

## **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 ☐

This question is misleading. It should be considering whether the option of Harm Reduction should be available to minors. It is a fact of life that despite all of the Health campaigns and warnings, UK Youth continue to take up the habit of smoking lit tobacco. This is as true in Scotland as in the rest of the UK. For those Youth who already have a smoking habit, the question you should be asking is whether the option of Harm Reduction (through use of eCigarettes) could be made available.

It is a scientifically proven fact that eCigarettes are 95% safer than their tobacco counterparts. Why cannot an eCigarette be a safer alternative for the Nation's youth ?

It is already legal for Youth to be able to access NRT Treatment. This being the case, why should eCigarettes not also be available to Youth with an already established tobacco habit to enable them to liberate themselves from that tobacco habit.

Obviously, I would not advocate ANY non-smoker to begin using eCigarettes – Youth or Adult. However, there is most certainly a case for eCigarettes to be available as a smoking cessation product to the nations Youth.

**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 ☐

Once again, this question is misleading. I refer you to my answer to the previous question.

**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 X

b ☐

c ☐

If such a scenario was to become an offence, it would be far more effective to make it an offence to the seller rather than the buyer – much in the same way as the law is currently applied to the purchase of alcohol. Youth are often rebellious by nature. If something is made unobtainable by a law, then it will become something that Youth will want even more. Therefore, it must be the responsibility of the Vendor to ensure that such products do not fall into the hands of Youth.

It should be noted that reputable vendors already self-regulate to NOT sell eCigarettes to anyone under the age of 18. That said, in every trade, there will always be a few ‘bad apples’ who will ‘bend’ the rules.

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

Yes X No ☐

Vending machines offer no way to control who may purchase from them

**5. Should a restriction be in place for other e-cigarette accessories?**

Yes ☐ No ☐

This question should define what it means by ‘accessories’. Are we planning to ban Youth from buying batteries ? Many eCigarettes use standard rechargeable batteries such as those that are commonly found in torches and/or photographic equipment

**6. If you answered “ yes” to question 5, which products should have restrictions applied to them?**

Comments

**Proxy purchase for e-cigarettes**

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

Yes ☐ No ☒

As considered above, why should the option of 'Harm Reduction' be available only to Adults ?

If I were to discover that any child of mine was using lit tobacco, I consider it part of my parental responsibility to try and help that child kick his/her tobacco habit. In my humble opinion, eCigarettes are a valuable smoking cessation tool.

In such a case, proxy purchase legislation would make it illegal for me to purchase an eCigarette for a child who already has an established tobacco habit.

It is not for Government to decide how I encourage my child to quit a potentially deadly tobacco habit. eCigarettes would be a vital tool in enabling a child to escape an established tobacco habit.

**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 is currently no legislation to protect non-gamblers from seeing the advertising and promotion of Casinos and Gambling Websites. There is also no such legislation protecting children from seeing adverts for sex-aids, or from seeing Alcohol advertising. Why should eCigarettes be treated any differently ?

As with Gambling, Alcohol and the Sex-aid industry, eCigarettes are an ADULT product and should be treated in the same way. Restricting such advertising on TV and Radio to after the 9pm Watershed is more than acceptable. But eCigarettes should NOT be treated any differently to any other Adult product.

**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 ☒

The TPD is already a 'dogs dinner' that is not fit for purpose and was pushed through in secrecy behind closed doors. It was also heavily influenced by intense lobbying from both the Pharmaceutical and Tobacco Industry.

eCigarettes should never have been included in the TPD.

The TPD has already been subject to several legal challenges which all have a very strong case and will be heard in 2015. Therefore the TPD could either be overturned by these Legal challenges, or at the very least, severely delayed. The Scottish

Government are 'jumping the gun' in believing that the TPD will come into effect and could find themselves with more questions than answers if you follow this route.

**10. If you believe that regulations are required, what types of domestic advertising and promotion should be regulated?**

- |   |                                   |
|---|-----------------------------------|
| <b>a. Bill boards</b>   | <b>a</b> <input type="checkbox"/> |
| <b>b. Leafleting</b>  | <b>b</b> <input type="checkbox"/> |
| <b>c. Brand-stretching (the process of using an existing brand name for new products or services that may not seem related)</b> | <b>c</b> <input type="checkbox"/> |
| <b>d. Free distribution (marketing a product by giving it away free)</b>  | <b>d</b> <input type="checkbox"/> |
| <b>e. Nominal pricing (marketing a product by selling at a low price)</b>   | <b>e</b> <input type="checkbox"/> |
| <b>f. Point of sale advertising (advertising for products and services at the places where they were bought)</b>                | <b>f</b> <input type="checkbox"/> |
| <b>g. Events sponsorship with a domestic setting</b>  | <b>g</b> <input type="checkbox"/> |

eCigarettes are already self-regulated far more strictly than NRT products. There is no need to further restrict their advertising. They should be considered for what they are, a life-saving product that can help anybody to successfully kick a lit-tobacco habit.

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

Comments

**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)?**

Professor Robert West's Smoking Toolkit Study has already captured that eCigarettes are simply not tempting to Youth or non-smokers and that Youth-uptake of eCigarettes remains extremely rare. Studies conducted by Action on Smoking & Health (ASH) have also recorded the same results.

Further information can be found at the following links:

<https://www.ucl.ac.uk/news/news-articles/0914/050914-E-cigarette-policies-should-be-evidence-based>

<http://bjgp.org/content/64/626/442>

[http://www.ash.org.uk/files/documents/ASH\\_891.pdf](http://www.ash.org.uk/files/documents/ASH_891.pdf)

Many more links to scientific evidence are available upon request

**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?**

If advertising of eCigarettes were to be banned, then how would smokers ever gain the knowledge that eCigarettes are an effective smoking cessation tool and up 95% SAFER than using lit tobacco ?

This needs to be a level playing field. If Pharmaceutical Companies are free to advertise their NRT products, then eCigarettes should also be given the same opportunity.

**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 ☒

eCigarettes are NOT tobacco products. They do NOT contain tobacco. Therefore, by definition, they cannot be considered to be Tobacco Products.

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

Yes ☐ No ☒

eCigarettes are NOT tobacco products. They do NOT contain tobacco. Therefore, by definition, they cannot be considered to be Tobacco Products.

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

eCigarettes are NOT tobacco products. They do NOT contain tobacco. Therefore, by definition, they cannot be considered to be Tobacco Products.

**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?**

Comments

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

By definition, eCigarette users have QUIT smoking. Any ban on the use of eCigarettes would force Vapers outside to stand amongst the smokers. This would not be helpful to anybody attempting to quit smoking by using eCigarettes and could provide a basis for relapse.

Banning eCigarettes from enclosed public spaces would be analogous to proposing to hold an Alcoholics Anonymous meetings in a pub !!

**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?**

Dr Konstantinos Farsalinos and Professor Riccardo Polosa have conducted several studies into the effects of second-hand vapour and has found no evidence that Vapour emitted by eCigarettes are harmful to either the user or anybody else in their vicinity.

One such study can be found here

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4110871/>

There are many more that can be made available to the Scottish Government upon demand

### **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 ☒

Again, this is something that should be down to parental responsibility and not a Government intrusion into personal liberty. Most responsible parents are aware of the harm of tobacco smoke and would not subject their children to it.

Furthermore, such a law would be simply unenforceable. The Police do not have the resources to enforce such a law. Besides, how does an Police Officer identify that a passenger may be a child under the age of 18 in a (possibly fast-moving) vehicle ?

How will the Police Officer differentiate between a child in a car and somebody who might have dwarfism ?

How will the Police Officer know that what he perceives as smoke is not actually the vapour from an eCigarette ?

**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?**

I do not believe it should be an offence and, as stated above, I do not believe such a law to be practically enforceable.

**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?**

Again, this Law would be unenforceable in practice. No Police Force has the available resources to enforce this – especially given the cuts in funding they are all subject to

**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?**

All of them. This Law will be impossible to enforce

**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 ☒

Smoking outside has no impact on others around them. This is abuse of personal liberty. Enforce on smoking indoors if necessary, but not outdoors.

Also remember that Vaping is NOT smoking. Therefore they must be exempted from any such measure.

**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)?**

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?**

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 ☒

This is down to Parental/Adult responsibility. There is no need for any government to legislate on personal freedom of choice. Most responsible adults will not smoke around children. How will this be enforced ?

**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?**

Comments

**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 ☐

I would agree that this policy would work as it is already something that happens in most pubs and supermarkets in regard to alcohol (for example). However, as stated above, reputable eCigarette Vendors already have a self-enforced rule not to sell to under-18's.

**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 ☐

This question is ambiguous

**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?**

Owner/Supervisor (who must also be over 18)

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

**a. the penalty**

a ☐

**b. the enforcement arrangements**

b ☐

This is a leading question as it assumes the responder agrees with what you are proposing to do.

**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 European Charter on Human Rights states that it is illegal to discriminate based on race, creed, religion etc. It also states that it is illegal to discriminate against a social group unless there is evidence of harm. Vapers are indeed a social group and there is absolutely no credible evidence of harm from the use of eCigarettes. Therefore any ban on eCigarettes (especially on use in enclosed spaces) could be in contravention of the ECHR

**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?**

Banning the use of eCigarettes in enclosed public spaces would penalise eCigarette Vendors. eCigarette Vendors take a great deal of care (especially with new vapers) that the equipment to be used is demonstrated properly for use. This also means finding the right strength of nicotine in the eLiquid AND finding the flavour of eLiquid that is most satisfying to that individual user. These factors are vital choices that greatly improve the new vapers chances of completely quitting smoking.

This necessarily means that eCigarettes and the various flavours must be tried within the shop premises. Banning the use of eCigarettes in enclosed spaces would take away this capability from the eCigarette Vendor and could also be argued as 'Restraint Of Trade' – which is also illegal under EU Laws.

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

If eCigarettes are banned from use in enclosed public spaces, are we to assume that publicans would be required to set up yet another area for the use of eCigarettes as opposed to smokers ? How would this be enforced ? Who pays the costs ?

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

These measures should not be introduced

**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.

I can truthfully declare that I have no links or financial interest whatsoever with either Tobacco or Pharmaceutical companies. Neither do I have any links to Governmental bodies.