

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 ☐

The Institute believes that the minimum age of sale for e-cigarette devices and associated paraphernalia should be equal to the sale of more “traditional” tobacco products as detailed within the Tobacco and Primary Medical Services (Scotland) Act 2010 which is 18. This will ensure a consistent approach to regulation and remove the perception that e-cigarettes are less harmful than traditional tobacco products.

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 ☒

The Institute believes that the arrangements for the regulation of e-cigarettes should reflect current arrangements of that for the sale of traditional tobacco products. This would mean that the retailer would be committing an offence if they sold an e-cigarette product to someone under 18 years old and anyone under 18 years of age would be committing an offence if they attempt to purchase such items.

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

Yes ☒ No ☐

The Institute believes that age restrictions cannot be effectively verified or regulated from self-service vending machines. Therefore, the Institute advocates the same restrictions for the prohibition of vending machines for the sale of tobacco products as required by regulation 9 of the Tobacco and Primary Medical Services (Scotland) Act 2010.

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?

The e-cigarette market is continually evolving and the Institute believes that to adequately protect public health, legislation should safeguard against future advances in this market. Therefore, the Institute advises that restrictions should be in place for a e-cigarette accessories.

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 ☐

The Institute believes that all advertising that may influence young people and non-smokers to use e-cigarettes and associated products should be carefully regulated.

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?

The e-cigarette market is continually evolving as is the public health literature around any benefits of using such products. Any approved advertising should be directed only at highlighting any benefit of switching from traditional tobacco based products to e-cigarettes. Advertisements should only be allowed if appropriate positive health related information, such as smoking cessation services are displayed simultaneously.

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 comment

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 comment

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?

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?

The Institute believes that the use of e-cigarettes should be banned in enclosed public spaces. Whilst the evidence base for the health impact of e-cigarettes is growing, the Institute believes that a precautionary approach is best under the circumstances. Scotland was the first home nation to completely ban smoking in all enclosed public spaces. A tremendous amount of effort and resources across a multi-disciplinary workforce ensured the success of the smoking ban, with Environmental Health Officers taking the lead. The Institute believes that by allowing the use of e-cigarettes in enclosed public spaces,

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

Comments

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?

The Institute believes that it should be an offence for anyone to smoke in a vehicle carrying someone under the age of 18. If the driver of the vehicle is under 18 and carrying passengers under the age of 18, then the offence should apply to the driver. This would also support the provisions of the Tobacco and Primary Medical Services (Scotland) Act 2010 with regards to the age restricted sale of tobacco products.

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?

At the present time, the Institute believes that only Police Officers and officers of the Driver and Vehicle Standards Agency (DVSA) can legally stop vehicles in Scotland.

Environmental Health Officers have enforced the ban in enclosed public spaces since the introduction of the Smoking, Health and Social Care (Scotland) Act 2005 and the Institute believes that a formal collaborative approach with Police Scotland should be adopted. This would ensure that the correct skills, knowledge and experiences are utilised in addressing the public health concern of smoking in vehicles where someone under the age of 18 is present.

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?

There should be exemptions applied to motorcycles and convertible vehicles where the roof is completely down.

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

The Institute believes that a reasonable defence would be if the driver had taken all reasonable steps to prevent a person from smoking within the

vehicle.

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 <input checked="" type="checkbox"/> |
| b. Only hospital grounds | b <input type="checkbox"/> |
| c. Only within a designated perimeter around NHS buildings | c <input type="checkbox"/> |
| d Other suggestions, including reasons, in the box below | |

No comment

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)?

The Institute believes that there should not be any exemptions.

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

NHS authorities should enforce any national legislation implemented to prevent smoking in all NHS grounds. However, local authority Environmental Health Officers could be involved with enforcement activities should there be appropriate protected resource investment and the cost of such activity is met either by the Scottish Government or the individual NHS authority.

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

The Institute believes that the penalty for smoking in NHS grounds should be identical to the offence of smoking in enclosed public spaces.

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?

No comment

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

Local authorities should be given the power to designate what areas and grounds should be smoke-free. This decision should be supported by national policy and guidelines which the local authority must have due regard for when making such decisions.

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

The Institute believes that this should include children's play parks and areas, sporting venues and large public events such as concerts.

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-medical 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?

The decision should be made by someone over the age of 18 year old who is employed and working on the premises at the time of sale.

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)?

No comment

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

No comments

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?

The Institute believes that adequate funding and other resources must be available and safeguarded to all enforcement authorities who will be involved with the regulation of e-cigarettes in Scotland.

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

No comment

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

A lead in time of 12 months would be recommended and the public should be informed through traditional media routes and working with NHS boards, manufacturers and retailers to promote the change in legislation.

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

No comment

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.

The Institute does not have any links to the tobacco industry.

ADDITIONAL INFORMATION

The Royal Environmental Health Institute of Scotland (the Institute) has been in existence for over 139 years and has around 1,000 members the majority of whom are Environmental Health Officers working in that capacity for Scottish local authorities. The Institute is Incorporated by Royal Charter, is an independent self-financing organisation, is an independent awarding body for the profession and for a wide range of community training qualifications, and is a registered Scottish charity

(No. SC009406). The Institute neither seeks nor receives grant aid and its charitable activities are funded significantly by the subscriptions received from its members.

The objects for which the Institute is established are for the benefit of the community to promote the advancement of Environmental Health by:

- stimulating interest in and disseminating knowledge concerning Environmental Health;
- promoting education and training in matters relating to Environmental Health; and
- maintaining, by examination or otherwise, high standards of professional practice and conduct on the part of Environmental Health Officers in Scotland.

Environmental Health Officers in Scotland are part of a graduate only profession and by virtue of their underpinning academic education, professional practical training, professional qualifications and experience are well placed to apply a holistic public health approach to the education of the public and to the enforcement of a wide range of environmental and public health legislation.

The Institute is an independent awarding body for the profession and currently accredits the BSc (Hons) Environmental Health degree courses delivered at the University of Strathclyde and at the University of the West of Scotland as well as the MSc Environmental Health degree courses delivered at the University of Strathclyde and at the University of Derby (distance learning option). Environmental Health students, graduate and undergraduate, who wish to pursue a career as an Environmental Health Officer require to undertake a period of professional practical training and to successfully complete the Institute's Professional Examination which determines their professional competence to practice.

In terms of EU Directive 2005/36/EC on the recognition of Professional Qualifications within Member States and under the European Communities (Recognition of Professional Qualifications) Regulations 2007 the Royal Environmental Health Institute of Scotland is a UK Competent Authority for the Profession titles Environmental Health Officer and Chartered Environmental Health Officer.