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

Fife Health and Wellbeing Alliance

Fife has chosen to submit a partnership response to the Scottish Governments Health and Sport Committee’s call for written evidence.

**Fife Health and Wellbeing Alliance** is the community planning partnership with the strategic lead for improving the health of Fifers and reducing health inequalities and represents NHS Fife, Fife Council, the Health and Social Care Partnership and Fife Voluntary Action. The Alliance is accountable to Fife’s community planning partnership - the Fife Partnership, and submits this response on its behalf.

**Nicotine Vapour Products (NVP’s) and Smoking in Hospital Grounds.**

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

   **Yes**

   NVP’s are relatively new devices (2004). Since 2011 the market has grown significantly (types and numbers of manufacturers). With an increase in popularity and the evolution of the devices regulation is required in order for their safety to be ensured.

   I. We agree the minimum age for sale of NVP’s is 18, due to the addictive nature of Nicotine we do not feel it is appropriate to sell NVP’s to persons under the age of 18.

   II. We support the proposed legislation to make it an offence to ‘proxy purchase’ (purchase on behalf of an under 18) NVP’s in line with current legislation in relation to cigarettes in the Tobacco and Primary Medical Services (Scotland) Act 2010.

   III. We agree that an age verification policy should be in place for NVP’s (as it currently stands for tobacco), retailers should be required to challenge the age of anyone they believe to be underage.

   IV. We agree that age of sale regulations should apply to all devices/refills (e-liquids) regardless of whether they contain or are capable of containing nicotine. This simplifies guidance and reduces the chances of ambiguity.

   V. We support the proposed extension of the Scottish Tobacco Retailers register to include NVP sellers/premises. Currently we have very little reliable information about the size and nature of the retail environment for NVP’s. We agree that offenses and penalties reflect those already in place for the Scottish Tobacco Retailers register as this simplifies compliance and enforcement.

   VI. We support the introduction of the offence of selling NVP’s from a vending machine (in line with tobacco sales).
VII. We support the Scottish Governments proposal of banning advertising and promotion of NVP’s to protect in particular young people and adult non-smokers from any form of advertising and promotion of NDP’s with no exemptions (type of advertising / promotion). Tobacco advertising was banned to try and help prevent people from taking up smoking. Advertising NVP’s should be treated in the same way as the use of them imitates smoking, may have an impact on people’s behaviour (renormalise smoking/mimic conventional smoking behaviour), which could have a major influence, particularly on young people. The imagery and slogans used in advertising are often aimed at the younger generation and they may interpret it as a fashionable thing to do with/amongst their peers.

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

Yes

We support the legislation which makes it an offence to smoke on NHS grounds.

Smokefree grounds has been part of policy since 2006 but the difficulty is that it is not complied with. With the increased focus and effort over the last few years (supported by clear signage) has shown that a voluntary option is not working. Following an intense communication strategy in the lead up to March 2015, (target date from Scottish Government) we have seen a decrease in number of people smoking in NHS grounds however we still have incidences of smoking happening on our grounds.

3. Is there anything you would add/remove/change in the Bill with regards to NVP’s or smoking in hospital grounds?

Yes

3.1 Smoking in hospital Grounds

Removal of building perimeters ‘area designated by regulations’ from the bill.

i. We believe that it should be the entire NHS grounds so there is no ambiguity about where people cannot smoke. If you differentiate then it gives people an excuse to say they didn’t think it applied at that part of the site. Fully smokefree hospital sites and grounds remove the triggers that cause many to smoke or relapse to smoking and sends a strong message from the organisation about the established dangers of smoking and second hand smoke.

ii. In 2013 the Scottish Governments launched its 5 year Tobacco Strategy for Scotland – Creating a Tobacco Free Generation. One of the actions included in that strategy was that: All NHS Boards will implement and enforce smoke-free grounds by March 2015. Smoke-free status means the removal of any designated smoking
areas in NHS Board buildings and grounds. We will work with Boards to raise awareness of the move to smoke-free hospital grounds.

iii. To support this action, the Public Health Minister in March 2015 launched a smokefree grounds ‘Green Curtain’ campaign. ‘This campaign is not asking smokers to quit but instead to wait until they are off NHS grounds before lighting up.’ The campaign used the (costly) medium of TV and Radio which supported local NHS boards marketing strategies.

iv. Like the ‘Green Curtain’ campaign NHS Fife, over the last two years have worked on the premis that this meant NHS grounds in totality. NHS Fife’s current smoking policy prohibits smoking in all areas of NHS sites including buildings, doorways, grounds, car parks and in any official NHS Fife vehicle, while on health service grounds, or whilst being used for NHS business.

v. We agree that health boards have called for legislation to support smokefree grounds policy as we are still experiencing difficulties with compliance as smokers know we do not have powers to enforce. We do not support the proposed perimeter option as we feel this will cause confusion, be counterproductive and a retrospective move.

vi. Since 2013/14 NHS Fife have worked hard on communicating the ‘Smokefree grounds’ message to staff, patients and visitors as well as across the community (ongoing via annual radio marketing contract). This has resulted in significant financial outlay to support the development of a high profile marketing and communication campaign. This has included: new site signage, commissioning of local research with patients, visitors and staff, paid articles in papers and lifestyle magazines, bus stop campaigns, posters for hospital sites and community venues, flyers for car parks, information flyer for staff induction and contract packs to support policy, credit card sized information card to hand to individuals smoking on site, portable pop up stands, inclusion of remit within car parking contract etc. Despite this concerted effort. Smoking on NHS grounds remains a significant challenge.

vii. Considerable staff time and resources have been required to progress and manage this work. Applying an ‘area designated by regulations’ would require changes to the work undertaken to date which we feel will be detrimental to the progress we have made to date.

viii. The Financial Memorandum stated that anticipated costs to the NHS around the smokefree legislation will be ‘modest costs associated with updating existing training and materials’. We believe that the change in message (from whole site to partial areas) will have considerable financial implications associated with amending policies, paperwork, communication materials (printed and digital). This will also impact on staff time and resource revisiting the work completed to date.
ix. It is proposed that certain buildings on hospital grounds are not regarded as hospital buildings therefore are exempt from having a perimeter applied. Clarity around what is/isn’t a hospital building needs to be established before we are able to comment. However, (making the assumption that this may mean a building such as a boiler house or labs) could lead to displacement of smokers to these areas which leads to more confusion over where people can/cannot smoke.

x. We feel that the general public, ‘the person having management and control’ of the designated areas and the enforcement officers will experience difficulties with demarcation of proposed perimeter. No smoking area outside a hospital building is fraught with difficulty unless we are expected to mark out that perimeter around all buildings.

xi. The proposal states that the Scottish Government will provide (149 hospitals) with new signage at considerable cost. We believe that as most boards have already gone to some expense to purchase their own signage (in line with Scotland’s Tobacco Strategy) that this would not be required if the designated perimeter proposal is removed from the Bill.

xii. Health Promoting Health Service CEL (01) requires NHS Fife to measure and report on adherence of Smokefree NHS Grounds on an annual basis. The changes the Bill is proposing, complicates the assessment of adherence whereas fully smokefree sites makes that reporting clear cut reducing interpretation around perimeters.

3.2 Nicotine Vapour Products (NVP’s)

I. NVP sellers/premises - We feel that clarity may be required around the responsibility for registering pop-ups/stalls/kiosks in large shopping centres (thoroughfares) in relation to ‘each premises’ (may require definition) on the register.

II. Financial Memorandum - As stated in the FM, there is a lack of robust data at present on the actual numbers of premises selling NVPs. The introduction of controls, the requirement for age verification and other factors could potentially lead to a proportion of current sellers discontinuing the sale of NVPs. However, it would appear there continues to be an increase in e-cigarette users in the population.

Premises that currently sell other age restricted products such as tobacco, alcohol or fireworks for example, should already have a proof of age scheme in operation. However, for those that do not, the assistance from local authorities to help introduce a proof of age scheme in order to sell NVPs will place a greater demand on Trading Standards resources.

Test purchase operations are resource intensive but continue to contribute to a reduction in failure rates across Scotland.
Whilst Scottish government made resources available on the introduction of the Enhanced Tobacco Sales Enforcement Programme (ETSEP), the Trading Standards Service has suffered both staff and budgetary reductions in recent years which may be exacerbated with the increased number of new premises selling only NVP’s that will need assistance as stated above.

III. Vicarious liability - The presumption in the TPMS is that any person who sells tobacco to an underage person may commit an offence. An LA would normally interpret this as covering both serving staff and registered owners as appropriate as we understand that this was the intention.

However, when a retailer is reported to the PF this view has occasionally been questioned. Other statutes enforced by Trading Standards tend to use the word ‘supply’ rather than ‘sell’ which avoids the discussion as to whether a person without title to the goods can actually sell.

Our concern is that extending the offences in the TPMS to NVPs will mean that businesses that have no prior experience of operating proof of age schemes will now require to operate one and should they fall foul of the legislation an issue may again arise as to who may have actually committed the offence.

IV. Warning notice - Should the seller of NVPs receive a banning order they are under a legal duty to display a notice that they have been banned from selling NVPs. However, there appears to be no requirement to display a warning notice that NVP’s are an age restricted product and therefore an offence to sell it to someone underage.

The TPMS re-stated earlier legislation that a warning notice: “Please Note it is Illegal to Sell Tobacco Products to Anyone Under the Age of 18” must be displayed. It is suggested that NVPs should be added to this requirement, although a single notice covering both products could be accepted where both products are sold.

V. Banning orders - There have been some recent difficulties with banning orders. When a banning orders was granted in Fife on the owner of a business that person transferred the lease to a family member and so the premises continued to trade in tobacco products.

It is suggested that a much improved outcome would be achieved by placing a ban on the premises from selling tobacco products. There is a precedent as such powers are currently available to Licensing Boards in respect of underage alcohol sales where the premises licence can be reviewed and if necessary suspended or revoked.
VI. **Relevant offences** - The sale of counterfeit and illicit tobacco are offences under reserved legislation and not included as relevant offences within the TPMS when considering banning orders.

We are not clear on the competency of including offences under reserved legislation within the TPMS but should this prove not to be a barrier we would like this issue to be considered, as conviction under the Trade Marks Act 1994 for selling counterfeit tobacco products could be used as an indicator of a person’s fitness to be registered to sell tobacco.

**Duty of candour and wilful neglect**

4. **Do you support the proposed duty of candour?**

The Bill proposes to place a duty of candour on health and social care organisations. This would create a legal requirement for health and social care organisations to inform people (or their carers/families) when they have been harmed as a result of the care or treatment they have received.

The proposal of a 'Duty of Candour' is fraught with legal difficulty over definitions of harm and adequate versus 'non-harming actions' or 'deliberate non-actions'. We would not want to see this proposal in the bill.

5. **Do you support the proposal to make willful neglect or ill-treatment of patients a criminal offence?**

The Bill would establish a new criminal offence of ill-treatment or willful neglect which would apply to individual health and social care workers, managers and supervisors. The offence would also apply to organisations

Similarly the idea of criminal offence runs counter to our local vision of a vocational caring and compassion driven NHS workforce. We would not support such a new offence.

Workforce development must have a strong enabling and caring emphasis and not one in which staff are harried by litigation fears. We have enough trouble recruiting at present without discouraging new staff to join the caring professions.

6. **Is there anything you would add/remove/change in the Bill with regards to these provisions?**

No

**Fife Health and Wellbeing Alliance**