

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, Except for E-cigarettes and devices licensed as medicines for the purpose of nicotine replacement in tobacco smoking cessation then the minimum age for the licensed use of the device should be applied.

N.b. Currently there are no e-devices delivering nicotine which are licensed medicines for the purpose of smoking cessation or any other purpose.

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 Unless it is licensed as a medicine for the purpose of nicotine replacement in tobacco smoking cessation then the minimum age for the licensed use of the device should be applied

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. The advertising of such products is designed to make the use of nicotine containing products attractive and it is important that e – cigarettes do not develop into a ‘gateway’ drug for cigarettes and other tobacco products.
Except E-cigarettes and devices licensed as medicines for the purpose of nicotine replacement in tobacco smoking cessation"

Proxy purchase for e-cigarettes

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

Yes Except for E-cigarettes and devices licensed as medicines for the purpose of nicotine replacement in tobacco smoking cessation" then a suitably qualified individual may determine whether a proxy purchase should be allowed

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 with the exception of any e-cigarettes or devices which may be licensed as medicines as above

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

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. Leafleting | 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)
f. Point of sale advertising (advertising for products and services at the places where they were bought)
g. Events sponsorship with a domestic setting

e ☒
f ☒
g ☒

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

E-cigarettes and devices licensed as medicines.

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)?

The Scottish Pharmacy Public Health network has given a comprehensive, referenced reply with which we agree

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?

As above

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 Except for E-cigarettes and devices licensed as medicines for the purpose of nicotine replacement in tobacco smoking cessation

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?

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 *Electronic cigarettes: review of use, content, safety, effects on smokers and potential for harm and benefit*. Addiction. doi:

10.1111/add.12659

There are insufficient data to support e-cigarettes safety when used in an enclosed space.

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?

The offence should apply to any individual even though it is possible that an individual smoking in a vehicle may be themselves under 18.

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?

Yes but only if the home is stationary and clearly parked up for use as a habitation.

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

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

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

It is reasonable to apply an exclusion zone to hospital entrances for example but NHS hospital grounds can be extensive and 'policing' grounds to apply the legislation may prove an additional expense to the NHS

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 after a thorough risk assessment has established that there is a greater risk to staff and patients if smoking is not permitted, particularly in facilities managing challenging patients. Risk assessments should be documented. 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 on traders and Police Scotland.

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

Fining with an increasing scale for repeat offenders.

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 ☒

d. Other actions. Please specify in the box below

Local Authorities should have the powers to designate areas as smoke free zones. Legislation should then be applied to allow these areas to be enforced in a similar way to exclusion around NHS premises.

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

Any area that is recognised as being predominantly for the use and recreation of children or an area which children might be expected to use for recreation e.g. tennis courts, football pitches.

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?

Another adult working in 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)?

Those with mental health issues or learning disabilities may be disadvantaged as changes in smoking legislation present a more far reaching cultural change than has previously applied

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

More health education provision to these groups particularly before and immediately after the introduction of legislation.

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

No comment

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?

No comment

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

We have no comment

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

At least 6 months and a variety of media should be used e.g. radio, tv,

newspapers, leaflets and posters in affected premises

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