About Cancer Research UK

Every year around 300,000 people are diagnosed with cancer in the UK and more than 150,000 people die from cancer. Cancer Research UK is the world's leading cancer charity dedicated to saving lives through research. Together with our partners and supporters, our vision is to bring forward the day when all cancers are cured. As the largest fundraising charity in the UK, we support research into all aspects of cancer through the work of over 4,000 scientists, doctors and nurses. In 2014/15, we spent £341 million on research, plus £41 million to the Francis Crick Institute. The charity's pioneering work has been at the heart of the progress that has already seen survival rates in the UK double in the last forty years. We receive no funding from the Government for our research.

Section one: provisions in relation to Nicotine Vapour Products (NVPs)

Age restriction for NVPs

Cancer Research UK (CRUK) believes that electronic cigarettes (e-cigarettes) are almost certainly much safer than tobacco cigarettes and may help smokers to cut down or quit smoking. However, the full health effects are unknown and the evidence suggests that exposure to nicotine is particularly dangerous for younger people and use in adolescence which may cause adverse consequences for brain development. The level of toxicants found in e-cigarette vapour is generally substantially lower than that found in tobacco cigarette smoke. However the health implications of long-term exposure to nicotine and propylene glycol/glycerine, the main chemicals in e-cigarette vapour are also not fully understood.

Currently there is little evidence that children are using e-cigarettes. In particular, among children in Great Britain who have never smoked, only 1% has used an e-cigarette once or twice. However given that this is a growing market it is important that adequate protections are put in place to prevent individuals aged under-18 from purchasing e-cigarettes. Furthermore, statistics from the Welsh Government suggested the need for caution as more 10-11 year olds had tried e-cigarettes (6%) than tobacco cigarettes (2%).

There are some e-cigarette products (e.g. ‘shisha pens’ and nicotine-free e-cigarettes) which claim to not contain nicotine, but which are contaminated with low levels of nicotine, as a result these products may not be risk-free. We believe that with respect to e-cigarettes and similar devices a precautionary approach is valid in preventing uptake amongst under-18s.

We support the introduction of an age restriction on the purchase of e-cigarettes to prevent young people under the age of 18 from purchasing them. The measure will also bring Scotland in line with the rest of the UK.
who are introducing similar proposals to prevent under-18s purchasing nicotine containing products, which are not licensed as medicines.

The Department of Health has recently launched its consultation on the implementation of the revised Tobacco Products Directive (TPD) (2014/40/EU). The consultation document notes the possible inconsistencies in the definitions of e-cigarettes and accessories (including refill liquids and tanks). The Scottish Government should be aware of this issue and address any conflict between the TPD definitions and the definition of an NVP as used in this Bill.

**Prohibition of sales of NVPs from vending machines**

We fully support the banning of the sale of NVPs through self service vending machines. The experience of tobacco cigarettes has demonstrated that vending machines have been used by under-18 smokers to purchase cigarettes. There is currently no evidence to demonstrate purchases of e-cigarettes by under-18s from vending machines, in part because there appears to be few such machines. However, if a ban on the sale of e-cigarettes to under-18s is introduced as proposed, this creates a genuine risk that under-18s may circumvent the law by purchasing them directly from vending machines.

**Proxy purchase of NVPs**

We fully support the introduction of an offence for the proxy purchasing of NVPs, consistent with legislation for other age-restricted products.

**Mandatory registration for NVPs**

We believe that a distinction in the relative harm of e-cigarettes compared to tobacco cigarettes, should inform different regulatory treatment of these products. The market in e-cigarettes is substantially different to that of tobacco. For example, compared to tobacco, a high proportion of sales of e-cigarettes, refills and components are conducted online. The introduction of mandatory registration may lead to the collection of ‘two-tier’ data, fuelling a misleading picture of the NVP market.

It is unclear whether registering with the Scottish Tobacco Retailers Register will have any impact on compliance amongst these retailers. One of the main reasons the Scottish Tobacco Retailer Register was established was to provide trading standards with information on the density of tobacco retail outlets to help control illicit tobacco and reduce inequalities. These same issues are not pertinent to NVPs and therefore mirroring the offences and penalties for NVPs, as are currently in place for tobacco products, does not seem a proportional response.

Therefore, on balance we do not believe that there is sufficient evidence or reasons to justify requiring NVP retailers to be subject to mandatory registration, which may place an administrative burden on retailers who do not sell tobacco.
Domestic advertising and promotion of NVPs

There is insufficient evidence to conclude whether e-cigarette marketing renormalises or denormalises smoking. Given this uncertainty we believe that the appropriate response is to protect young people and non-smokers or non-nicotine users from e-cigarette marketing in a proportionate way.

In May 2016, the TPD will introduce new restrictions on cross-border advertising of NVPs, as well as – for the first time – regulating the market in products which have and have not been granted a medicinal license. As indicated in Q21 of the UK Government consultation on the implementation of the revised TPD\textsuperscript{10}, the intention is that labelling will be applied to e-cigarettes will indicate that their use is not recommended for use by non-smokers.

We believe that further regulation of domestic advertising are justified, whereby a proportionate response to the marketing of e-cigarettes seeks to minimise young people and non-smokers exposure to marketing and the appeal of e-cigarettes without placing a blanket ban on their promotion.

It is also important to note that any further restrictions to e-cigarette marketing should not apply to e-cigarettes which are licensed by the Medicines and Healthcare products Regulatory Agency (MHRA). Products which are licensed by the MHRA will be treated as medicinal products and will be subjected to specific restrictions on the content of marketing communications and advertising as set out in Committees of Advertising Practice (CAP) codes. The new rules on e-cigarette marketing recently developed by CAP will also apply to these products. Therefore further restrictions on the marketing of these licensed products will be unnecessary so long as these advertisements adhere to the CAP codes.

However, there are areas whether further regulation of unlicensed NVP marketing is justified, beyond the cross-border provisions of the TPD.

We welcome the Bill’s proposals to place restrictions on:

- Domestic sponsorship of an activity, event or person, and;
- Brand-stretching in products and services (whereby NVP branding is used in relation to unrelated products or services and vice versa).
- We also support restrictions on free distribution of unlicensed NVPs. These restrictions should not apply to products which are granted a medicines license.
  - We also support the exemption of point of sale advertising of NVPs, as laid out in the Bill.

However, we do not support regulation on nominal pricing. The price difference between tobacco products and NVPs may be significant in encouraging existing smokers to move from tobacco products to NVPs. Smoking is a greater source of health inequality than social position,
underlining that without reducing smoking prevalence in the most deprived
groups (as well as reducing the number of smokers overall), policies designed
to reduce health inequalities will have limited success\textsuperscript{11}.

Paragraph 66 of the policy memorandum accompanying the Bill notes the
following: ‘There is no good reason why NVPs should be marketed to non-
smokers or to children and young people but there is also no practical way to
ensure that permitted mass advertising only targets adult smokers, so a partial
restriction is not an option in that respect’.

A CRUK commissioned study\textsuperscript{12} from the University of Stirling which identified
the different forms of e-cigarette marketing, demonstrated that some e-
cigarette marketing strategies may appeal to children.

We take our responsibility to inform the public about potential risks seriously
and we will continue to provide balanced information for e-cigarette users. We
cautions potential users about the unknowns surrounding e-cigarettes and
focus on Stop Smoking Services as the best possible way to quit smoking.

However, we believe that e-cigarettes do have the potential to help
smokers quit\textsuperscript{13} and therefore, on balance, believe that there may be value in allowing some forms of promotion which increase smokers’
awareness of e-cigarettes and encourages them to quit smoking. A
CRUK funded real-world survey, the Smoking Toolkit study, estimates 20,000 extra people have succeeded in quitting using e-
cigarettes in the last year\textsuperscript{14}. Tobacco control strategies which also
incorporate targeted mass media campaigns have been shown to be more effective in increasing smoking cessation\textsuperscript{15} particularly among
relatively deprived socioeconomic groups\textsuperscript{16}.

We are concerned about the unintended consequences of treating e-
cigarettes like tobacco products within regulatory frameworks and the
potential that this could have in discouraging quitting. As recent data from
Action on Smoking and Health (ASH) shows, we are facing a problem of
public perception of e-cigarettes and need to continue to communicate both
the promise for these products in terms of tobacco control and the challenges
we face around product safety and efficacy while waiting for longer term and
more robust data\textsuperscript{17}. We are committed to funding more e-cigarette research in
the coming years and so far in 2015 we have held three workshops bringing
together researchers and funders to address these questions.

Therefore, while e-cigarettes seem to be playing a role in smoking
cessation, and in ahead of the introduction of licensed products which
will significantly alter the current market, we do not – at this time -
support the full prohibition on all NVP domestic advertising and
promotion.
Supporting the age restriction for the purchase of both tobacco and NVPs

We support the introduction of a similar mandatory age verification scheme, distinct from the licensing requirements for alcohol, and welcome the Government's decision to consult with stakeholders on guidance. However we do not believe that penalties for underage sales of tobacco and NVPs should be the same. The level of the penalty for underage NVP sales should be high enough to encourage compliance, but should be lower than the penalty for selling tobacco to reflect the relative harms of these products.

Section two: The proposal to ban smoking in hospital grounds

Smoke-free (tobacco) NHS grounds

We fully support the principal that patients should not be exposed to carcinogenic smoke in the very place they have gone to get well. We are aware that Health Boards across Scotland have already implemented completely smokefree policies, as recommended in the 2005 guidance issued by the Scottish Government. However they do not have the legislative mandate to enforce the guidance. We note the recommendations of the World Health Organisation which highlights that compliance with smokefree legislation requires three components; good legislation, a good enforcement strategy and; a good communications and outreach strategy. This supports the case that compliance with Health Boards’ smokefree policies would be improved through the granting of a legislative mandate. However, there were a number of issues which we raised in the original consultation with respect to the enforcement of smoke-free bans:

- Under current legislation, we note the smokefree exemptions for adult hospices in Scotland “For humanitarian reasons”. Extending a ban will impact on terminal patients not covered by this exemption, which could create a disparity in how smokefree policies are being applied and to whom they affect.

- There are also issues of enforcement to which need to be confronted, one of the most pressing is the size of some NHS facilities, which are not ‘contained’, but rather are separated by trunk roads and alike. It will be extremely difficult to prevent enforcement across such large areas becoming an arbitrary exercise.

- The responsibility of that enforcement is unclear. The Royal College of Nursing, for example, have been explicit that nursing staff should not be expected to enforce complete smokefree bans.

A number of media reports have noted the practical difficulty of enforcing the smokefree policies in NHS sites across Scotland. While this does not constitute an ‘evaluation’ of the measures, it does highlight the high-level scrutiny these measures are subject to. Concerns about compliance are also
noted under paragraphs 87-88 of the policy memorandum, accompanying the Bill, including the concerns and 'desirability' of enforcement with relation to patients.

With consideration of these factors, we believe the proposal to extend a designated smoke-free perimeter outside the hospital building, is a sensible approach which strikes a balance between the public health principle, and the practical enforceability; subject to the regulations providing further detail in relation to enforcement responsibilities of the measure – including the levels at which fixed penalty notices are set:

* Paragraphs 90 and 96 of the policy memorandum accompanying the consultation seem unclear with regard to the intention to use fixed penalty notices, including the consistency with the 2005 Act.*

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