

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?

All electronic cigarette accessories should be restricted similarly

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 | <input checked="" type="checkbox"/> |
| b. Leafleting | <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) | <input checked="" type="checkbox"/> |
| d. Free distribution (marketing a product by giving it away free) | <input checked="" type="checkbox"/> |
| e. Nominal pricing (marketing a product by selling at a low price) | <input checked="" type="checkbox"/> |
| f. Point of sale advertising (advertising for products and services at the places where they were bought) | <input checked="" type="checkbox"/> |
| g. Events sponsorship with a domestic setting | <input checked="" type="checkbox"/> |

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

An exemption should be in place for non-tobacco nicotine products, including electronic cigarettes, that are placed on the market with a medicinal licence following review and authorization by the MHRA, in such cases advertising would be possible but subject to the rules for the advertising of non-prescription medicines.

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)?

No

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

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?

Based on available evidence it is not possible at this time to develop a compelling public health argument either for or against the use of electronic cigarettes in enclosed or substantially enclosed public places. This absence of evidence means it is not possible to clearly state the appropriateness of restricting the use of electronic cigarettes in enclosed or substantially enclosed public places.

Policy makers, including the Scottish Government, and tobacco control experts should prioritize the development of an evidence base on the use of electronic cigarettes in public places that will allow commonly held concerns to be addressed. This will allow the development of appropriate, evidence based public health policy regarding the use of electronic cigarettes in enclosed or substantially enclosed public places. Without further evidence it is not possible to confirm if legislation to control the use of electronic cigarettes in enclosed or substantially enclosed public spaces is necessary or will have the desired effect. However, it appears prudent that any new legislation should be drafted in such a way as to allow for restrictions to be introduced in future, subject to a compelling public health argument to do so, without the need for additional new legislation.

If restrictions on the use of electronic cigarettes in enclosed or substantially enclosed public places are deemed to be necessary the situation will be complicated should one or more electronic cigarette be licensed as medicinal products by the MHRA. It appears counter-intuitive and could undermine public health to consider that a nicotine containing product could be licensed as a medicine to aid smoking cessation or support tobacco harm reduction whilst being restricted or partially-restricted in enclosed or substantially enclosed public places.

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

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?

No, which is a significant problem when considering an appropriate legislative approach to this issue and is something that needs to be addressed.

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?

It should be an offence for anyone to smoke 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

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)?

For mental health facilities and/or facilities where there are long-stay patients it may be necessary to consider an exemption. However, if that is deemed appropriate then smoking should only be allowed in clearly identifiable designated areas that are clear of areas utilized by non-smokers, including around entry and exit points to NHS buildings.

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

The legislation should be enforced in the same way as for all other smoke free public places.

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

The same penalties should be in place as for all other smoke free public places.

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

In the first instance further voluntary measures should be sought to make children's outdoor areas tobacco free. However, should voluntary efforts not be effective, it appears prudent that any new legislation should be drafted in such a way as to allow for the extension of present smoke free legislation to cover children's outdoor areas without the need for additional legislation at such a time.

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

All areas that are primarily intended for use by children and persons under 18 years of age and where this group is therefore significantly represented.

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?

Johnson & Johnson UK Ltd believes that it should be sufficient to require that another adult employed in the store be able to authorise an under 18 year old to make the sale.

It is notable that in recent research carried out by the Trading Standards Institute, and referenced in a SPICe Briefing (E-Cigarettes: Frequently Asked Questions) of the Scottish Parliament, many successful purchases of e-cigarettes by those under 18 years of age occurred in specialist e-cigarette suppliers, small retailers, independent newsagents, pharmacy, and at market stalls/car boot sales. This suggests that there will be a significant need for information, education and training on the underage purchase issue targeted at people working in these retail environments. This information also indicates that there are specific retail environments where implementation and enforcement activity might need to be targeted should restrictions be introduced with new legislation.

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)?

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

All measures outlined are primarily focussed on advancing public health without targeting any specific individual or group; as such Johnson & Johnson UK Ltd does not believe there will be a negative implication for equality.

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

[Empty box]

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?

Johnson & Johnson UK Ltd does not anticipate that these important public health measures will have a significant financial impact on its own organization. It does however believe that they will lead to improved public health and as such may have a positive impact on the health of its Scottish employees and the communities in which it operates in Scotland.

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

Any financial implications associated with these proposed measures must be considered in the context of the social and economic benefits of improved public health.

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

As these measures are designed to advance public health any necessary lead-in times prior to implementation should be set to the minimum reasonable timeframe.

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

Regarding “Inclusion of electronic cigarettes on the Scottish Tobacco Retailer Register”:

Johnson & Johnson UK Ltd believes that a prerequisite for being granted a license to sell tobacco products or electronic cigarettes is the requirement to also stock licensed nicotine replacement therapy which should also be visible at the point of cigarette/electronic cigarette purchase. Such a change may trigger impulse or unplanned quit attempts and also support those already making a quit attempt who may be tempted to purchase cigarettes if no alternative is available. Tobacco retailers should also be encouraged to have information available for smokers that highlights the harm of smoking and sources of NHS approved support for those who may wish to quit.

Regarding resources to support effective implementation and enforcement:

Johnson & Johnson UK Ltd believes that it is critical to ensure that appropriate resource is identified and provided in order to effectively implement and enforce any new measures. Accountable organizations need to be identified and appropriate training should be given to all of those required to implement and enforce any new tobacco control measures.

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.

Johnson & Johnson UK Ltd is not linked to the tobacco industry.