Health (Tobacco, Nicotine etc. and Care)(Scotland) Bill

Totally Wicked Ltd

Totally Wicked welcomes the opportunity to respond to the above named call for evidence.

Totally Wicked is an electronic cigarette manufacturing business based in Lancashire. The company, which was formed in 2008 now employs over 120 people locally and has established businesses in both Germany and the United States. Significantly, unlike most companies in this sector, Totally Wicked manufacture in the UK and export globally. This includes the manufacture of our own fluid ranges which use only UK sourced ingredients and our own product development team which includes a dedicated manufacturing and assembly business in Lancashire. Since 2008 Totally Wicked has been responsible for creating over 500 jobs in eight EU Member States.

Totally Wicked has a significant presence throughout Scotland in terms of customers and individual retail outlets selling our products.

The guiding principle of our business is to put our customers’ needs first. We therefore wish for our sector to be robustly and proportionately regulated. We have always gone above and beyond what has been required under the current regulatory regime. Over the last year we have also been working with Public Health, consumers, Trading Standards, and others from our industry to develop the very first nationally recognised voluntary standard that e-cigarette and e-liquid manufacturers, importers and distributors can adopt to provide assurance to their end customers that they are doing the right things to ensure quality and safety in the end product – British Standards Institution Publicly Available Specification for vaping products (BSI PAS 54115).

According to figures produced by the Scottish Government 13,000 people die every year throughout Scotland as a result of smoking related illnesses.\(^1\) All those with an interest in public health need to stay focussed on reducing this figure. Electronic cigarettes or Nicotine Vapour Products (NVPs) as they are referred to in this Bill, have a significant role to play in this.\(^2\) Robert West, Professor of health psychology and director of tobacco studies at University College London’s department of epidemiology and public health said: “We found that those using the e-cigarette were about 60 per cent more likely still not to be smoking than those using the licensed product or nothing at all.”\(^3\) NVPs are however not some form of more effective NRT product, they are totally different and need to be regulated accordingly.

Regulation whilst being robust needs to be proportionate. Policy makers with an interest in public health should therefore develop regulation that allows

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\(^3\) Study carried out on 5,000 smokers, by Professor Robert West looking at the success rate of different methods to stop smoking: nicotine gum, nicotine patches, nothing, or e-cigarettes. Reported on BBC Breakfast 28 April 2014
adult smokers throughout Scotland to have the genuine choice of an alternative and significantly less harmful product.

In this context please find below Totally Wicked’s responses to the aspects of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill that relate to NVPs.

**Sales of NVPs to those under the age of 18:**

Totally Wicked believes that NVPs are a product for current/former adult smokers and current users of nicotine containing products. Therefore Totally Wicked fully supports a ban on the sale of NVPs to those under the age of 18. Totally Wicked also supports the proposed ban on proxy sales and a ban on the sale of NVPs via vending machines.

Totally Wicked has been voluntarily implementing a ban on the sale of NVPs to those under the age of 18 for the past seven years, as have other responsible companies. Therefore it would be relatively easy to introduce this measure and the Scottish Government should do so at the earliest available opportunity.

**Scottish Tobacco Retailers Register:**

Totally Wicked does not believe retailers selling NVPs should be required to register on the Scottish Tobacco Retailers Register as they are not selling a tobacco product.

Neither electronic cigarettes nor e-liquids are tobacco products, as the recent negotiations and votes surrounding the Tobacco Products Directive made clear, NVPs are consumer products.

According to the latest research produced by Professor Peter Hajek, Director of the Tobacco Dependence Research Unit at Barts and The London School of Medicine and Dentistry, Queen Mary, University of London, NVPs are at least 95 per cent less harmful than tobacco cigarettes.\(^4\)

The key health benefit of NVPs is determined by how many smokers switch to them or use them as a staging post to quitting completely. This means that NVPs have to be an attractive alternative to tobacco cigarettes for established smokers. It would therefore be perverse and counterproductive from a public health standpoint to subject NVPs to the restrictions enforced under the Scottish Tobacco Retailers Register.

Totally Wicked believe that it is socially responsible, and legitimate, to openly market NVPs particularly when there is little evidence to demonstrate that children and non-smokers are using them. Research undertaken by John Moores University demonstrates that there is no correlation between NVP advertising and use amongst children. The research concluded that, ‘Despite

\(^4\) Professor Peter Hajek: “Saying e-cigs are 95 per cent safer is not a medical claim, it is a truth.” E-cigarette Summit 2014, Royal Society, London (http://vaping.com/ecigsummit2014/peter-hajek) and http://www.addictionjournal.org/press-releases/new-study-challenges-claims-on-aldehyde-contentof-third-generation-e-cigarettes
widespread advertising of e-cigarette brands in print, visual and social media, the majority of participants (children) reported that they had not seen any advertising for e-cigarettes and showed a lack of awareness of advertising and marketing strategies and approaches.\(^5\)

The Scottish Tobacco Retailers Register comes under the Tobacco and Primary Medical Services (Scotland) Act 2010. This Act empowers trading standards officers in Scotland to issue fixed penalty notices for the sale of tobacco to those under the age of 18. According to the Act, if a retailer has been found to be selling tobacco to those under the age of 18 three times within a two year period a local authority can apply to the courts to have the retailer banned from selling tobacco. A court can then ban a retailer from selling tobacco for up to 24 months.

Totally Wicked strongly supports the banning of the sale of NVPs to those under the age of 18. Therefore Totally Wicked would support the issuing of fixed penalty notices to retailers found selling NVPs to those under the age of 18. Totally Wicked would also support repeat multiple offenders being banned by the courts from selling NVPs for up to 24 months.

For the avoidance of doubt, Totally Wicked does not support any other offences and penalties contained within the Scottish Tobacco Retailers Register also being used for retailers of NVPs.

Policy makers must ask themselves what public health benefit would derive from including retailers selling NVPs on the Scottish Tobacco Retailers Register as they are not selling a tobacco product. Totally Wicked believe such a move would have a wholly negative public health impact across Scotland.

**Restricting domestic advertising and promotion of NVPs:**

Totally Wicked does not think it necessary for the Scottish Government to introduce any new rules for the domestic advertising and promotion of NVPs.

For Totally Wicked the marketing of NVPs should be primarily aimed at former smokers and existing users of nicotine containing products. In addition, such marketing must accept responsibility for not explicitly or indirectly targeting those under the age of 18. Within this context Totally Wicked believe a responsible advertising and marketing regulatory regime can be drawn up that allows for the promotion of NVPs as a viable alternative to conventional tobacco products, that allow users to continue their nicotine use without any of the harm associated with tobacco.

Totally Wicked believes that the recently published rules for the advertising of NVPs, drawn up by the Committee of Advertising Practice\(^6\), provide a more than adequate regulatory regime for the advertising of NVPs within Scotland.

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\(^5\) Liverpool John Moores University – ‘Young People’s Perceptions and Experiences of Electronic Cigarettes’

If the Scottish Government is minded to develop new regulations for the domestic advertising of NVPs, something Totally Wicked does not think necessary, then these new regulations should be evidence based and proportionate.

Presently there is no evidence to suggest that children or non-smokers are using NVPs. The anti-smoking charity ASH regularly carries out research into the use of NVPs by children, they concluded: ‘Of those who had heard of e-cigarettes and had never smoked a cigarette, 98 per cent reported never having tried an electronic cigarette and two per cent reported having tried them “once or twice”. There is almost no evidence of regular electronic cigarette use among children who have never smoked or who have only tried smoking once.’ The latest statistical bulletin from the Office for National Statistics of Adult Smoking Habits in Great Britain, 2013, showed that 0.14 per cent of non-smokers use NVPs compared to 11.8 per cent of smokers and 4.8 per cent of ex-smokers in Great Britain.

Research undertaken by Queen Mary University found that a child trying a tobacco cigarette for the first time has a 50 per cent chance of becoming a regular smoker. The same research found no evidence that a child trying a NVP for the first time goes on to become a regular user of NVPs.

Additional comments

Originally the Scottish Government proposed including a ban on the use of NVPs in enclosed public places. Totally Wicked is delighted that, having listened to the evidence, this proposal was dropped. We hope that the Scottish Parliament’s Health and Sport Committee do not try and reintroduce this proposal.

Any decision as to whether or not NVPs should be banned in enclosed public spaces should be based on the following evidence based criteria:

- Would such a ban result in more people switching from tobacco products to NVPs?
- Does the public use of NVPs undermine the existing smoking ban?
- Does the vapour produced by NVPs pose a threat to the health of bystanders?
- Does the public use of NVPs act as a gateway to tobacco products?
- Does the public use of NVPs normalise smoking?

In answering the above questions, the weight of independent evidence so unequivocally demonstrates that a ban on the use of NVPs in enclosed public places would be disproportionate, counterproductive from a public health

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9 Research undertaken by Professor Peter Hajek, Director of the Tobacco Dependence Research Unit at Queen Mary University of London: http://www.bbc.co.uk/news/health-27184630 28/04/2014
standpoint, go against the precautionary principle as originally intended, and demonstrate that the Scottish Government and the Scottish Parliament’s Health and Sport Committee were worrying about problems that do not exist.

The original ban on smoking in public places was introduced, not to improve the health of smokers, but to protect non-smokers from exposure to second-hand smoke. Any attempt to include NVPs within this ban would be to state that the vapour produced by NVPs is as dangerous to bystanders as the smoke from tobacco products. In actual fact, all available evidence demonstrates that there is no harm to bystanders caused by second-hand vapour. Recent research produced by Dr Konstantinos Farsalinos (Researcher, Onassis Cardiac Surgery Centre, Greece, University Hospital Gathuisberg, Belgium) and Professor Riccardo Polosa (Director of the Institute for Internal Medicine and Clinical Immunology of the University of Catania, Italy) concluded that the ‘effects of e-cigarette use on by-standers are minimal compared with conventional cigarettes.’

Totally Wicked does not consider that the use of NVPs in enclosed public places undermines nor makes more difficult the enforcement of the current ban on smoking in such places. The Chartered Institute of Environmental Health stated that there is a 99.7 per cent compliance rate with the smoking ban, and there is no evidence to support the idea that the use of NVPs in enclosed public places is undermining this.

Some companies have unilaterally acted and introduced their own bans on the use of NVPs within their businesses. However, public health policy should be based on actual evidence. Those responsible companies and organisations that have taken the time to look at the evidence take a very different position. Cambridgeshire Police, for example, looked in detail and the perceived health fears surrounding NVPs. Following their research, they concluded that it was perfectly acceptable to allow their officers to use NVPs at work.

Commenting on this issue, ASH stated: ‘The fact that many (18 per cent) electronic cigarettes look similar to conventional cigarettes has been said to risk confusion as to their use in enclosed public places, such as public transport. However, given that the most distinctive feature of cigarette smoking is the smell of the smoke, which travels rapidly, and that this is absent from electronic cigarette use, it is not clear how any such confusion would be sustained.’

Recently ASH and the Chartered Institute of Environmental Health have been working together to promote vaping policies for businesses and the public

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10 Safety evaluation and risk assessment of electronic cigarettes as tobacco cigarette substitutes: a systematic review: Konstantinos E. Farsalinos and Riccardo Polosa published online 13 February 2014 Therapeutic Advances in Drug Safety
11 Meeting of the All-Party Groups on Smoking and Health, Pharmacy, and Heart Disease 10 June 2014
12 http://www.cambridge-news.co.uk/Cambridge/Police-in-Cambridgeshire-can-smoke-e-cigarettes-after-health-review-but-they-are-banned-on-our-trains-20130821131920.htm
sector. Totally Wicked recommends that the Scottish Parliament’s Health and Sport Committee looks at the positive results generated from this work.

Recent research from ASH has shown that just 0.1 per cent of NVP users had never smoked tobacco products previously. Given the fact that 99.9 per cent of people who use NVPs are current or former smokers, it is not surprising that NVPs are not acting as a gateway to smoking.\(^\text{14}\)

The issues of renormalisation and gateway are important and expert monitoring is required. However, at this moment in time there is no evidence whatsoever that the use of NVPs is normalising the act of smoking.\(^\text{15}\)

Finally, politicians must remember that the products we manufacture and sell have been recognised by independent experts to be at least 95 per cent less harmful than tobacco products.\(^\text{16}\) We know that 99.9 per cent of vapers are former or current smokers; therefore the direct competitor product for NVPs is the significantly more harmful tobacco product. There is never a situation where it is better to smoke than to vape, therefore any new regulations introduced to cover our sector must be proportionate and must not under any circumstances put NVPs at a competitive disadvantage to tobacco products.

As Professor John Britton from the Royal College of Physicians has said: “If all the smokers in Britain stopped smoking cigarettes and started using e-cigarettes we would save five million deaths in people who are alive today. It’s a massive potential public health prize.”\(^\text{17}\)

Disproportionate regulations in areas such as advertising will not just negatively impact businesses like Totally Wicked, more fundamentally they will have a negative impact on public health across Scotland.

**Totally Wicked Ltd**

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\(^{17}\) The Independent Newspaper, 29 March 2013