

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

a ☐

b. the young person attempting to purchase the e-cigarette

b ☐

c. both

c ☒

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

Yes ☒ No ☐ But there should be an exemption where a self-service vending machine is located in a facility where the retailer ensures that people under 18 are prohibited from entering.

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?

Proxy purchase for e-cigarettes

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

Yes x 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 x No ☐ Young people and non-smokers/non-nicotine-users should not be targeted by e-cigarette advertisers, but inevitably these people could be exposed to some e-cigarette advertising (as is the case with all advertising). We support the position taken by the UK Committee of Advertising Practice (**CAP**) and the UK Broadcast Committee of Advertising Practice (**BCAP**) which, after a full public consultation, has recently introduced specific measures to protect young people and non-smokers from inappropriate e-cigarette advertising.

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 x We refer to the specific rules relating to e-cigarette advertising contained in the CAP Code and BCAP Code, which we support. In light of these rules, we do not believe any further regulation on the advertising and promotion of e-cigarettes is required or would be proportionate.

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?

We believe that domestic advertising and promotion of e-cigarettes should be regulated in accordance with the CAP Code and BCAP Code.

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)?

We believe that adults (18+) should have the right to be responsibly informed about alternatives to cigarettes that might have the potential to reduce the risks of smoking. The need for smokers to be able to make informed choices when considering changing their smoking habits is important. In this context, discussions and concerns are often raised that e-cigarettes could act as a gateway into smoking, particularly among children. Although it is not possible to completely prevent children from being exposed to some product related advertising, there are several past and recent surveys that show that the risk of e-cigarettes acting as a gateway to smoking is very low.

The most recent evidence from a UK survey conducted by Action on Smoking and Health (**ASH**) shows that *“Electronic cigarette use amongst never smokers remains negligible”* and *“Regular use of electronic cigarettes amongst children and young people is rare and is confined almost entirely to those who currently or have previously smoked”*. [Action on Smoking and Health Fact Sheet, October 2014]

The concerns around a potential gateway effect and the current evidence base are also well summarised by the report on e-cigarettes by Public Health England: *“Experimentation with electronic cigarettes among non-smoking children in the UK is currently rare, and only about 1% of 16 to 18-year-old never smokers have experimented to electronic cigarettes and few if any progress to sustained use. Furthermore, experimentation with electronic cigarettes should be considered in the context of current levels of experimentation with tobacco cigarettes, which in Great Britain currently generates a prevalence of smoking of 15% among 16 to 19-year olds, and 29% in 20 to 24-year olds. Experimentation with electronic cigarettes is most likely to occur predominantly in the same group that currently experiment with tobacco, as indeed is suggested by recent US data. It is therefore relatively unlikely that availability and use of electronic cigarettes causes or will cause significant additional numbers of young people to become smokers than do at present”*. [Electronic Cigarettes: A report commissioned by Public Health England, John Britton and Ilze

Bogdanovica, May 2014]

The main study repeatedly quoted to support the 'gateway' argument is a National Youth Tobacco Survey study from the US Centre for Diseases Control [CDC National Youth Tobacco Survey, September 2013]. This study conducted among middle and high school students reported on ever use of e-cigarettes (3.3% in 2011 and 6.8% in 2012) – and use in past 30 days (1.1% in 2011 and 2.1% in 2012). Based on the data, the CNC claimed that "*many kids are starting out with e-cigarettes and then going on to smoke conventional cigarettes*". Given the significant increase in the profile of e-cigarettes over the timescale of the survey, some increase in exposure is perhaps not surprising, but there has been criticism of the conclusions and press releases from this survey for the following reasons:

- no questions on history of past use and progression from vaping to smoking were asked in the questionnaire, therefore the study cannot be used to conclude that e-cigarettes have acted as a gateway;
- similarly, as the study was only a snapshot and did not track youth over multiple time points to determine their vaping and smoking patterns, it would not be suitable to draw any conclusions on e-cigarette users subsequently switching to cigarettes; and
- no data were reported on regular use of e-cigarettes.

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?

The e-cigarette industry has grown rapidly over the last several years and although it is clear that there are areas where regulation should be introduced (i.e. product standards, to ensure both regulators and consumers that products on the market meet appropriate criteria for quality and safety), these measures should be considered carefully in order not to stifle continued innovation and investment in the category.

An appropriately regulated e-cigarette industry (i.e. with appropriate commercial freedoms) will ensure that e-cigarette manufacturers continue to invest in the category and contribute to increasing employment opportunities. Such investments would benefit all businesses involved in the e-cigarette industry, including R&D partners, retailers, distributors, advertising agencies, advisers and other business partners throughout the supply chain.

If responsible advertising (adhering to the CAP Code and BCAP Code) is permitted, we believe this will assist the category in continuing to grow in order to reach its potential in terms of tobacco harm reduction and will also lead to significant benefits for businesses involved in the category.

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 ☒ We do not believe that such a measure should be implemented as it would introduce additional obstacles for a category that has the potential to provide significant public health benefits. Such a measure is unnecessary and would be disproportionate.

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

Yes ☐ No ☐ N/a. Please see our response to Q14.

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

Please see our response to Q14.

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?

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

We believe it is important to recognise that there is growing consensus among many scientists and public health professionals that e-cigarettes are in general significantly less risky than conventional cigarettes and that a switch to e-cigarettes by smokers has the potential to lead to an unprecedented public health success in terms of tobacco harm reduction. [Letter to Margaret Chan, Director General WHO. Signed by 53 leading public health leaders from around the world. <http://nicotinepolicy.net/documents/letters/MargaretChan.pdf>]

We believe that bringing e-cigarettes under the remit of smoke free legislation is likely to ultimately be damaging to public health, by inhibiting switching from combustible tobacco products, restricting the opportunities

for using e-cigarettes and by compelling vapers to co-habit the outdoor spaces that are set aside for those smoking. We therefore believe it would be counter to achieving the Scottish Government's goal of effective tobacco control.

Current evidence suggests that e-cigarettes are far more likely to assist rather than hinder quit attempts. For example, a study following vapers over a 12 month period found that 22% of dual tobacco and e-cigarette users had stopped smoking after one month and 46% after one year. [A longitudinal study of electronic cigarette users. Jean Francois Etter and Chris Bullen, Addictive Behaviours, February 2014. <http://www.sciencedirect.com/science/article/pii/S0306460313003304>]

Our own research shows that the frequency of cigarette usage declines as e-cigarette usage develops. Moreover, ASH UK [Electronic Cigarettes, ASH UK Briefing May 2014. http://ash.org.uk/files/documents/ASH_715.pdf] has suggested that vaping in public places will positively discriminate between e-cigarettes and tobacco products and thereby encourage recognition of the benefit in transfer from the latter to the former. ASH UK and the UK Chartered Institute of Environmental Health (CIEH) point out that requiring staff who are trying to quit smoking to use e-cigarettes only in smoking breaks and in areas where others are smoking tobacco is unlikely to help them quit successfully.

Separately, British smoking cessation expert Professor Robert West's Smoking in England project found that: "the evidence conflicts with the view that electronic cigarettes are undermining tobacco control or 'renormalizing' smoking", and that the devices "may be contributing to a reduction in smoking prevalence through increased success at quitting smoking". [Trends in electronic cigarette use in England. West et al. April 2014. <http://www.smokinginengland.info/downloadfile/?type=latest-stats&src=11%E2%80%8E>]

The results and conclusions by Professor Peter Hajak et al in their recent e-cigarette review (June 2014), further supports our view that it is unnecessary for the Scottish Government to take measures to restrict the use of e-cigarettes in public places: *"EC aerosol can contain some of the toxicants present in tobacco smoke, but at levels which are much lower. Long-term health effects of EC use are unknown but compared with cigarettes, EC are likely to be much less, if at all, harmful to users or bystanders. EC are increasingly popular among smokers, but to date there is no evidence of regular use by never-smokers or by non-smoking children. EC enable some users to reduce or quit smoking. Allowing EC to compete with cigarettes in the market-place might decrease smoking-related morbidity and mortality. Regulating EC as strictly as cigarettes, or even more strictly as some regulators propose, is not warranted on current evidence. Health professionals may consider advising smokers unable or unwilling to quit through other routes to switch to EC as a safer alternative to smoking and a possible pathway to complete cessation of nicotine use"*. [http://www.addictionjournal.org June 2014 Electronic cigarettes: review of use, content, safety, effects on smokers and potential for harm and benefit: Peter Hajak, Jean-François Etter, Neal Benowitz, Thomas Eissenberg &

Hayden McRobbie]

Recognising that some businesses and venue owners may believe that employees or customers are uncomfortable being in close proximity to the use of e-cigarettes for different reasons (e.g. the smell in restaurants), we believe the best course of action is to allow businesses to establish rules on the use of e-cigarettes that they think are in the best interests of their employees / customers.

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?

Please see answer to Q19.

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 ☐
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 ☐

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 x 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?

We believe it should be any of the above listed persons.

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

- | | |
|--|--|
| a. the penalty | a <input checked="" type="checkbox"/> |
| b. the enforcement arrangements | b <input checked="" type="checkbox"/> |

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)?

Comments

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?

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 do not expect that any financial impact would result from the introduction of a minimum age of sale for e-cigarettes (and related proxy purchase and 'Challenge 25' provisions).

Any other restrictions (such as the need for an e-cigarette retailer register, further restrictions on advertising or Government bans on the use of e-cigarettes in public places) could have material financial implications on individual e-cigarettes companies as well as the industry as a whole.

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

For the e-cigarette category to maintain the growth it has seen over recent years, it will be necessary to avoid any overly burdensome or inappropriate regulation. Any such regulation will lead to reduced investment in the category, thereby resulting in a reduction in employment opportunities and detrimental financial implications on the wide range of businesses which have an involvement in the category.

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

Lead-in times need to be considered in respect of the particular measure being introduced. In our view there are no reasons for delaying (beyond a short period whilst an awareness campaign is conducted) the introduction of 18 as a minimum age for buying e-cigarettes, the proposed provision in relation to proxy purchases of e-cigarettes or the proposed 'Challenge 25' rule.

Other measures, if introduced, warrant careful consideration with regards to lead-in time, especially those that have practical, administrative and financial implications for e-cigarettes manufacturers and retailers.

It is especially important to consider lead-times in light of additional provisions that will follow as a consequence of the transposition of the EU Tobacco Products Directive which, on its own, will put significant pressure on the industry with regards to compliance matters above and beyond those contemplated by this consultation.

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.

Nicoventures is a division of British American Tobacco (**BAT**) and focusses on the development and production of innovative, high quality, inhaled nicotine products that meet relevant regulatory requirements.

Nicoventures is managed separately from BAT's tobacco business.