

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

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

c. both

a
b
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?

We believe that all products associated with the use of electronic cigarettes should be age-restricted to those aged 18 and above.

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?

While we acknowledge that e-cigarettes may be able to play a useful role in harm reduction and encouraging smoking cessation it is important that e-cigarettes and vaping of an addictive substance is not glamorised. Given the obvious overlap in behaviour between traditional smoking and vaping it is vital that advertising and promotion of e-cigarettes is restricted to prevent young people becoming encouraged to either take up vaping or to see any marketing material that potentially encourages smoking.

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 are aware of scientific studies that suggest that nicotine intake during pregnancy may be associated with an increased risk of poor lung function and transgenerational asthma in animal models (Leslie, 2013) BMC Med. 2013 Feb 4;11:27. doi: 10.1186/1741-7015-11-27. We are concerned that there is the possibility that nicotine addiction at a population level could

increase if domestic advertising of e-cigarettes was unrestricted and that this could have negative implications for future respiratory health in Scotland.

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?

This is outside our area of expertise.

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?

On balance we think that the use of e-cigarettes should be treated similarly to traditional cigarettes and banned from use in enclosed public spaces. We have reached this decision for two reasons: (a) we think that one of the major successes of the 2006 smoke-free legislation has been that children are no longer exposed to seeing smoking behaviour take place in enclosed public settings and so are less likely to consider that smoking is a glamorous or positive behaviour to engage in; and (b) we are concerned that the effective and comprehensive enforcement of smoke-free laws will be undermined if e-cigarette use is permitted in enclosed areas. It is not

difficult to see how a bar worker, currently responsible for enforcement, would have problems identifying a smoker where 20-30 e-cigarette users were located in a busy bar. While we acknowledge that the design of vaping devices has progressed in recent months and many devices no longer resemble cigarettes we think it is simpler to restrict the use of all e-cigarette devices. In terms of indoor air quality the current evidence is certainly that e-cigarette emissions are likely to be much less harmful than traditional cigarette smoke but it should also be noted that these products are not 'emission-free'. They do produce substantial numbers of nano-sized particles and, as such, they impair air quality for those within the vicinity of the vapor. There is the potential for acute irritation, particularly for those with pre-existing lung conditions, and the long-term effects of repeated exposure are currently unknown. We feel it would be prudent to restrict unnecessary population exposure to these emissions until further epidemiological evidence becomes available - and restrictions in enclosed public space settings would be commensurate with that aim.

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 used of e-cigarettes in enclosed spaces, that you think the Scottish Government should consider?

A recent scientific study by Schober et al (Int J Hyg Environ Health. 2014 Jul;217(6):628-37. doi: 10.1016/j.ijheh.2013.11.003) provides some useful measurement data on the effect of e-cigarettes on indoor air quality. The study also suggests that e-cigarette emissions can lead to irritation of the airways. There has been some scientific debate about the findings of this study.

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?

Smoking by anyone of any age in a car carrying children is likely to be harmful to the child's health. We acknowledge the complexity of the various permutations of driver/passenger ages but, on balance, our preference would be for the offence to apply to anyone aged 18 years or over. Although a driver can have a full licence from age 17 this may lead to a small number of case where a 17 year old driver could smoke while carrying children in his/her car but someone aged 18 could be prosecuted for the same action. While we acknowledge that this loophole is not ideal we think that the benefits of a uniform age to which smoking legislation applies (e.g. the minimum age for purchasing and have procession of tobacco in a public place is 18) outweigh the minor loophole that this creates. We are also minded not to create legislation that criminalises children. We also think that the age of the child being protected should be set at those below 18 although in reality, given the difficulties in determining the age of someone aged 16-18 in a moving car, it seems likely that any Police Scotland enforcement activity is likely to be very much targeted at cars carrying children that are much younger than this.

We strongly encourage the Scottish Government to implement this measure and believe that it will send a clear message that exposing children to tobacco smoke in enclosed private spaces is unacceptable. Given the Government's recent world-leading target to reduce the number of children exposed to SHS in their own home by half by 2020, we think that legislation prohibiting smoking in vehicles carrying children sends a very clear and important societal message about preventing children's exposure to SHS. We anticipate that this measure would enable substantial awareness raising and education about the harmful effects of SHS, and hope that this could also lead to significant carry-over to domestic environments and increasing the number of smoke-free homes in Scotland.

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?

The key to the success of the smoke-free legislation in 2006 was the simplicity of the rules. There were almost no exemptions and the public were quickly aware that smoking within all enclosed public spaces was

prohibited. We would favour a similarly clear and transparent rule that stated that smoking in any vehicle where a child was present was prohibited. Given the UK Highway Code guidance (rule 148) that states “Avoid distractions when driving or riding such as: smoking” it would seem simpler to work within this framework to apply the restriction to all vehicles (carrying children). Exemption could be applied to those vehicles that were stationary, clearly removed from the public highway and were being used as a home for overnight accommodation.

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

We do not think that national legislation is required to make it an offence to smoke (outdoors) on NHS grounds. Guidance and local measures to advise smokers to smoke away from hospital entrances is our preferred option. We note that Foresterhill is one of the largest (by geographical area) hospital sites in Europe and that a legal requirement to move entirely off-site in order to smoke could pose problems for patients, visitors and staff in terms of extended walk times and issues around personal security. Our group has gathered evidence of SHS concentrations around hospital entrances in Aberdeen. At such outdoor locations the increase in PM2.5 from smoking activity is generally of the order of 5-10 micrograms/m³. While the odour of SHS can be unpleasant as you pass through this area it is difficult to see how it could add substantially to your daily PM2.5 dose (and hence risk). For example, a non-smoker living in a smoke-free home, working in a smoke-free workplace and spending perhaps 2 minutes (1 minute each way) passing through an outdoor entrance area where SHS-derived PM2.5 averaged about 25 micrograms/m³ would experience about a 0.3% increase in their daily PM2.5 dose. This can be compared to the 991% increase that the same person would have experienced if they'd taken up a job working in a typical bar in Scotland in 2005 prior to smoke-free legislation

Restricting smoking outside in NHS grounds has many merits in terms of de-normalising smoking, preventing children from seeing adult smoking behaviour, reducing littering and lowering smokers' intake of tobacco. It is, however, difficult to see that restricting smoking in outdoor spaces can be justified in terms of improving air quality or reducing population level exposure to SHS-derived PM2.5. In addition we feel that many patients and visitors within a hospital setting are there at times of extreme stress brought about by major life events. A legislative requirement to leave the hospital grounds to smoke may result in considerable walking distances at larger hospital sites and seems unnecessarily harsh for patients and visitors.

On balance, we think that legislation is not necessary and that local guidance, signage and targeted measures to encourage smokers to smoke outside enclosed public areas and away from entrance areas are the best methods of approach.

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?

We have been impressed by the steps taken at the Foresterhill site and the impact this has had in reducing smoking activity around entrance areas. A mixture of clear signage across multiple platforms, in-hospital policy statements, motion activated audible warnings, and clear outdoor smoking locations (compliant with smoke-free public space legislation) have proved to be very successful outside the Royal Aberdeen Children's Hospital.

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?

We are mindful of the fact that the REFRESH study and recent Rightoutside campaign focussed on the benefits of making homes and cars smoke-free. One of the key items of advice in both these approaches was that quitting is not the only option available and that smoking outdoors is a way of reducing the potential harm of SHS to non-smokers living in your home. We would be concerned that legislation, or a public health message, focussing on smoking in parks and children's playgrounds would alienate or undermine parents who smoked and who felt that they were making a positive choice to protect their child by taking their smoking outside. Parents with pre-school children may spend a large proportion of their day at home or in a play-park and in terms of limiting their child's exposure to SHS there is no doubt that it would be preferable for that parent to smoke (if they have to) within the park rather than at home.

In terms of air quality, air movement/wind will disperse and dilute SHS very quickly in outdoor spaces and moving to a distance of >1.5m is likely to lead to personal exposure concentrations of PM2.5 very similar to background levels. In the case of smoking in parks it seems unlikely that a child would spend any significant time in close proximity to a smoking adult who was not a family member. The child's exposure to SHS is thus much more likely to be influenced by the smoking behaviour of that adult within their enclosed domestic setting or in their car and, as such, the focus should be on targeting that exposure and encouraging the smoking adult to take their smoking outdoors.

Introducing national legislation or local powers to allow decisions about making outdoor areas smoke-free should be considered with some caution and the possible unintended consequences explored in detail. Stigmatisation of parents smoking in outdoor areas could result in displacement of outdoor smoking indoors- exactly the opposite of the intentions of the current Rightoutside campaign.

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?

It would seem reasonable that another adult working in the store would be given the authority to authorise the sale.

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)?

Comments

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?

Comments

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

The proposals may reduce the quantity of cigarettes smoked per day by smokers with consequent reductions in revenue for tobacco companies and retailers who sell cigarettes but given that the Scottish Government is committed to making Scotland a tobacco-free nation by 2034 this legislation is likely to have little financial impact beyond that broad governmental aim. At a wider health-care level we anticipate, given the findings of the Royal College of Physician's report, that reductions in children's exposure to SHS are likely to reduce pressures on the NHS. We would expect to see some reduction in GP consultation rates and hospital admissions with the consequent financial benefits that would bring. Longer term we could anticipate increased levels of productivity- smoking is associated with higher levels of work absenteeism while non-smokers will have increased life expectancy.

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

For the restrictions on smoking in cars a 6-12 month lead-in time seems appropriate. Public education is key to the success of public health legislation such as this. A comprehensive social marketing and media campaign would be required to ensure that the health reasons for the legislation are explained together with clear information provided about how the law would operate. This education campaign could be delivered in tandem with the Scottish Government's wider SHS education material/campaign. There would need to be information provided for tourists and those entering Scotland for the first time. Signage was a key component for enclosed public spaces in March 2006 and something similar at main border points with England, ferry ports and at car-hire locations would need to be considered. The overhead matrix signage currently used by Transport Scotland across the road network would be an appropriate (and inexpensive) method of delivering reinforcing messages relating to the legislation in the lead up and after implementation.

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

None

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.

The Respiratory Group of the University of Aberdeen have no direct or indirect links with the tobacco industry and none of the three academics/clinical academics involved in preparing this response have received funding from the tobacco industry.