government should administer controls on

the use of e-cigarettes in enclosed public spaces.

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

Comments

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?

Recent research suggests that the second hand smoke from some e-cigarettes may contain higher levels of certain harmful metals than in traditional tobacco cigarettes as levels of nickel and chromium are four times higher than most in traditional cigarettes.¹ Coupled with this, the World Health Organisation has already proposed banning the use of e-cigarettes indoors as they increase the background level of toxicants and nicotine.²

Children in Scotland believes that in light of this evidence that there should be further regulation of e-cigarettes.

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 ☐

¹ Environmental Science: Processes and Impacts; *Particulate metals and organic compounds from electronic and tobacco-containing cigarettes: comparison of emission rates and secondhand exposure* (Published online 22nd August 2014)

² The World Health Organisation, *Background on WHO report on regulation of e-cigarettes and similar products* (Press Release 26 August 2014)
<http://www.who.int/nmh/events/2014/backgrounder-e-cigarettes/en/>

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

Children in Scotland was pleased to respond to the consultation on this proposed Bill in 2013. We also supported the Bill at its launch and in accompanying documents we feel strongly that we must do all we can to protect the health and development of today's young people as well as the next generation. This proposed Bill is one way of positively influencing this direction of travel.

Children in Scotland issued a short poll to our members during the consultation period, 94% of responses received agreed that they would support a ban on smoking in cars with child passengers. This is in line with other opinion polls on the issue, quoted in the consultation document, which shows very strong public support for such a measure. When children themselves are asked they have also expressed a strong dislike of their parents and other adults smoking in the car, as seen in Dr Rowa-Dewar's research on second-hand smoke.

Among the comments from our members on this issue were:

"I strongly agree with the plan to ban smoking in cars carrying children because they are unable to leave if they wish to, and therefore have no autonomy in the situation. As an adult, I can get out of the car if I do not wish to be exposed to smoke, but a child is unable to do this. Also, in such a small space, the levels of passive smoke must be extremely high. We should not subject our children and young people to situations and health risks we are not happy to endure ourselves".

"This is a long time coming and I totally support this as I'm sure all parents do".

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?

We believe this ban should apply to all vehicles capable of being enclosed. To introduce exceptions could lead to arguments about the extent to which windows are open and the car is ventilated for example. This also helps make it clear that the intention is to reduce children's exposure to second hand smoke and that opening the window or roof is not enough.

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

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)?

We believe that this should apply to all health service facilities as protecting the health of children and adults should be of paramount importance for both patients and their visitors.

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

Police Scotland and local community authority officers

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

We believe that the penalty should relate or compare the fine to that imposed on those smoking in an enclosed space (£50), treating the offence as a health issue.

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?

From the Children in Scotland survey 77.8% stated they would like a ban on e-cigarette and tobacco use in public spaces used by children and young people this included:

1. *Play parks/areas*
2. *Parks/sports pitches/immediate vicinities of sports centres/community centres etc.*
3. *Within 50 M of schools/playgrounds and health care settings.*
4. *Playgrounds/family eating areas/ smoke free areas in outdoor areas of pubs and restaurants.*

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?

From the Children in Scotland survey 66.7% believed that another adult working in the store should authorise the sale, whilst 22.2% believed it should be the owner and 11.1% stated it should be the manager.

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 patterns of tobacco use and inequalities are significant in Scotland particularly within deprived areas and youth smoking. There is research available outlining the links between early life experiences that predispose young people to take up smoking such as reported by Giesinger³ Children in Scotland urge the Scottish Government to take opportunities to tackle the links between inequalities and nicotine addiction.

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

Comments

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?

N/A

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

N/A

³ Giesinger et al 2013

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

N/A

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

N/A

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