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

Philip Morris Limited

Philip Morris Limited ("PML") welcomes the opportunity to respond to the Scottish Parliament Health and Sport Committee’s call for written evidence further to their Stage 1 scrutiny of the Scottish Government’s Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill.¹ We have limited our response to the measures contained in Chapters 1-3, Part 1 of the Health Bill which are of direct relevance to our business.

Last year, Philip Morris International through an affiliate of PML, entered the UK e-cigarette market by acquiring one of the leading UK e-cigarette manufacturers, Nicocigs Limited.

Tobacco Harm Reduction, E-Cigarettes and Reduced Risk Products²

We agree with many professionals in the public health community that e-cigarettes are likely to be reduced risk alternatives to cigarettes³. Many smokers will continue to smoke; by switching to less harmful products, such as electronic cigarettes, significant individual and public health benefits could be delivered. As the US FDA recently stated, there is “a continuum of nicotine-delivering products that pose differing levels of risk to the individual” and if certain products are shown to be less harmful “they could help reduce the overall death and disease toll from tobacco product use at a population level.”

The Royal College of Physicians made a similar point in their 2007 report:

“…..smokers smoke predominantly for nicotine, {that} nicotine itself is not especially hazardous, and {that} if nicotine could be provided in a form that is acceptable and effective as a cigarette substitute, millions of lives could be saved.” ⁴

Therefore, e-cigarettes should be regulated in a different manner from cigarettes and other traditional tobacco products. We believe that advertising and promotion of these products should protect non-smokers and minors whilst allowing adult smokers to receive useful, non-misleading information and e-cigarette businesses commercial freedom to compete in the marketplace. As Cancer Research UK (CRUK) stated, in their consultation response to the Scottish Government: “A proportionate response to the marketing of e-cigarettes should seek to minimise young people and non-

¹ For simplicity, the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill will hereafter be referred to as the Health Bill.
² Reduced Risk Products is the term used by Philip Morris International to refer to products with the potential to reduce individual risk and population harm in comparison to smoking combustible cigarettes.
³ Hajek P. et al. Electronic cigarettes: review of use, content, safety, effects on smokers and potential for harm and benefit, Addiction, 2014
smokers exposure to marketing and the appeal of e-cigarettes without disproportionately restricting promotion."  

Such comments provide a sensible, pragmatic and reasonable basis in which Scottish policymakers should proceed with their scrutiny of the Health Bill.

**Committee Questions: NVPs and smoking in hospital grounds**

1. Do you support the Bill’s provisions in relation to NVPs?

Our comments relating to the specific measures in the Bill can be found below.

### Sale and Purchase of tobacco and nicotine vapour products

PML supports comprehensive, evidence-based regulation that helps to reduce the harm caused by smoking and measures which ensure that products designed for adults (such as e-cigarettes) are not made available to under 18’s.

Consequently, we support the following provisions:

- The introduction of an offense of selling e-cigarettes to under-18s;
- The requirement for tobacco or e-cigarette business to operate an age verification policy;
- The extension of existing proxy purchase laws on tobacco to include e-cigarettes; and
- The creation of an offence for a business to allow the unauthorised sale of tobacco products or e-cigarettes by a person under-18;

The aforementioned measures could provide an effective regulatory framework for the sale of e-cigarettes in Scotland that will effectively address the concerns raised by the Government.

### Register of tobacco and nicotine vapour product retailers

PML endorse the Scottish Government’s decision to include those retailers who sell e-cigarettes on a mandatory retailer register alongside those who presently sell tobacco products. We believe that the existing Scottish Tobacco Retail Register forms part of an effective tobacco control policy and its extension to include e-cigarettes would be welcome.

### Advertising and Promotion of Nicotine Vapour Products

PML believe that domestic advertising regulations should permit truthful and non-misleading communication to consumers regarding the availability and risk profile of e-cigarettes. Any claims of risk reduction should be evidence based and subject to scientific substantiation. The objective of tobacco harm

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reduction is to convince adult smokers who would otherwise continue to smoke to switch to less harmful products. Allowing manufacturers to market e-cigarettes but prohibiting any form of advertising would make it extraordinarily difficult, if not impossible, to achieve this objective. As the UK Centre for Tobacco and Alcohol Studies notes: “To argue for a ban on all forms of advertising and promotion fails to recognise the benefits of e-cigarettes as a harm reduction tool and as a safer alternative to smoking.”

At the same time, we recognise that there is a legitimate concern that marketing of e-cigarettes will lead to an environment where marketing of products, which might be associated to tobacco products, will once again be viewed by minors and members of the general public. We believe that the right balance can be achieved to ensure that adult smokers are informed about e-cigarettes and the general public, especially minors, are not exposed to marketing information.

The EU’s Tobacco Products Directive and the UK’s CAP/BCAP e-cigarette advertising rules together provide a strong framework for manufacturers and the Scottish Government. Any additional restrictions may have unintended consequences by impeding adult smoker awareness or trial of e-cigarettes which is directly contrary to the objective of harm reduction. Such restrictions could also discourage growth, innovation and competition in this new product category. Thus, the Scottish Government ought to carefully reflect on the relevant provisions in the Health Bill so that an appropriate balance is struck between enabling manufacturers to market their products to existing adult smokers, whilst limiting and safeguarding young people and non-nicotine users from exposure to inappropriate advertising and promotion of e-cigarettes.

As public health advocates have already commented, it is imperative that adult smokers receive information about e-cigarettes, including their benefits, risks and other relevant information that encourage them to switch. We believe this information should be presented in the form of marketing which is the most effective way to convince adult smokers to switch. Manufacturers should be required to ensure that marketing conveys messages that the product is not for minors or for non-nicotine users.

The Government has argued that intervention in this area is needed to prevent the so-called “gateway effect” (people who start using e-cigarettes and then move to cigarettes) and the “re-normalisation” of cigarette tobacco smoking. But this logic lacks a compelling and credible evidence base. The available data show that e-cigarettes are used almost exclusively by existing adult smokers who switch from combustible cigarettes, while use among never-smokers is negligible. Moreover, the Scottish Adolescent Lifestyle and Substance Use Survey showed that under-18 e-cigarette use is confined to

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existing smokers and that only 4% of minors who never smoked have tried an e-cigarette. Concerns that e-cigarettes are re-normalising smoking, or are acting as a ‘gateway’ to tobacco for young people, cannot be substantiated; in fact, the available scientific evidence suggests precisely the opposite with e-cigarettes being utilised as a means to quit tobacco. The recent report of the Behavioural Insights Team of the UK Government concluded its review of the data by stating “e-cigarettes are now the most successful product at helping people quit smoking, and the evidence shows that almost all users of e-cigarettes are former smokers.”

The opinions expressed by various public health experts are also validated among adult smokers and e-cigarette users across Great Britain as measured by a recent nationally representative survey conducted by Populus Limited, a leading opinion research firm in the UK, on behalf of PML.

The initial results send the clear message that smokers and e-cigarette users see the benefit of e-cigarettes and demand the reasonable regulation of these products.

- Three-quarters (76%) agree that “e-cigarettes represent a positive alternative to today’s conventional cigarettes”. Agreement increases among those most familiar with e-cigarettes: current e-cigarette users (89%) and those who switched from conventional cigarettes to e-cigarettes (93%).
- Over eight-in-ten (82%) agree that the Government should enact appropriate regulations to ensure e-cigarettes are not used by minors under 18.
- Three-quarters (78%) believe “the Government should do all it can to encourage smokers to switch to less harmful alternatives to cigarettes, including lower taxes and less restrictions compared to normal cigarettes”. Agreement with this statement increases to 85% among Scottish respondents.
- Three-quarters (74%) agree “it would be wrong for the Government to restrict the advertisement of e-cigarettes in retail shops, leaflets, posters, and brochures”.

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11 Survey on attitudes to e-cigarette regulation carried out by Populus Limited, on behalf of Philip Morris Limited, using a national quota of 1083 smokers and e-cigarette users aged 18 and above. The survey was executed via the online methodology from 24-28 July 2015 and the nationally representative sample was drawn from a combination of the Populus Live research panel and Random Online Sampling.
The above findings are further reinforced when examining the opinion of those that have fully switched from conventional cigarettes to e-cigarettes:

- Nearly all e-cigarette switchers (92%) agree that “switching to e-cigarettes has been a positive change” in their life, with three-quarters (75%) strongly agreeing.
- Over eight-in-ten (83%) agree with the statement: “When making the switch to e-cigarettes, it was important for me to have access to information about these products and to see advertisements in shops, on billboards, and in brochures. I could only make an informed decision regarding the use of e-cigarettes once I became familiar with these products”.

Lastly, smokers of conventional cigarettes intrinsically see the value that e-cigarette advertisements and communications can have in aiding their decision to switch to these products.

- Roughly half (48%) agree with the statement: “It is important for me to see advertisements for e-cigarettes in places like shops, billboards, leaflets, and brochures. If I decide to switch to e-cigarettes, this is the best way for me to gather information about which products are available and how they operate”.
  - Agreement increases to a majority (56%) among Scottish respondents.
- Similarly, 37% say they would be less likely to switch to e-cigarettes if e-cigarette advertisements were banned in billboards, posters, leaflets, and retail shops.
- Six-in-ten (61%) say they would be “more likely to switch to e-cigarettes if the Government provided clarity on the health effects of these products and the role they can play in quitting cigarettes”.

PML encourages the Committee to carefully consider the views and opinions of smokers and e-cigarette users when debating and discussing the Health Bill. Access to honest and non-misleading e-cigarette information and advertisements has helped adult smokers make the switch to e-cigarettes, and banning these communications could discourage a substantial number of current adult smokers from considering this option. The full report of the study, as well as all supporting data, will be submitted to the Committee and we would welcome the opportunity to further discuss the research at a future date.

2. Do you support the proposal to ban smoking in hospital grounds?

The conclusions of public health officials on the health effects of second-hand smoke warrant restrictions on public place smoking, including prohibiting smoking in many locations. Smoking indoors should be prohibited in hospitals and healthcare settings, with signs clearly highlighting that smoking is not permitted. However, we believe that designated outside areas for smokers should remain in place.
3. Is there anything you would add/remove/change in the Bill with regards to NVPs or smoking in hospital grounds?

Further to the comments made in response to Question 1, we would advise the Scottish Government to rethink its approach to domestic advertising and promotion to ensure that they do not implement an overly restrictive system. A key argument for the strict regulation of tobacco smoking is the health risks for smokers (and also to non-smokers exposed to second hand tobacco smoke), which is not the case for e-cigarettes. Many public health experts believe e-cigarettes to be at least 95% lower risk than smoking.¹²

Further Comments

Scotland, which has led the UK on tobacco control issues and remains a centre of scientific excellence, has the opportunity to continue offering its approximately one million adult smokers the chance to switch to potentially less harmful products like e-cigarettes¹³. In addition to our written evidence supplied here, we would welcome the opportunity to provide oral evidence to the Health and Sport Committee at a future date.

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¹² Hajek P. et al. Electronic cigarettes: review of use, content, safety, effects on smokers and potential for harm and benefit, Addiction, 2014