

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)?

It should be made clear that there may be risks involved in using e-cigarettes, but it should also make it clear that smoking tobacco is obviously much worse and that it is an informed choice by an adult to decide whether they wish to use e-cigs.

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?

NA

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?

The penalties should be commensurate with the level of harm e-cigs can do in relation to tobacco – so while I agree sales to under-18s should certainly be restricted, the harm caused by e-cigs are clearly much lower and therefore any related penalties should be proportionate. So something along the line of penalties for selling fireworks to underage people would be reasonable.

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.

There is no conclusive evidence that e-cigs do any harm to bystanders:

<http://publichealth.drexel.edu/~media/files/publichealth/ms08.pdf>

<http://www.mdpi.com/1660-4601/11/11/11325>

<http://www.sciencedirect.com/science/article/pii/S0278691512005030>

If a ban was imposed you will need to ban coffee:

Professor John Britton, who is Director of the UK Centre on Tobacco and Alcohol Studies and heads the Royal College of Physicians Tobacco Advisory Group compares the health risks of nicotine to caffeine. "Nicotine itself is not a particularly hazardous drug," says Professor John Britton, who leads the tobacco advisory group for the Royal College of Physicians. It's something on a par with the effects you get from caffeine. If all the smokers in Britain stopped smoking cigarettes and started smoking e-cigarettes we would save 5 million deaths in people who are alive today. It's a massive potential public health prize." (BBC, Feb 2013) Obviously I am not suggesting banning coffee, but this illustrates the view held by many that it does very little harm if any.

Vaping does not normalise smoking – it [normalises vaping](#) (link embedded as full link affected formatting). So the argument for saying it leads to people smoking is fallacious; it does the opposite

However I agree that there are 'bad' manufacturers of e-cigs – some of these may cause harmful byproducts – therefore what is required is not to throw the baby out with the bathwater and ban their use in public, but rather to regulate the ingredients used in e-cigs to make sure they are using safe products. For example I only use food grade vegetable glycerine and pharmaceutical grade nicotine with food grade flavourings so I know that what I am inhaling is free of anything that shouldn't be there – studies that uncover chemicals like formaldehyde show that there should be some regulation of what is allowed to go into e-cigs and refills to prevent unscrupulous manufacturers, much like the horse meat fiasco. Similarly, the e-cigarettes that contain tobacco are not e-cigarettes and should not be classed under the same thing; they defeat the point of vaping!

The current regimen of individual areas deciding their own policy works fine and responsible vapers respect the wishes of individual establishments; what could be useful would be an extension to the right of management to bar customers who do not adhere to voluntary bans; they are the people who give the vast majority of socially responsible

vapers a bad name and should be made accountable for their actions, not the silent majority who do right by establishments.

From a purely selfish reason, consigning vapers outside to join the smokers also belittles our efforts to wean ourselves off tobacco and would lead to more people deciding to just revert back to tobacco if we have to join the smokers outside! And by allowing people to vape inside it encourages current smokers to swap over to e-cigs when they see they don't need to go outside, and they are safer and would save the NHS more money. So banning their use inside would reduce the conversion from phlegmy smoker to healthier vaper. Plus I do not want to be considered a smoker and consigning me to the smokers would place me in the same category. I have been off cigarettes for 2 years and only vaping and one of the benefits is being able to use them inside – do not take this away without very good evidence please.

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?

In addition to the above in Q.19 and countless other studies, even the briefing from ASH who are the most fervent anti-smoking lobby does not support a ban in public places:

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

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?

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 <input type="checkbox"/> |
| b. Only hospital grounds | b <input type="checkbox"/> |
| c. Only within a designated perimeter around NHS buildings | c <input checked="" type="checkbox"/> |
| 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)?

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?

Encourage the use of nicotine inhalers or e-cigs to those in hospital to stop patients who are smokers from making themselves more ill – encourage a culture of compliance rather than applying rules that may cause determined smokers to find themselves trailing drip trolleys out into the street to be outside of NHS grounds which can be quite a risk to their health.

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?

Playparks

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?

The 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)?

NA

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

NA

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

NA

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?

A disproportionate approach to the regulation of e-cigs would cause a number of small businesses that support local economies. The e-cig market is booming in Scotland. I live in Leith in Edinburgh and there are now 3 e-cig shops just in Leith that do a thriving business, serves the community, provides safe, affordable alternatives to smoking, as well as jobs in an area that has been severely affected financially by the trams fiasco on that no longer reaches Leith. Scotland has a poor health record, I doubt anyone can deny this, and removing a safer alternative to smoking would be disastrous to its recovery, and put a dent in local industries and businesses - Scotland prides itself on the diversity of attracting large corporations as well as entrepreneurs and boutique industries - this is not one that should be lost.

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

By encouraging e-cigarettes or at the least undertaking proper independent research in them, there is an opportunity to save the NHS millions of pounds not only in treatments but also in subsidising expensive and not very good NRTs; and also then getting the tax on e-cigs.

I quote from the Addiction Journal, part of UCL:

People attempting to quit smoking without professional help are approximately 60% more likely to report succeeding if they use e-cigarettes than if they use willpower alone or over-the-counter nicotine replacement therapies such as patches or gum, finds a large UCL survey of smokers in England^[1]. The results were adjusted for a wide range of factors that might influence success at quitting, including age, nicotine dependence, previous quit attempts, and whether quitting was gradual or abrupt.

- The study, published in *Addiction*, surveyed 5,863 smokers between

2009 and 2014 who had attempted to quit smoking without the aid of prescription medication or professional support. 20% of people trying to quit with the aid of e-cigarettes reported having stopped smoking conventional cigarettes at the time of the survey.

- The research, chiefly funded by Cancer Research UK, suggests that e-cigarettes could play a positive role in reducing smoking rates. “E-cigarettes could substantially improve public health because of their widespread appeal and the huge health gains associated with stopping smoking,” says Professor Robert West of UCL’s Department of Epidemiology & Public Health, senior author of the study. “However, we should also recognise that the strongest evidence remains for use of the NHS stop-smoking services. These almost triple a smoker’s odds of successfully quitting compared with going it alone or relying on over-the-counter products.”..... Some e-cigarette users may want to continue using them indefinitely. “It is not clear whether long-term use of e-cigarettes carries health risks but from what is known about the contents of the vapour these will be much less than from smoking,” says Professor West.
- “Some public health experts have expressed concern that widespread use of e-cigarettes could ‘re-normalise’ smoking. However, we are tracking this very closely and see no evidence of it. Smoking rates in England are declining, quitting rates are increasing and regular e-cigarette use among never smokers is negligible.”
- (<http://www.addictionjournal.org/press-releases/e-cigarette-use-for-quit-qing-smoking-is-associated-with-improved-success-rates->)

Also the conclusions of the following UK government report shows that more should be done to properly consider e-cigs in the armoury for reducing tobacco use:

Smoking kills, and millions of smokers alive today will die prematurely from their smoking unless they quit. This burden falls predominantly on the most disadvantaged in society. Preventing this death and disability requires measures that help as many of today’s smokers to quit as possible. The option of switching to electronic cigarettes as an alternative and much safer source of nicotine, as a personal lifestyle choice rather than medical service, has enormous potential to reach smokers currently refractory to existing approaches. The emergence of electronic cigarettes and the likely arrival of more effective nicotine-containing devices currently in development provides a radical alternative to tobacco, and evidence to date suggests that smokers are willing to use these products in substantial numbers. Electronic cigarettes, and other nicotine devices, therefore offer vast potential health benefits, but maximising those benefits while minimising harms and risks to society requires appropriate regulation, careful monitoring, and risk management. However the opportunity to harness this potential into public health policy, complementing existing comprehensive tobacco control policies, should not be missed.¹

So it would be more expensive in the long run to restrict e-cigs disproportionately.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311887/E-cigarettes_report.pdf

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

Any measures to restrict the use of e-cigs inside, which I do not agree with by the way, but if they were brought in, the lead time should be to conduct research that what is exhaled is actually harmful to bystanders – I do not believe this to be the case as studies such as these show:

<http://publichealth.drexel.edu/~media/files/publichealth/ms08.pdf>

<http://www.mdpi.com/1660-4601/11/11/11325>

<http://www.sciencedirect.com/science/article/pii/S0278691512005030>

Only then would there be an evidence based justification to ban their use in enclosed public places, otherwise you will need to ban coffee:

Professor John Britton, who is Director of the UK Centre on Tobacco and Alcohol Studies and heads the Royal College of Physicians Tobacco Advisory Group compares the health risks of nicotine to caffeine. “Nicotine itself is not a particularly hazardous drug,” says Professor John Britton, who leads the tobacco advisory group for the Royal College of Physicians. It’s something on a par with the effects you get from caffeine. If all the smokers in Britain stopped smoking cigarettes and started smoking e-cigarettes we would save 5 million deaths in people who are alive today. It’s a massive potential public health prize.” ([BBC, Feb 2013](#))

Again it would be more expensive in the long run to restrict e-cigs disproportionately.

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 to tobacco or to e-cig companies/interests etc