

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 ☐

A recent test purchase exercise in Scotland has shown that despite a voluntary trade ban on the sale of e-cigarettes to young person's age under 18 that a significant number of the retailers sold e-cigarettes to persons under 18 years old.

The 2013 SALSUS indicates that 17% of 15 year olds and 7 % of 13 year olds have tried e –cigarettes. An introduction of an age restriction of 18 for these products would bring them in line with the age restriction already in place for tobacco and alcohol leading to less confusion for retailers and the public alike.

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 ☒

This would bring any legislation on e-cigarettes in line alcohol and tobacco and be

less confusing for both retailers and the public alike.

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?

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 ☐

Smoking is an adult choice and whilst e-cigarettes may have a role to play in assisting in smoking reduction or cessation they should not be marketed in such a way that they appeal to young people or people who are not already smokers as we do not have sufficient evidence of any long term harm they may cause users.

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 ☐

If the desired effect of any legislation is to prevent access to, and promotion of, this type of product to young people then it would be prudent to ensure that e-cigarettes are not promoted at point of sale as tobacco has been in the past.

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) | 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?

Exemptions should be similar to the exclusions contained the Tobacco Advertising and Promotions Act 2002 for tobacco i.e. communications made in respect of trade/commercial purposes and also the exemptions in the Tobacco and Primary Medical Services Act 2010 for requested and incidental displays of the product.

It would be important to ensure that other more modern methods of promotion **are subject to regulation** such as social media, blogs, YouTube endorsements and also pop-ups on online sites used by young people.

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)?

Only anecdotal evidence that current advertising sensationalises e-cigs, makes it look attractive and safe.

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

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 ☐

Currently the number of e-cigarette retailers and their details are unknown. Having a register of e-cigarette sellers would allow targeting of these retailers for advice and support, as well as enforcement, where necessary.

For the register to be effective it must be properly maintained and resourced so that new entrants, changes to the register and removals from the register are all correctly carried out and notified to the designated enforcement body. The register could be a very powerful enforcement tool if it was maintained and updated regularly.

To make it easier for existing tobacco retailers already on the Tobacco Register they should be allowed to amend their existing registration to include e cigarettes and a new category created for premises that only sell e-cigarettes.

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

Yes ☒ No ☐

There should be similar penalties/fines to those contained in The Tobacco and Primary Medical Services (Scotland) Act including the provision of a lesser fine for young person aged 16 to 18 and also a bar to issuing a fixed penalty to young people age under 16.

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

Comments

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 ☐

The same restrictions for cigarettes should apply to prevent "smoking" being seen as the norm and to prevent e-cigarettes just acting as a temporary substitution from tobacco (dual use).

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?

Ban the use of these products in public places as per any other tobacco products to ensure a clear, consistent message. This reduces the

opportunity for mimicking behaviours and currently the effects of second hand vapour are unknown or unclear.

Policing the use of other tobacco products in pubs, cafes and other enclosed public spaces will be compromised due to wasted staff time ascertaining if they are seeing vapour or smoke if not banned.

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

NA

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?

NA

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 consistent with purchasing of cigarettes i.e. it is an offence for under 18s to purchase cigarettes therefore it should be an offence of under 18s to smoke. It is irrelevant if it is in a car or not.

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?

NA

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

NA

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 ☐

This question is best answered by NHS Boards given that it is NHS Boards who have called for legislation to help enforce this policy.

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

As above, this question is best answered by NHS Boards however consideration needs to be given to the practicality of enforcing the legislation over extensive open areas.

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)?

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

It is imperative that primary responsibility for enforcement lies with those responsible for the premises on which the smoking is taking place. Powers should be made available to enable NHS Facilities Management Staff to issue fixed penalty notices. It is unrealistic to expect Environmental Health or Police to have a significant role in enforcing anti-smoking legislation at NHS owned properties.

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

NA

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?

NA

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

NA

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

Any play area e.g. play parks and play areas within hospitality.

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 ☐

This is a simple, low cost method of preventing age restricted sales. It was designed, developed and promoted by the trade themselves. It is already mandatory under alcohol legislation, is easily understood by the public and young adults are familiar with its protocol.

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 ☐

This is standard good practice in the prevention of sales of all age restricted products and is already mandatory in alcohol sales.

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 person who has registered the premises in the first instance but if not available then the manager and again, if not available, another adult

working in the 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)?

None

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

NA

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

No

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?

There will be costs for local authorities Trading Standards Services in financial terms and officers time constraints in providing business support and to enforce any changes to the legislation. There could also be enforcement costs if Environmental Health are expected to take on additional enforcement roles for NHS properties or Children's outdoor areas.

There will also be costs associated with promoting consumer awareness of any changes to the legislation.

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

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

The public should be informed with consistent clear message via TV, media, radio, papers, facebook, twitter, bill boards, buses.

The lead in time should be 12 months with a 6 month light touch period for registration similar to the introduction for tobacco registration.

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

1. A clear definition of what constitutes electronic cigarette “devices”, “refills” and “accessories” is required to ensure the proposed regulation can be effectively enforced.
2. Challenge 25 for alcohol was brought in to force as a breach of the premises licence conditions under the Licensing (Scotland) Act 2005. Consideration of offences and penalties would be needed to extend this policy to tobacco/e-cigarettes in order to minimise retailer confusion.
3. The sale of tobacco and potentially e-cigarettes to a person aged under 18 is not a relevant offence under The Licensing (Relevant Offences) (Scotland) Regulations 2007 yet alcohol and tobacco both share the same age restriction.
4. The e- cigarette market is a developing sector and further evidence should be sought as to the harm or risk factors involved before further regulation to the extent that is proposed, is implemented.

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, none.