

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

a ☐

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

b ☐

c. both

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?

Accessories such as chargers, replacement tanks, cases, replacement mouthpieces etc should be restricted as they can only be used with the device so if restrictions for purchase of electronic nicotine devices are 18, accessory purchase should be in line.

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?

Advertising and promotion restrictions for electronic nicotine devices should be brought in line with tobacco restrictions. Any electronic nicotine devices which have applied for and been granted a MHRA licence should be permitted to advertise their products as a stop smoking aid: target group for advertising should clearly be adult smokers.

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)?

1. http://www.cancerresearchuk.org/prod_consump/groups/cr_common/@nre/@pol/documents/generalcontent/cr_115991.pdf
2. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311491/Ecigarette_uptake_and_marketing.pdf

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?

Electronic nicotine devices should be included in the Smoking, Health and Social Care (Scotland) Act, banning use within enclosed public places. Although the evidence regarding toxicity of second-hand vapours from electronic nicotine devices is limited, it is unlikely that they would be even close to the toxicity of second-hand tobacco smoke. However, the inclusion within the public place restriction would be on the basis of the risk of 're-normalising' the image of smoking. From a distance it is difficult to distinguish between an electronic cigarette and a regular cigarette. An important aspect of prevention of young people initiating tobacco use has been the 'de-normalisation' of smoking. Allowing electronic nicotine device use in enclosed public places could potentially undermine this change. Also, for those who have recently initiated a quit attempt, seeing others using electronic nicotine devices could potentially undermine their quit attempt.

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?

Comments

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?

Comments

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?

n.b. for Question 26, we do not believe that the proposal should extend to mobile homes which are stationary and clearly being used as a residence at the time.

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

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)?

There should be no exemptions

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

Local measures (decided by the Health Board) in place to support the national legislation. Designated Manager on site responsible on behalf of the board to enforce. Ideally extra funding would be provided by Scottish Government if this legislation was passed.

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

A fine of £50, in line with current fine for smoking in enclosed public places. Increase to £2500 if fail to or refuse to pay.

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?

Any area which has equipment designed to be played on by children or young people.

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?

The manager / duty 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)?

Possibly if someone is asked to produce ID and are transgender, this may cause discrimination or distress as birth sex may be included on the ID.

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?

The potential cost of enforcing smokefree NHS grounds is a substantial one if significant impact is to be made. Within NHS Greater Glasgow & Clyde, the cost of employing wardens for all the hospital sites for one year was between £350-400,000. Legislation supported by a national campaign would be helpful but the actual enforcement on the ground is costly.

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

Comments

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

Lead in time will vary depending on whether the changes are legislative or not. 12 months would seem reasonable for changes to be outlined and the public kept informed.
The recent 'Take smoking outside' was a good example of a public

information campaign where work was collaborative with local boards. A multimedia approach is important with disseminating such information but a presence in local communities in the form of 'roadshows' allows people to ask questions and gives changes a human face.

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

Comments

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

Additional Information

Smoke-free (tobacco) NHS Grounds

Significant challenges have been faced within NHS Greater Glasgow & Clyde in implementing smoke-free NHS grounds. In May 2013 we launched a campaign to improve compliance with our SF Policy to create a SF environment for people to work and visit. This was in response to complaints being received about smoking on our grounds and in particular from people having to walk past smokers at main entrances.

Key elements of the campaign included introducing wardens, rebranding of main entrances, extensive comms campaign and ensuring staff and patients were supported to either manage or stop smoking. Through our counting smokers exercise (which was done at numerous times pre, during and post campaign) a reduction in smokers at the main entrances was observed.

Some of the main challenges were:

- Patients, visitors and even some staff just simply refused to comply: there is no action for people not complying, therefore they continue to do it.
- Failure to understand the rationale for having smoke-free grounds: some understanding of prohibiting smoking at entrances, but not wider than that.
- From feedback sessions with staff, many stated they would not speak to smokers for a number of reasons including feeling that it was not their job, fear of abuse, lack of confidence etc.
- Funding: the cost of the comms campaign, the signage, branding and the wardens on such a large number of sites cost approx £450,000 for one year.

Data from the two companies supplying wardens across the sites show how many people were spoken to about smoking on the grounds and whether they were patients, visitors or staff (see below).

All Site	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr
Total Number of people spoken to	10865	9288	7884	8374	6850	6756	6633	7523	8484	7357	8425
Visitors	6186	5625	4573	5061	4027	3555	3471	3989	4599	3987	4002
Staff	1369	671	522	616	564	692	774	912	1049	828	1247
Patients	3135	2992	2789	2697	2259	2509	2388	2622	2836	2542	3176
Unknown/Unsure	175	0	0	0	0	0	0	0	0	0	0

The counting exercise was conducted pre-wardens, when wardens were in place (in different seasons) and once the wardens were no longer in place. Numbers of smokers at all Greater Glasgow & Clyde acute sites were counted for a 1 hour period and collated. The count gives a snapshot of smoking levels over time.

Pre wardens	Feb 2013	404 smokers
Wardens in place	July 2013	208 smokers
Wardens in place	Oct 2013	179 smokers
Wardens in place	Feb 2014	201 smokers
Post wardens	July 2014	216 smokers
Post wardens	Oct 2014	201 smokers