

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?

The restrictions should apply to all electronic cigarettes and refill (e-liquids) and accessories. This would include shisha e-pipes and associated paraphernalia.

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?

Whilst we appreciate that the policing of the above regulations will be difficult to enforce, there should be no exemptions. The advertising and the promotion of the points above could encourage individuals to begin or continue to vape.

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)?

ADPH is concerned about the impact of advertising of electronic cigarettes as they mimic and normalise smoking behaviours. Although many adults use electronic cigarettes to stop smoking and are clear about why they are using them, children and young people are less aware of this connection and are susceptible to 'sexy advertising' and these products are promoted to apply to the senses. The strict regulation of domestic advertising of these products is highly important to ensure they are not presented in an appealing way, in order to prevent young people from trying electronic cigarettes or perhaps actual tobacco.

On-going surveillance is required to assess the possibility that electronic cigarettes may prove to be a gateway product to the use of tobacco and nicotine addiction for ex-smokers and never smokers. Until the evidence is clearer the precautionary principle ought to apply. The link between the two is so strong that it would be difficult for any advertising campaign to differentiate between them. Therefore stricter regulation rules will ensure that all marketing should be explicitly targeted at smokers only.

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?

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?

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 ☐

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?

As demonstrated by our 2014 survey of UK Directors of Public Health, ADPH believes that the use of nicotine vapourisers in enclosed and substantially enclosed public places (including work places) undermines and makes more difficult the enforcement of the current ban on smoking in such places. In our survey, 78% of Directors of Public Health who responded said that the restrictions and regulations relating to the use of smoked tobacco products in public places should also apply to nicotine vapourisers.

Many nicotine vapourisers look similar to regular cigarettes, therefore sending mixed messages to the public about acceptance of smoking, with the potential of re-normalising smoking behaviours. Evidence supports the need for consistency in messages in trying to support behaviour change and culture change.

We are concerned over the second hand effects of vapour on those with respiratory conditions (such as asthma), particularly when nicotine vapourisers are used in enclosed and substantially enclosed public places.

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

Electronic cigarettes are relatively new devices and there are still real concerns regarding their safety to both users and bystanders.

ADPH is working in collaboration with other Public Health organisations to support the development of evidence based approaches to nicotine vapourisers.

ADPH is currently considering the emerging evidence on the impact of nicotine vapourisers, however we are concerned that marketing of nicotine vapourisers and their widespread use in enclosed public spaces will undermine the successful efforts which have been made to denormalise smoking behaviour.

We are cognisant of arguments for the potential impact of nicotine vapourisers as a means of quitting or reducing harm by substituting for conventional tobacco products. However, we believe that more research is needed to establish clear evidence of safety and their long term impact on health – as well as on wider questions relating to re-normalisation of smoking behaviour, and the impact on young people of product development, advertising and marketing.

The involvement of the tobacco industry in product development raises concerns, and whilst efforts to de-normalise tobacco use are welcomed, attempts to maintain a population addicted to nicotine (including tobacco) are not.

We will continue to canvass the views of our members and to review our policy position – both in the light of further research and evidence, and in response to product development.

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?

We disagree with the proposal to make it an offence on the person smoking

regardless of their age and recommend that the absence of age-related exemptions for the fines be reconsidered.

The potential of fining a child is not common in other similar laws. Currently there is high support for this ban as it is being introduced as a child protection measure, however the potential to fine children could put this support at risk as well as its success in practice.

Furthermore in cases where the child is the smoker in a car, the driver should receive a fine for the offence for failing to prevent smoking in the vehicle.

ADPH also agrees that all drivers, regardless of their age or whether they hold a full or provisional license, should be responsible for ensuring that smoking does not occur in vehicles with children present.

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?

N/A

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?

Although smoking in private vehicles with children present should be unlawful, smoking in homes is a private matter. However this should also be discouraged, particularly where children are present.

In some cases caravans or motor caravans are used as a primary residence for some families, which can be the case in the traveller community. As smoking in private homes is not currently against the law, if some communities were included in the legislation whilst others were not, there is a danger that this may breach their right to be treated equally alongside other types of households. Therefore where vehicles have a dual use as permanent or temporary homes, the law should distinguish between occasions when they are used as homes and occasions when they are used as vehicles. In addition to this it would be sensible for the Road Traffic Act to define a road, which also includes public car parks and lay-bys, to be used as a practical solution.

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?

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

The NHS is a health promoting organisation with a duty of care to all patients, staff and visitors to provide a smoke-free environment. Therefore all NHS grounds should have legislation to this effect in order to ensure that these sites, where sickness and illness are dealt with, are also viewed as the promotion of wellbeing for all.

By introducing this legislation, into all hospital grounds, this will ensure the NHS in Scotland is in line with the recommendations set out in the Tobacco Control Strategy for Scotland, which also encourages NHS Scotland to demonstrate clear leadership regarding the creation of smoke free premises. National legislation would support the NHS with fiscal measures to enforce Smoke Free Policies.

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)?

ADPH supports the NICE guidance on smoking cessation in secondary care: acute, maternity and mental health services.

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

We believe that this should be a cross-cutting exercise involving the Scottish Police Service, NHS and Local Authority enforcement staff.

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

We recommend that there should be an on the spot fine for those who are non-compliant.

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 ☐

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

All need to be considered but there may be a staged/phased implementation (e.g. voluntary action pending devolution of local enforcement powers followed by national legislation if concern persists).

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

This should be applied to school and nursery grounds (both public and private).

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?

Another adult, aged 18 or over, who is working in the store would be the most practical measure to oversee this.

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)?

For a number of groups with protected characteristics the proposed changes will have a positive impact of improving the health of those who already vape or smoke. The health harms of tobacco are undisputed and therefore these changes will protect people and have a positive effect on health outcomes.

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

It is unlikely that the proposed measures will have a substantial negative implication for equality, however continued communication with the public, including mass media coverage, is important to ensure understanding of these issues.

45. Do you have any other comments on or suggestions relevant to the proposals in regard to equality considerations?

We recommend that all communities are given clear, easy to understand guidance on the proposed changes and these should be available in a variety of formats for accessibility.

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?

The introduction of these proposals will provide a significant and positive impact on the NHS in Scotland due to the improved health and wellbeing of the population. This includes improved quality of life, increased health benefits, further reduction in cardiac and respiratory tobacco events and a reduction in the number of patients using health services for tobacco related illnesses, including those as a result of exposure to second hand smoke.

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

Given the strong link between tobacco use and health inequalities, these measures will have a huge impact on the improvement of health and wellbeing within economically deprived communities and will also impact positively on an individual's financial wealth.

These measures would also support the work of the early years collaborative across Scotland to ensure future generations are given the best start in life, by growing up in a smoke free environment.

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

At least 12 months should be allowed prior to the implementation of these measures.

Use of national public awareness campaigns, with a strong focus on the use of social media, such as Facebook and Twitter, should be used as methods to inform the public. For those who do not use modern technology, information should be published through the radio, TV, adverts, bus shelters, billboards, leaflet drops, flyers and newspapers.

Local Authorities, NHS and voluntary organisations could also help by promoting information through their internal communication systems.

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.

None