

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. The voluntary ban is not being observed with a recent test purchase exercise by South Ayrshire Trading Standards finding that 4 out of 5 shops visited sold to the young volunteer.

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? ✓

b It will pose difficulties in enforcement if this is restricted only to nicotine containing products.

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

C. This would harmonise the requirements with alcohol and tobacco and provide consistency.

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

Yes, this should follow tobacco requirements.

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

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, again this would provide consistency with alcohol and tobacco.

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. Whilst the potential for harm or addiction from these products is not known at present, it would be advisable to adopt a precautionary approach to avoid adult non smokers being influenced to use e cigarettes and for young people to be protected from influences that suggest smoking is something to try or experiment with, leading possibly to actual tobacco products.

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. If we are to exert controls to avoid the promotion of smoking as desirable then this must be applied to e cigarettes

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

- a. Bill boards
- b. Leafleting

a ✓
b ✓

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

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

Consideration should be given to exemptions that apply already to tobacco such as for trade or commercial purposes.

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. In the same way that the tobacco register enables us to identify sellers for visits, advice and support.

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

Yes

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

n/a

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

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?

Current knowledge re the impact on public health from the inhalation of 2nd hand vapour from e-cigarettes is uncertain and therefore the precautionary principle should apply and they should be treated the same way as traditional cigarettes and smoking in substantially enclosed outside spaces should be prohibited.

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 used of e-cigarettes in enclosed spaces, that you think the Scottish Government should consider?

no

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. People under 18 and in particular very young children, should not be subjected to health risks from second hand smoke and in such a confined space. In addition, their age may militate against them being in a position to object or for the smoker to listen to their objections.

22. Do you agree that the offence should only apply to adults aged 18 and over?

No

23. If you answered 'no' to Question 22, to whom should the offence apply?

Anyone smoking in a vehicle aged between 16 and 18. We should not be criminalising under 16s for this.

24. Do you agree that Police Scotland should enforce this measure?

Yes

25. If you answered 'no' to Question 24, who should be responsible for enforcing this measure?

n/a

26. Do you agree that there should be an exemption for vehicles which are also people's homes?

No

27. If you think there are other categories of vehicle which should be exempted, please specify these?

n/a

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

n/a

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

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)?

Where the patients are unable to leave the grounds of the facility then a smoking area should be designated within the facility.

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

Local authority Environmental Health staff are best placed to enforce such controls building on their expertise with the smoking ban.

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

They should be the same as those applying to traditional cigarettes

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?

n/a

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

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

This would ensure a uniform approach nationally

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

Designated children's play areas that are clearly identified (by a fence or other means)

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 ☐

A culture of 'challenge 25' already exists in relation to alcohol and therefore it is logical this should be extended to tobacco and e cigs. However, the challenge in relation alcohol is more phrased around having a challenge 25 policy rather than a legal requirement to age verify anyone that appears to be under 25.

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?

Another adult employee working in the store

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)?

none

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

n/a

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

no

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?

We are unable to quantify the resource impact on South Ayrshire Council at this time in relation to enforcement of legislation controlling e cigs and related products and enforcement at NHS premises or within vehicles if this is not to be the responsibility of Police Scotland. Age restrictions will require a need for business support as many e cig sellers do not provide other age restricted products and would be unfamiliar with the tobacco or alcohol regime and management of these sales. It would also involve more test purchasing activity to ensure restrictions were being observed.

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

unknown

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

12 months with a 6 month grace period to allow registration of sellers.

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

no

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.

no