

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

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

3. Whom should the offence apply to:

a. the retailer selling the e-cigarette

a ☐

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

Yes ☐

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

Yes ☐

6. If you answered “ yes” to question 5, which products should have restrictions applied to them?

Any accessory which is used to operate nicotine containing products should be restricted. Even though some products may not contain nicotine their advertising may still present the same or similar issues as nicotine-containing e-cigarettes when advertised so we would support restrictions on such products.

Proxy purchase for e-cigarettes

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

Yes

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

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. Products should not be seen in TV programming or films before the 9pm watershed

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"/> x |
| b. Leafletting | b <input type="checkbox"/> x |
| 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"/> x |
| d. Free distribution (marketing a product by giving it away free) | d <input type="checkbox"/> x |
| e. Nominal pricing (marketing a product by selling at a low price) | e <input type="checkbox"/> x |
| f. Point of sale advertising (advertising for products and services at the places where they were bought) | f <input type="checkbox"/> x |
| g. Events sponsorship with a domestic setting | g <input type="checkbox"/> x |

All of the above.

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

Advertising should not be a medium by which people are encouraged to begin or re-establish the use of nicotine. Any advertisement and promotion which has the potential to increase awareness and/or use of e cigarettes and normalise smoking should be regulated. Huge efforts have been made to make smoking tobacco “not the norm” so anything which might renormalise smoking should be regulated. There should be no exemptions. We do not support any advertising.

See Gateway effect and Normalisation effect in SPICE briefing on e cigarettes. (13th Nov 2014 14/83)

Licensing of nicotine containing products as medicines should be taken forward in which case there are strict regulations about advertising.

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)?

Images of people smoking or using e-cigarettes should not be able to be shown on television programmes or films before the 9pm watershed to avoid the likelihood of children viewing them. Ideally there should not be advertising.

National expert in Scotland [Professor Gerard Hastings OBE, University of Stirling](#), [The impact of marketing on Public Health](#)

Copious literature published on marketing and health and tobacco and increasing amounts related to e cigarettes. Just a few samples below:

<http://journalistsresource.org/studies/society/public-health/electronic-cigarettes-marketing-health-regulation-research-roundup#>

E-cigarette marketing

As the market for e-cigarettes has grown, manufacturers have been aggressively using the Web, social media and television to promote their products. Research published in 2014 in Nicotine & Tobacco Research found that e-cigarette advertising was the most widely circulated of all non-combustible tobacco products. A 2014 content analysis of e-cigarette websites by the San Francisco Center for Tobacco Control Research and Education showed that the majority (95%) made explicit or implicit health claims: 64% mentioned smoking cessation, and 88% noted they can be used anywhere, with 71% explicitly talking about the circumvention of clean indoor air laws. Researchers at South Korea's Hanyang University analyzed 365 YouTube e-cigarette-related videos and 85% were sponsored by marketers. Researchers at the Institute for Health Research and Policy

at the University of Illinois at Chicago found that among 73,672 e-cigarette tweets, 90% were by marketers, and 40% were by users with e-cigarette keywords in their Twitter handles — yet these users made up only 2% of Twitter users who tweeted about e-cigarettes. A 2014 examination of Nielsen data published in *Pediatrics* showed a 256% increase in exposure to televised e-cigarette advertisements between 2011 and 2013. Exposure largely took place on cable television.

E-cigarettes and youth

According to the CDC, e-cigarette use appears to be on the rise among U.S. adolescents. A 2014 study from New York University found that 50% of U.S. adolescents are aware of e-cigarettes, and of these 13% had tried one, and 4% were regular users to some degree. A 2014 article in the *Journal of the American Medical Association* and 2014 study in *Nicotine & Tobacco Research* both found that e-cigarette use was associated with a greater likelihood of intending to smoke conventional cigarettes. A 2014 study by the Yale School of Medicine found that adolescents who use e-cigarettes were more likely to smoke hookahs and “blunts” than those who smoked conventional cigarettes. Among adolescents who smoke conventional cigarettes, concurrent e-cigarette use has not been shown to be associated with a desire to quit. A 2014 report by members of the U.S. Congress found that e-cigarette marketing targets youth, either through attendance at youth-oriented events, advertising during radio and television programs with youth audiences, or flavors that appeal to teens. - See more at:

<http://journalistsresource.org/studies/society/public-health/electronic-cigarettes-marketing-health-regulation-research-roundup#sthash.Q8bvI9G5.dpuf>

“Four Hundred and Sixty Brands of E-cigarettes and Counting: Implications for Product Regulation”

Zun, Shu-Hong; Sun, Jessica Y; Bonnevie, Erika; Cummins, Sharon E; Gamst, Anthony; et al. *Tobacco Control*, July 2014, Vol. 23, No. 3, ii3-9. doi: 10.1136/tobaccocontrol-2014-051670.

Abstract: “E-cigarettes are largely unregulated and internet sales are substantial. This study examines how the online market for e-cigarettes has changed over time: in product design and in marketing messages appearing on websites.... Results: By January 2014 there were 466 brands (each with its own website) and 7764 unique flavours. In the 17 months between the searches, there was a net increase of 10.5 brands and 242 new flavours per month. Older brands were more likely than newer brands to offer cigalikes (86.9% vs. 52.1%, $p<0.01$), and newer brands more likely to offer the more versatile eGos and mods (75.3% vs. 57.8%, $p<0.01$). Older brands were significantly more likely to claim that they were healthier and cheaper than cigarettes, were good substitutes where smoking was banned and were effective smoking cessation aids. Newer brands offered more flavours per brand (49 vs. 32, $p<0.01$) and were less likely to compare themselves with conventional cigarettes. Conclusions: The number of e-cigarette brands is large and has been increasing. Older brands tend to highlight their advantages over conventional cigarettes while newer brands emphasise consumer choice in multiple flavours and product versatility. These results can serve as a benchmark for future research on the impact of upcoming regulations on product design and advertising messages of e-cigarettes.”

- See more at: <http://journalistsresource.org/studies/society/public-health/electronic-cigarettes-marketing-health-regulation-research-roundup#sthash.Q8bvI9G5.dpuf>

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?

We would suggest contacting Prof Hastings as above in Section 12 to understand the substantial investment and intended outcomes of marketing and consider this in relation to impacts on businesses.

What evaluation has been undertaken of the recently introduced legislation in Scotland which demands that tobacco products are not visible at point of sale in retail outlets?

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

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

Yes, however The Scottish Tobacco Retailers Register does not provide sufficient powers to enable breaches of regulation to be managed. Further powers are required. In particular further powers are required to enable the number of retailers within a community to be managed and the proximity of retailers to sensitive areas such as schools. It should be possible for retailers not on the register to be prohibited from selling tobacco products and e-cigarettes.

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

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?

E-cigarettes should be managed in the same way as tobacco-containing products and their use prohibited in enclosed public spaces. As with many of the issues surrounding e-cigarettes, research into health effects is at an early stage and it is widely recognised that more research into the long term effects of e-cigarette vapour is required. It took many decades to understand the health consequences of exposure to tobacco smoke whether as a smoker or a passive smoker. It is likely to take considerable time until we fully understand the effects of e-cigarette vapour so until such times the public health should be protected and the use of e-cigarettes in enclosed spaces prohibited.

WHO notes that, given the relatively recent introduction of e-cigarettes into the market place, it is unlikely that there will be conclusive evidence on any association with diseases such as cancer for years or even decades. World Health Organisation. (2014) *Electronic nicotine delivery systems*. FCTC/COP/6/10 rev.1. Paper for Conference of the Parties to the WHO Framework Convention of Tobacco Control, Sixth Session 13-18 October 2014. [Online]. Available at: [http://apps.who.int/gb/fctc/PDF/cop6/FCTC COP6 10Rev1-en.pdf](http://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_10Rev1-en.pdf)

Overall, ASH Scotland found that nicotine delivered in forms other than tobacco smoke does not have strong associations with disease, though also that there is a need for more research into this area (Action on Smoking and Health (ASH). (2014) *Will you permit or prohibit electronic cigarette use on your premises? 5 questions to ask before you decide*. [Online]. Available at: http://www.ash.org.uk/files/documents/ASH_900.pdf.)

Because of the way an e-cigarette works there are concerns about the toxins that would result from the heating process that produces the vapour, and the content of the vapour itself. The most commonly used carrier fluids for nicotine in e-cigarette cartridges are Propylene Glycol and Vegetable Glycerine. It has been suggested that when they are heated in an e-cigarette there could be implications to long term, high intensity inhalation.

A common short-term effect of exposure to PG includes eye and respiratory irritation. However, a study has shown that chronic exposure to PG indoors can induce or exacerbate conditions such as asthma and eczema in children. Another found that people exposed to theatre fog containing PG experienced acute and chronic respiratory problems (Hajek, P et al. (2014), *Electronic cigarettes: review of use, content, safety, effects on smokers and potential for harm and benefit*. Addiction. doi: 10.1111/add.12659).

VG is considered to be non-toxic. However, when heated to high temperatures it can produce acrolein, which is toxic.

The type of exposure to PG/VG resulting from e-cigarette use does not have a precedent and this should be an area of further monitoring and evaluation. There is evidence that e-cigarettes contain toxic substances,

including small amounts of formaldehyde and acetaldehyde, which are carcinogenic. Studies have also found traces of carcinogenic nitrosamines and toxic metals, including cadmium, nickel and lead, in e-cigarette vapour. Until the health effects for users and passive users are known there should be spatial restrictions on the use of e-cigarettes.

We are aware of e-cigarette reservoirs being increasingly used to “smoke” drugs and misuse and legal highs. We would urge that the Scottish Government considers this public health issue in the early part of 2015.

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

SPICE briefing Nov 2014

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

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?

Consultees have only been given the option of under 18 years old. As young people can drive from the age of 17 it may be more appropriate to have the age limited to vehicles carrying someone aged 16 years or under. A driver of any age should know the laws pertaining to the vehicle they drive as well as the laws of the road. If the driver was 17 and smokes or permits someone else in their car to smoke then the offence should apply to them. There needs to be clarity on what the age definition for a child will be. 16 & 17 year olds have been given the opportunity to vote recently.

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?

Comments

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?

None. People should not be exposed to the vapours in enclosed spaces.

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

No defence. The Scottish Government strategy "Creating a Tobacco-Free Generation" clearly identifies exposure to tobacco as a child protection issue.

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 x ☐
- b. Only hospital grounds b ☐
- c. Only within a designated perimeter around NHS buildings c ☐
- d. Other suggestions, including reasons, in the box below

There would need to be some clear policy decisions setting out the rationale for targeting only NHS grounds. It will be extremely difficult to "police" this type of offence on NHS grounds which are extensive. This could also essentially put a legal onus on NHS staff to report a patient/work colleague/visitor for smoking, which may conflict with their healthcare relationship with patients and/or staff members. Providing advice to

smokers that this habit is not good for their health is very different to reporting someone for a potential prosecutable/fineable offence.

Thought should be given to targeting grounds of other public body or health related premises e.g. local authority buildings, schools, nurseries, nursing homes and public spaces such as shopping centres and streets etc.

Any legislation will have to consider the legal position of the ground "owner". E.g. will hospitals be fined if smokers are found on their premises?

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)?

Exceptions may be made only after a thorough risk assessment has established that there is an increased risk to staff and patients if smoking is not permitted, particularly in facilities managing challenging patients. Risk assessments should be documented and subject to regular review. At the same time the health care teams of such facilities should be proactively supported to move 'smoke free' policies forward in their working environment.

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

Trading standards should be given the ability to impose fines. Police Scotland may also have a role in the management of smokers who persistently smoke within designated areas although this may be unmanageable due to numbers. If NHS staff or additional monitoring staff are involved on NHS premises is this the best use of public money when healthcare budgets are tight?

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

The penalty should be a fine. An increasing scale of fines should be available for repeat offences.

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

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 ☐ x

d. Other actions. Please specify in the box below

Local Authorities should have the powers that enable them to fulfil their duty to protect children from second-hand smoke. Such powers should have the potential to be applied to all areas in which children might be exposed. i.e. areas around schools and community centres, areas where children play, areas that families utilise such as parks, dry ski slopes, gardens, mazes, shopping centres etc.

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

Local Authorities should have the powers that enable them to fulfil their duty to protect children from second-hand smoke. Such powers should have the potential to be applied to all areas in which children might be exposed. i.e. areas around schools and community centres, areas where children play, areas that families utilise. Such areas may differ across the nation and that is why it is important that Local Authorities have the power to designate children's outdoor play areas.

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

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

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

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?

There should be no authorisation facility allowed. Young people under the age of 18 should be prohibited from selling tobacco and e-cigarettes.

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

a. the penalty

a ☐x

b. the enforcement arrangements

b ☐x

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)?

Many vulnerable groups may be more likely to smoke and so these measures provide the opportunity to reduce the health inequalities that they may experience

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

These measures are likely to reduce inequalities and have a positive effect.

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

Protecting vulnerable groups from the adverse effects of smoking should be a primary aim of any proposed legislation.

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?

Selling tobacco and e-cigarettes is likely to be a very small part of the business volumes of most retailers. Most people do not smoke in Scotland.

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

There should be significant savings to be made from reduced requirements for street cleaning, to remove the discarded cigarette tabs from public areas

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

These measures should be introduced as quickly as possible to protect public health.

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

Businesses should be licensed to sell tobacco and e-cigarettes in a similar way and with similar measures to the licensing arrangements for alcohol

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.

Members of the Directorate of Public Health, NHS Tayside have no vested interests in the tobacco industry, whether direct, indirect or funding sources.