

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?

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 ☐

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 type="checkbox"/> |
| b. Leafleting | b <input 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 type="checkbox"/> |
| d. Free distribution (marketing a product by giving it away free) | d <input type="checkbox"/> |
| e. Nominal pricing (marketing a product by selling at a low price) | e <input 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 type="checkbox"/> |

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)?

Action on Smoking and Health reported in June 2014 that they estimate a third of electronic cigarette users are former smokers, and that smokers are using electronic cigarettes as a means of reducing or stopping smoking.

Action on Smoking and Health report that their findings show that electronic cigarette use amongst children and young people is rare and confined almost exclusively to those who do or who have smoked:

http://www.ash.org.uk/files/documents/ASH_715.pdf

Conversely, opinion may also be informed by the more mature electronic cigarette market in USA; a recent report in the Journal of the American Medical Association quoted research stating that the number of high school students who had tried e-cigarettes had tripled:

<http://jama.jamanetwork.com/article.aspx?articleid=1911300>

<http://www.cdc.gov/media/releases/2014/p0825-e-cigarettes.html>

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?

In North Lanarkshire, we have had 4 new businesses, selling only electronic cigarettes and their accessories, open up in the last 6 months. We therefore expect the electronic cigarette market to continue to increase rapidly in the near future.

The MHRA is encouraging companies, including those that manufacture electronic cigarettes, to submit medicines licence applications:

<http://www.mhra.gov.uk/home/groups/comms-ic/documents/websiteresources/con454361.pdf>

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?

Only electronic cigarettes and refills containing tobacco should be included in the tobacco register. Separate rules regarding the products will come into effect with the enactment of Directive 2014/40/EU from 20 May 2016.

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?

Nicotine is a highly addictive drug, and if electronic cigarettes continue to be used in enclosed public spaces without restriction, there is a risk of normalising the practice of nicotine consumption through these means. Fixed penalty notices may be considered for breach of any enacted ban.

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?

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?

Comments

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

That the smoker did not know, and could not have reasonably established, that the passenger in the vehicle was under the age of 18 years.

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)?

Mental health facilities and prisons.

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

Police Scotland

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

Fixed penalty scheme equivalent to level 4 on the standard scale.

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 25, 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?

Parks, playgrounds and sports facilities.

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 person in store who has management responsibility on behalf of the legal entity which owns the business.

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)?

No comments

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

No comments

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

None

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?

If restrictions are to be implemented by legislation, it is likely that local authority Trading Standards Services will be expected to enforce them; this will place a further burden upon already overstretched staffing resources.

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

As budgetary financial pressures continue to place a strain on existing Trading Standards resources, extra funding should be provided for local authorities to enable Trading Standards Services to meet the demands of extra duties.

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

Comments

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.

We have occasional contact with tobacco companies' trade mark representatives when enforcing legislation in relation to counterfeit tobacco. We do not receive any funding from the tobacco industry.