

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?

All e-cigarettes devices and refills (including e-liquids) and accessories that are available now or may become available in the future. This would include shisha e- pipes and associated paraphernalia. Any accessories that are traditionally associated with smoking tobacco.

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. Leafletting | 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?

Our preferred approach is no exemptions because of the evidence on the impact of advertising on initiating and maintaining addictive and habitual

behaviour. Whilst it may be difficult to get regulations on all of the above and then police them, all could effectively encourage someone to begin or continue to vape. Should any become licensed medicines then advertising would be in line with other smoking cessation products. There should be no advertising of paraphernalia.

12. Are you aware of any information or evidence that you think the Scottish Government should consider in relation to regulating domestic adverting in relation to impacts on children and adults (including smokers and non-smokers)?

The impact of advertising on behaviours is well known. Although adults may be using e-cigarettes to stop smoking and are clear about why they are using them, children and adolescents are less aware of this connection and thus the advertising may have the same impact as tobacco advertising did before it was banned; for example, it was cool, sexy or powerful . Evidence from England, the United States, France and Poland indicates that an increasing proportion of young people who have never smoked are trying e-cigarettes. Lothian data from SALUS indicates that approximately 24% of young people think it is okay to try cigarettes, illustrating the continued lack of understanding of the addictive nature of nicotine and the habituation effect of smoking and smoking related behaviours such as occurs with electronic nicotine delivery systems (ENDS). The link between the ENDS and cigarettes in terms of image creation is so strong that it would be difficult for any advertising campaign to differentiate between them.

13. Are you aware of any information or evidence that you think the Scottish Government should consider in relation to regulating domestic adverting in relation to impacts on business, including retailers, distributors and manufacturers?

We are aware that the regulation will ultimately have a negative impact on the sales distribution and manufacture of those e-cigarettes who do not meet the regulatory safeguards under the terms of the European Directive, which will come into force in 2016. There is existing evidence, however, that consumers will purchase other products, that impacts on retailers are short term, and that new entry entrepreneurs will move onto other businesses.

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?

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 ☒ 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?

We are concerned that e-cigarettes re-normalise smoking behaviours which have been made socially unacceptable since 2006. There is already evidence that e-cigarette use in enclosed public places undermines existing smoking legislation. As a consequence, many organisations have already banned the use of e-cigarettes, to avoid confusion among staff and clients of services and because of safety concerns. Currently there is insufficient evidence regarding the level of harm from second and third hand vapour. In addition, the long term health impact on e-cigarette users and those exposed to second hand vapour is unclear, although laboratory tests and case studies suggest an adverse impact on lung function. Exposure to nicotine itself is not risk free: it is an addictive substance which affects the metabolism of various medicines, hence its use as a regulated product. We believe the Scottish Government should amend current smoke-free legislation to include e-cigarettes and actively support organisations to implement and develop their own policies restricting the use of e-cigarettes. We also feel the Scottish Government should acknowledge the possibility of a new generation of nicotine addicts who will in future require support to deal with their nicotine addiction from e-cigarettes. For these reasons, therefore, a precautionary principle should be adopted and we support a total ban with fixed penalty notice fines and the potential for loss of license if used in licensed premises.

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

n/a

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?

Evidence is emerging of second and third hand exposure to nicotine from e-cigarettes and of an adverse impact on air quality and lung function. Much of this remains laboratory data and at the level of case studies.

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?

It should be an offence for anybody who is smoking in a car regardless of their age. We would obviously be reluctant to criminalise anyone under 18 for this offence alone but a fixed penalty on the spot fine and licence points for the driver would be proportionate.

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?

n/a

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?

None

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

None

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

All grounds/premises that have a role (no matter how big or small in promoting health) should have legislation to this effect. This sends a strong message that hospitals are not only about sickness and illness, but about wellbeing and as such smoking will not be tolerated.

Scottish Government are committed to implement the World Health Organisation Convention on Tobacco Control, a legally binding treaty which makes clear the need to provide protection from environmental tobacco smoke in workplaces, healthcare environments and public places in general. Such environments and in particular healthcare environments are integral to achieving Scottish Government's aspiration of a smoke free generation by 2034.

In Lothian we have carried out semi-structured interviews with twenty NHS staff discussing the implementation of smoke-free grounds. Results showed that staff were regularly exposed to second-hand smoke and described the adverse impact this had on their work environment, patient care and quit attempts. Smoking on hospital grounds was felt to provide a negative image, with staff identifying disadvantaged groups as those most commonly seen smoking. Despite this, most staff felt unwilling to challenge smoking behaviour, with many feeling uncomfortable about enforcement due to a perception that vulnerable groups were already being stigmatised and unfairly penalised. Staff cited their lack of authority in willingness to enforce the policy and all stated it needed to be a designated person such as security to ensure compliance. Management commitment was also stated as very important. While e-cigarette use was seen to be low, the topic created additional challenges for policy enforcement and staff felt that it was unfair to send users of e-cigarettes out to the smoking shelter as this was encouraging them to take up smoking cigarettes again.

Our findings reinforce the need for clear consistent messages in relation to the purpose of smoke-free grounds and the need for staff and managers to be trained in this. Staff also require guidance on how to manage patients who smoke cigarettes and e-cigarettes, encouraging referral to specialist smoking cessation services at all opportunities. Stigma seemed to be a

barrier in implementing smoke-free grounds and this needs to be addressed to ensure smokers do not feel unfairly penalised and instead they are supported while in hospital to comply with the policy.

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)?

We believe that because of the health harms caused by tobacco that there should be no exemptions. In addition, we believe that because e-cigarettes mimic traditional tobacco use and also because of a lack of information regarding their health effects on users and bystanders exposed to second hand vapour, that these should be treated the same as other tobacco products and be included in this legislation. The NHS is a health promoting organisation and has a duty of care to all patients, staff and visitors to provide a smoke free environment. Also, in line with recommendations set out in the Tobacco Control strategy for Scotland the NHS in Scotland is encouraged to demonstrate clear leadership regarding the creation of smoke free premises. Legislation would support the NHS with fiscal measures to enforce Smoke Free Policies.

We know there are increased levels of smoking-related mortality amongst the mentally ill and tobacco interacts with some psychiatric medication making it less effective, resulting in increased dosages and more side effects. To make an exemption for grounds of mental health facilities would not be supportive of those patients who are concerned about their tobacco use and trying to stop smoking. There are cases where patients released from the state prison back to a NHS mental health hospital relapse back to smoking immediately due to the lack of a comprehensive ban despite a desire to remain abstinent.

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

Police Scotland, with Local Authority officers issuing fixed penalties if litter (tobacco and accessories) is dropped.

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

Fixed penalty, with an on the spot fine

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?

Support national legislation but additional funding for smoking prevention and cessation to invest significantly in changing culture and behaviour of

staff, visitors, patients and clients of all education, health and care services would be welcome.

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

Support national legislation with local powers put in place to enable relevant local action to be taken while national legislation on expected standards is put in place. National legislation supplemented by licensing, with a condition of the licensing being smoke-free for both permanent and temporary sits, for example ice rinks at Festive Season and funfairs.

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

Local parks and public play areas, all schools, colleges and nursery/childcare grounds, whether public or privately owned. We also believe all sports grounds and stadia should be included, as should theme parks and any beach areas which are already signed and promoted as for families only. This should apply to both permanent and temporary sites. This may be particularly important when concerts and live music events are staged in venues normally used for other purposes.

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?

Another adult over the age of 18 who is working in the store would be most practical measure to confirm ID and to oversee this.

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)?

We do not believe as an organisation that there will be any negative or adverse effects of these changes to people with protected characteristics. The health harms of tobacco are undisputed and therefore these changes will protect people and have a positive effect on health outcomes.

We believe there needs to be equitable access to evidence-based cessation services for all nicotine users, including users of shisha bars and e-cigarette users. We also believe that shisha bars, whether indoors or outdoors, should be licensed.

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?

For a number of these groups, there is a positive impact of improving health of those with protected characteristics who already vape or smoke and their families.

We recommend that all communities are given clear, easy to understand guidance in a variety of languages and formats.

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?

These measures will enhance the positive consequences of the smoke-free legislation already in place in Scotland. It is likely to see a further reduction in the harmful effects of second hand smoke, particularly in children. This will result in a reduction in the number of patients requiring interventions for smoking related illnesses, with subsequent cost avoidance for the NHS in the future.

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

Smoking cessation is already one of the interventions promoted in welfare rights and income maximisation services. The tax generated from tobacco is already outweighed by NHS and social care spending and the adverse impact on the wider economy. These proposals would give greater spending power to those who currently smoke or vape as the combination of legislation and support from services reduces the incidence and prevalence of smoking.

We strongly believe that these proposed measures will allow Scotland to flourish and achieve the ambition of a smoke free Scotland by 2034 and we also believe that Scotland will be a nation of people who are wealthier, healthier and smarter. Given the strong link between tobacco use and health inequalities these measures will have a huge impact on improving health and wellbeing in economically deprived communities and will impact positively on an individual's financial wealth. These measures would also support the work of the early years collaborative across Scotland to ensure future generations get the best start in life by growing up in a smoke free environment.

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

One year would seem a reasonable timeframe. The public would have to be informed with a national public awareness campaign, which could build on the success of the 'Take it Right Outside' campaign. A variety of methods could be used to ensure all populations were properly informed.

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 links. We very much welcome the opportunity to comment on these Tobacco Control issues. We will only successfully meet the target of 5% prevalence to smoking by 2014 if sufficient action is taken at a national and at a local level.