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

Scottish Grocers’ Federation

SGF is the national trade association for the independent convenience store industry. There are 5,545 convenience stores in Scotland, these stores provide over 42,000 jobs and the total value of sales is approximately £4 billion per annum.

Convenience store retailers are fully committed to the responsible retailing of age-restricted products. They have fully and effectively implemented the Challenge 25 age verification regime for both alcohol and tobacco products (in relation to tobacco they have done so entirely voluntarily). They have also fully embraced the tobacco retail register.

We welcome the opportunity to respond to the Health and Sport Committee’s call for evidence. In our short submission, we have made reference to a statement of principles on the control of e-cigarettes, produced by a panel of leading experts in nicotine science and public health policy, which was sent to the World Health Organisation. We believe the Committee may find this statement to be of further interest and have attached a copy with our submission.

Overall our view is that electronic cigarettes have significant potential to enable people to move away from tobacco products: this potential should not be quashed by regulations which lack balance and proportionality.

Chapter 1. Sale and Purchase of Tobacco and Nicotine Vapour Products

Sale of NVPs to persons under 18

We agree that NVP’s should be age-restricted – our members already treat these products as being age-restricted - and that it should be an offence to sell these products to persons under the age of 18. We also agree that demonstrating ‘due diligence’ should be a defence in such instances: the seller believed the customer to be aged 18 and over and took reasonable steps to establish the customers age.

Age Verification Policy

We agree that retailers should operate a mandatory age verification policy for NVPs, but this need not be a written policy. The introduction of an age verification regime, such as Challenge 25, will reinforce best practice. However, we do not believe that Scottish Ministers should be given the power to amend the age specified in the Bill (25) as this could only cause inconsistency in practice. Challenge 25 has become an effective benchmark for preventing underage sales; varying the age would only undermine retailers’ efforts to continue this success. We recommend that the tobacco and nicotine vapour products age verification policy should reflect the alcohol age verification policy specified in the Alcohol etc. (Scotland) Act 2010 section
6, which does not give Scottish Ministers the power to amend the age specified.

In 2013 the Scottish government amended existing regulations to enable national identity cards issued by EU member states and UK Ministry of Defence ID cards to become acceptable proof of age documents in relation to the purchase of tobacco and alcohol. To ensure consistency these documents should have the same usage in respect to the purchase of NVPs.

**Purchase of NVPs on Behalf of Persons Under 18**

We agree that the 'proxy purchase' of NVP's should be an offence liable to a fine not exceeding level 5 on the standard scale.

**Sales by Persons Under 18**

We support the provision in the Bill to ban unauthorised sales of tobacco and NVPs by under-18s. We believe that the sale or supply of tobacco and e-cigarettes by young people under the age of 18 should reflect the same regulations for the sale of alcohol in Section 142 paragraph 262 of the Licensing (Scotland) Act 2005.

**Ban on the Sale of NVPs from Vending Machines**

SGF support the measures contained in the Bill to prohibit the sale of NVPs from vending machines.

**Chapter 2 Advertising and Promotion of Nicotine Vapour Products**

In our view the provisions in the Bill relating to prohibiting advertising are much too vaguely defined. Therefore they could lead to regulations on advertising that are neither evidence-based, balanced nor proportionate and which could adversely impact on the potential of NVPs to assist in smoking cessation, including the Scottish Government's target for a 'tobacco free' nation by 2034.

The Explanatory Notes accompanying the Bill suggests that point of sale material displayed in-store will not be included in an advertising ban. However, this is not stated in the Bill itself. In our view it is extremely important that point of sale material should not be included in any advertising restrictions and that should be clearly stated in the Bill as amended.

As the Convenor of the Health and Sport Committee said at the launch of the call for evidence, it is imperative that the Bill strikes a balance between regulating the use of e-cigarettes and helping smokers who wish to use the devices to quit smoking. In our response to the original Scottish Government Consultation (*Electronic Cigarettes and Strengthen Tobacco Control in Scotland*), we highlighted a ‘position statement’ produced in May of 2014 by a panel of distinguished specialists in nicotine science and public health policy – including Professor Linda Bauld of the University of Stirling, Deputy Director, UK Centre for Tobacco and Alcohol Studies – and issued to Dr Margaret Chan, DG of the World Health Organisation. The statement aimed to highlight
the potentially vital role e-cigarettes can play in helping people stop using tobacco products and listed 10 principles which should underpin the public health approach to electronic cigarettes and tobacco harm reduction.

One of the key principles in the position statement relates to the advertising of e-cigarettes:

*It is counterproductive to ban the advertising of e-cigarettes and other low risk alternatives to smoking. The case for banning tobacco advertising rests on the great harm that smoking causes but no such argument applies to e-cigarettes, for example, which are far more likely to reduce harm by reducing smoking. Controls on advertising to non-smokers, and particularly to young people are certainly justified, but a total ban would have many negative effects, including protection of the cigarette market and implicit support for tobacco companies. It is possible to target advertising at existing smokers where the benefits are potentially huge and the risks minimal. It is inappropriate to apply Article 13 of the FCTC (Tobacco advertising, promotion and sponsorship) to these products.*

We would urge the Committee to take cognisance of the approach recommended by this panel of experts – that banning advertising of NVPs is counterproductive. If adult smokers are to fully embrace the cessation potential offered by NVPs, it is vital that a market for these products is in place. This will allow customers to make decisions on which products are most suitable for them in terms of price and individual preference – advertising is clearly a key mechanism for this. A ban on domestic advertising and promotion will simply stop this market from fully developing and the tobacco cessation potential will never be realised.

The market for e-cigarettes is relatively new but there are already safeguards in place to prevent inappropriate and irresponsible advertising. We would like to draw the Committee’s attention to the existing frameworks for governing the advertising and promotion of NVPs. The Committees of Advertising Practice (CAP) write and maintain the UK Advertising Codes, which are administered by the Advertising Standards Authority. CAP currently have a robust and comprehensive code of practice for advertising, sales promotion and direct marketing. Section 22 of the code applies to electronic cigarettes and stipulates *inter alia* that:

- Marketing communications for these products must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture;
- Marketing communications must state clearly if the product contains nicotine;
- Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.
Clearly the existing market for NVPs’ already has standards on advertising which manufacturers have to adhere to. It is difficult to see how this could be added to without an outright ban on advertising, a move which would significantly inhibit the tobacco harm reduction potential of NVPs.

Finally, there is currently no robust evidence that e-cigarettes are acting as a ‘gateway’ to smoking tobacco for young people – the use of these products by people who have never smoked is extremely low. As ASH stated in its factsheet (May 2015) on the use of electronic cigarettes:

“ASH estimates that there are currently 2.6 million adults in Great Britain using electronic cigarettes. Of these, approximately 1.1 million are ex-smokers while 1.4 million continue to use tobacco alongside their electronic cigarette use. Regular use of the devices is confined to current and ex-smokers and use amongst never smokers remains negligible……In summary the ASH Smokefree Youth Survey shows that regular use of electronic cigarettes amongst children and young people is rare and is confined almost entirely to those who currently or have previously smoked.”

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