

Scottish Coalition on Tobacco (SCOT) Consultation Response

Introduction

The Scottish Coalition on Tobacco (SCOT) is a campaigning coalition of health and medical organisations with a shared interest in matters relating to tobacco and health.

Members of the coalition are: ASH Scotland, Asthma UK Scotland, British Heart Foundation Scotland, British Lung Foundation Scotland, British Medical Association, Cancer Research UK, Chest Heart & Stroke Scotland, Macmillan Cancer Support, Royal College of Nursing, The Roy Castle Lung Cancer Foundation, Royal College of Physicians of Edinburgh, Royal College of Psychiatrists, The Stroke Association (Scotland office), and the Royal Environmental Health Institute of Scotland.

SCOT welcomes the opportunity to respond to this consultation.

This is the agreed SCOT coalition response representing the majority view of members and does not necessarily represent the view of each member organisation. If individual members have taken a different position on particular points, or are providing a more detailed response to the consultation, this will be reflected in their own submissions.

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 ☐

Nicotine is addictive, to a degree similar to drugs such as heroin or cocaine¹ and therefore not appropriate for sale to children and young people under 18. Nicotine addiction is usually established within one year of experimenting with traditional cigarettes, which, for most life-long smokers, was before they were 16². We support the proposal to set the minimum age of sale for these products at 18.

1. Royal College of Physicians. Nicotine addiction in Britain - A report of the Tobacco Advisory Group of the Royal College of Physicians. 2000. www.rcplondon.ac.uk/publications/nicotine-addiction-britain [Accessed 02 December 2014]

2. Ibid

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 ☒

Yes, 'b', all devices. Because it is possible for non-nicotine containing e-cigarettes to look the same as nicotine containing e-cigarettes, and some types of e-cigarettes have user-replaceable parts and a choice of nicotine or non-nicotine fluid, exempting non-nicotine e-cigarette from these rules could make it easier to subvert any age restriction. It also creates the potential scenario where 'cigarette like' non-nicotine e-cigarettes sold to children act as "trainer" devices, forming habits and expectations which prime them to take up "the real thing" when it becomes available to them.

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 ☒

While appreciating the far greater harm caused by tobacco products, we believe that in order to simplify the situation - for both retailers and enforcement agencies the practical arrangements should reflect those already in place around current tobacco sales legislation. As we do not want to see the criminalisation of those who are children themselves we also recognise that before an offender under the age of 18 is referred to court or prosecuted, due consideration should be given as to whether or not it is in the public's interest to do so.

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

Yes ☒ No ☐

Yes, because age restrictions cannot be verified in sales from self-service vending machines we believe that prohibiting such sales is an inherent part of enforcing an age restriction. This argument has already been accepted during the comprehensive scrutiny of the removal of self-service tobacco vending machines.

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?

Cartridges and pre-filled cartridges; tanks, atomisers, cartomisers and clearomisers; e-liquids and diluents; variable voltage kits, pass-throughs and drop in modules; coils; drip tips; and e-cigarette wicking materials. In recognition of the fact that e-cigarettes and their modifiable variants are a rapidly evolving market the restrictions should have scope to add new accessories as they become available.

Proxy purchase for e-cigarettes

7. Should the Scottish Government introduce legislation to make it an offence to proxy purchase e-cigarettes?

Yes ☒ No ☐

These products are not suitable for people under 18 years of age, whether they purchase the product themselves or an adult makes the purchase for them so should therefore be subject to proxy purchase restrictions.

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 ☐

There should be no advertising which might encourage non-smokers of any age to use e-cigarettes nor ex-smokers to relapse, but advertising to make the benefits of switching from lit tobacco to e-cigarettes clear to those who are current smokers should be regulated and not be prohibited.

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 ☐

We propose:

1. Regulation of advertising of unlicensed electronic cigarettes and other nicotine containing products should be, as far as is possible, consistent with that for licenced products. For example, celebrity endorsement and free samples are not allowed for licenced nicotine containing products and should not be allowed for unlicensed electronic cigarettes either.
2. Electronic cigarettes and other nicotine containing products should not be advertised or promoted in ways that could reasonably be expected to promote smoking of tobacco products.
3. Electronic cigarettes and other nicotine containing products should be required to be advertised as an alternative to smoking cigarettes or other tobacco products for existing smokers only.
4. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to non-tobacco users.
5. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people.

We suggest that the production of statutory guidelines would be the best means of taking this forward and that these be amenable to rapid revision in light of emerging evidence surrounding what is a rapidly evolving class of products, or the impact of their marketing on the non-smoking population and particularly on people under 18.

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. Leafletting | 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"/> |

- a. Bill boards; YES. Billboard adverts are a non-discriminatory medium which reach the wider population and so targeting the advertising towards existing smokers can only occur through regulating the content and location of adverts.
- b. Leafletting; YES, for the same reasons as for billboards, with regulation relating to distribution rather than billboard location.
- c. Brand-stretching (the process of using an existing brand name for new products or services that may not seem related); YES
- d. Free distribution (marketing a product by giving it away free); YES, except in a tobacco amnesty or exchange scheme.
- e. Nominal pricing (marketing a product by selling at a low price); YES
- f. Point of sale advertising (advertising for products and services at the places where they are bought); No, but regulated to require a focus on information, rather than promotion or glamourisation.
- g. Events sponsorship within a domestic setting? YES

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

There should be an exemption to allow current smokers to be made aware of products which are less harmful to use than lit tobacco. Such products could be advertised, for example, at point of sale of tobacco with an emphasis on informing smokers of the benefits of switching away from tobacco use. However, regulations should be used to incentivise cessation, rather than recreational or dual use.

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)?

As the Scottish Government is aware, Cancer Research UK (CRUK) published the first systematic audit and thematic content analysis of the marketing of e-cigarettes in the UK¹ and this remains the best source of information on the extent and diversity of e-cigarette advertising.

1. de Andrade M, Hastings G, Angus K, Dixon D and Purves R.

The Marketing of Electronic Cigarettes in the UK. Cancer Research UK: London 2013.

www.cancerresearchuk.org/prod_consump/groups/cr_common/@nre/@pol/documents/generalcontent/cr_115991.pdf

[Accessed 02 December 2014]

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?

No. We currently have very little reliable information about the size and nature of the retail environment for e-cigarettes. However, it should be noted that tobacco companies are a growing force in the e-cigarette market and have long experience of the profits to be made from creating and maintaining markets for addictive products.

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 ☐

Yes, to assist in gathering intelligence about retail outlets and with enforcement activities.

15. Do you agree that the offences and penalties should reflect those already in place for the Scottish Tobacco Retailers Register?

Yes ☒ No ☐

Yes, as this would help with compliance and enforcement.

16. If you answered 'no', to question 15, what offences and penalties should be applied?

n/a

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 ☐

Members of the SCOT coalition have differing policy positions and views on this question, with some supporting a precautionary approach in view of the longer term public health unknowns, and others believing that there is insufficient evidence available at this time to justify a full legislative ban of this kind. If the Scottish Government does not move to introduce legislation, we believe that developing national guidance to assist people with considering and developing their policies would be helpful.

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.

n/a

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?

E-cigarettes are a class of products (almost 500 products of varying quality and composition) and this makes it difficult to generalise about their effects.

The American Non-Smokers' Rights Federation maintains an evidence base¹ on the claimed effects of what they term 'second-hand aerosol'.

The SCOT coalition is in agreement that the integrity of current smoke-free policies must not be compromised.

1. American Non-Smokers' Rights Federation, Electronic Smoking Devices and Secondhand Aerosol. <http://no-smoke.org/pdf/ecigarette-secondhand-aerosol.pdf> [Accessed 05 December 2014]

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 ☐

The SCOT coalition supports legislation to make it an offence to smoke in a private vehicle when children under the age of 18 are present due to the well-established health hazards known to be posed by tobacco smoke, and the high levels of smoke that accumulate in vehicles.

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

Yes ☐ No ☒

We believe that by law, any person under the age of 18 should be held liable for committing an offence of smoking in a vehicle if another person under 18 is present.

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

To any individual smoking when another person under the age of 18 is present. However, in the situation of the driver being under 18, smoking, and alone in the vehicle, we believe the offence should not apply.

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

Yes ☒ No ☐

We agree that the bulk of enforcement responsibility should be upheld by local police officers as Police Scotland has resources tailored to the enforcement of this kind of legislation. However joint working between Environmental Health Officers and Police Scotland to uphold regulations may be effective.

We believe that a public awareness raising campaign around the introduction of new legislation is likely both to enhance smooth implementation and to increase public support.

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?

Yes ☒ No ☐

We believe that the proposed regulations should apply to vehicles when they are being used as a vehicle (this would include being stationary on any highway where there is public access such as verges, lay-bys and car parks), but not when they are acting as a home or living accommodation.

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

We believe proposed exemptions should be in line with those proposed in England, Wales and N Ireland. So for example there would be an exemption for a motorbike, or a convertible car with the roof completely down.

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

Our suggestions are consistent with the smoking in vehicles legislative proposals of Wales, England, and Northern Ireland, where a driver can present a defence that:

- a) the driver, by reason of driving the vehicle, was unable to prevent another individual from smoking in the car, and
- b) the driver made all reasonable efforts to prevent the offence

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 ☐

While we support the principle of smoke-free hospital estates, we would prefer that the NHS be given powers to designate outdoor smoke-free areas that are consistent with local needs and can be enforced in line with existing indoor restrictions in NHS premises.

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

With regard to option 'c' above:

We believe that determining a legally binding, designated smoke-free external perimeter/smoke-free areas is the next progressive step to Scotland becoming smoke-free and creating a normal expectation of tobacco-free spaces, whilst retaining a compassionate and evidence-based approach to smoking outdoors.

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)?

If each health board has the power to designate smoke-free perimeters that are reasonable for its grounds and context then the need for national exemptions should be eliminated.

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

NHS authorities and health boards should extend current monitoring and enforcement practices to include external designated smoke-free perimeters, within which all smoking is prohibited.

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

We suggest that the penalty for non-compliance of smoking legislation on NHS grounds should be kept in line with the penalties for indoor offences.

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?

Yes ☒ No ☐

SCOT supports further action to increase tobacco-free outdoor areas for children and to increase the normality of communities where tobacco is no longer part of everyday life.

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

With reference to option 'c' above:

We believe that the powers of local authorities to designate smoke-free children's outdoor areas should be clarified, and that a statutory obligation should be set to plan and implement designated smoke-free outdoor areas in consultation with local communities as part of their local tobacco control strategy.

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

We believe that the onus and responsibility for such designations should lie with Local Authorities, and would highlight the following as examples of locations and events where young people are likely to be susceptible to the modelling of smoking behaviour:

- Local authority play areas
- Sports grounds and stadia
- Public events such as concerts, live music, cultural and seasonal activities.

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 ☐

Yes, and this should include cartridges and pre-filled cartridges; tanks, atomisers, cartomisers and clearomisers; e-liquids and diluents; variable voltage kits, pass-throughs and drop in modules; coils; drip tips; and e-cigarette wicking materials.

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?

We suggest that authorisation should rest with the person formally named on the tobacco retailer's register.

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

a. the penalty

a ☒

Yes, this should be consistent with other age restriction requirements relating to tobacco.

b. the enforcement arrangements

b ☒

A 2013 survey of pupils in Scotland found that 39% who smoked cigarettes regularly reported that they had bought cigarettes from a shop, supermarket or van in the last four weeks¹. We support the suggestion that all tobacco and e-cigarette retailers should be required by law to challenge the age of anyone they believe to be under the age of 25.

1. Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS), 2014. *Smoking: Among 13 and 15 year olds in Scotland 2013*, NHS National Services Scotland. www.isdscotland.org/Health-Topics/Public-Health/Publications/2014-11-25/SALSUS_2013_Smoking_Report.pdf

[Accessed 1 December, 2014]

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 Marmot Review notes that *'tobacco control is central to any strategy to tackle health inequalities... Smoking-related death rates are two to three times higher in low-income groups than in wealthier social groups'*¹.

Smoking remains the most important preventable cause of ill-health and premature death in Scotland, with smoking-attributable deaths accounting for around a quarter of all deaths. The use of tobacco is highest in our most disadvantaged communities, and is a major contributor to health, poverty and social inequalities in Scotland.

Tobacco use and exposure to second-hand smoke in pregnancy affects the health of pregnant women and their children. Research indicates that in utero exposure to nicotine may have adverse effects upon foetal development² and any regulation should reflect this.

1. Marmot et al, Fair Society Healthy Lives, 2010. Available at: <http://www.instituteofhealthequity.org/projects/fair-society-healthy-lives-the-marmot-review> [Accessed 04 December 2014]

2. Smith A M, Dwoskin L P, Pauly J R. Early exposure to nicotine during critical periods of brain development: Mechanisms and consequences. *Journal of Pediatric Biochemistry*. 2010; 1(2): 125–141. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4042244/> [Accessed 12 December 2014]

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?

Reductions in smoking prevalence will bring significant gains for public health and result in future savings for the NHS and for employers. Over time there will be reduced tobacco sales for retailers, however the profit margin from selling tobacco is minimal and the decline likely to occur over a period of years, allowing retailers to adapt.

Tobacco industry headlines suggesting widespread short-term shop closures in relation to specific proposed tobacco control measures continue to be exposed as baseless scaremongering^{1,2}.

1. Advertising Standards Authority, Adjudication on Gallaher Ltd, 28 August 2013.

www.asa.org.uk/Rulings/Adjudications/2013/8/Gallaher-Ltd/SHP_ADJ_213116.aspx#.VIhd8HqsU1I

[Accessed 10 December 2014]

For further information see: Morrison, R. How Many Corner Shops Face Closure Because of Tobacco Smuggling, 16 September 2013. <http://tobaccounpacked.wordpress.com/2013/09/16/how-many-corner-shops-face-closure-because-of-tobacco-smuggling/> [Accessed 11 December 2014]

2. Savell, E et al. How does the tobacco industry attempt to influence marketing regulations? A systematic review. 5 February 2014.

www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0087389

[Accessed 11 December 2014]

For further information see: Tobacco Research Control Unit, University of Bath. Extent of tobacco industry's lobbying tactics unveiled by new paper. 6 February 2014. <http://blogs.bath.ac.uk/tcrg/>

[Accessed 11 December 2014]

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

We believe that if proposals for age restrictions are put before the Scottish Parliament in the latter part of this parliamentary year, it would be reasonable to expect these restrictions to come into force by April 2016.

As the e-cigarette market and profile of products are evolving rapidly, we would value a mechanism for periodic review.

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.

Neither the SCOT coalition or any of its members has any direct or indirect links with the tobacco industry nor have we received any funding from tobacco companies or their vested interests.