

## **CONSULTATION QUESTIONS**

### **Age restriction for e-cigarettes**

**1. Should the minimum age of sale for e-cigarette devices, refills (e-liquids) be set at 18?**

Yes ☐ No ☐

**2. Should age of sale regulations apply to:**

**a. only e-cigarette devices and refills (e-liquids) that contain nicotine or are capable of containing nicotine, or**

**b. all devices / refills (e-liquids) regardless of whether they contain or are capable of containing nicotine?**

a ☐ b ☐

**3. Whom should the offence apply to:**

**a. the retailer selling the e-cigarette**

**b. the young person attempting to purchase the e-cigarette**

**c. both**

a ☐  
b ☐  
c ☐

**4. Should sales of e -cigarettes devices and refills (e-liquids) from self-service vending machines be banned?**

Yes ☐ No ☐

**5. Should a restriction be in place for other e-cigarette accessories?**

Yes ☐ No ☐

6. If you answered “ yes” to question 5, which products should have restrictions applied to them?

Comments

**Proxy purchase for e-cigarettes**

7. Should the Scottish Government introduce legislation to make it an offence to proxy purchase e-cigarettes?

Yes ☐ No ☐

**Domestic advertising and promotion of e-cigarettes**

8. Should young people and adult non-smokers be protected from any form of advertising and promotion of e-cigarettes?

Yes ☐ No ☐

9. In addition to the regulations that will be introduced by the Tobacco Products Directive do you believe that the Scottish Government should take further steps to regulate domestic advertising and promotion of e-cigarettes?

Yes ☐ No ☐

10. If you believe that regulations are required, what types of domestic advertising and promotion should be regulated?

- |  |                            |
|--|----------------------------|
| a. Bill boards   | a <input type="checkbox"/> |
| b. Leafleting  | b <input type="checkbox"/> |
| c. Brand-stretching (the process of using an existing brand name for new products or services that may not seem related) | c <input type="checkbox"/> |
| d. Free distribution (marketing a product by giving it away free)  | d <input type="checkbox"/> |
| e. Nominal pricing (marketing a product by selling at a low price)   | e <input type="checkbox"/> |
| f. Point of sale advertising (advertising for products and services at the places where they were bought)                | f <input type="checkbox"/> |
| g. Events sponsorship with a domestic setting  | g <input type="checkbox"/> |

11. If you believe that domestic advertising and promotion should be regulated, what, if any, exemptions should apply?

Comments

**12. Are you aware of any information or evidence that you think the Scottish Government should consider in relation to regulating domestic advertising in relation to impacts on children and adults (including smokers and non-smokers)?**

Comments

**13. Are you aware of any information or evidence that you think the Scottish Government should consider in relation to regulating domestic advertising in relation to impacts on business, including retailers, distributors and manufacturers?**

Comments

**Inclusion of electronic cigarettes on the Scottish Tobacco Retailer Register**

**14. Do you agree that retailers selling e-cigarettes and refills should be required to register on the Scottish Tobacco Retailers Register?**

Yes ☐ No ☐

**15. Do you agree that the offences and penalties should reflect those already in place for the Scottish Tobacco Retailers Register?**

Yes ☐ No ☐

**16. If you answered 'no', to question 15, what offences and penalties should be applied?**

Comments

**E-cigarettes – use in enclosed public spaces**

**17. Do you believe that the Scottish Government should take action on the use of e-cigarettes in enclosed public spaces?**

Yes ☐ No ☐

**18. If you answered 'yes' to Question 17, what action do you think the Scottish Government should take and what are your reasons for this?**

Comments

**19. If you answered, 'no' to Question 17, please give reasons for your answer.**

Comments

**20. Are you aware of any evidence, relevant to the use of e-cigarettes in enclosed spaces, that you think the Scottish Government should consider?**

Comments

**Smoking in cars carrying children aged under 18**

**21. Do you agree that it should be an offence for an adult to smoke in a vehicle carrying someone under the age of 18?**

Yes ☐ No ☐

**22. Do you agree that the offence should only apply to adults aged 18 and over?**

Yes ☐ No ☐

**23. If you answered 'no' to Question 22, to whom should the offence apply?**

Comments

**24. Do you agree that Police Scotland should enforce this measure?**

Yes ☐ No ☐

**25. If you answered 'no' to Question 24, who should be responsible for enforcing this measure?**

Comments

**26. Do you agree that there should be an exemption for vehicles which are also people's homes?**

Yes ☐ No ☐

**27. If you think there are other categories of vehicle which should be exempted, please specify these?**

Comments

**28. If you believe that a defence should be permitted, what would a reasonable defence be?**

Comments

**Smoke-free (tobacco) NHS grounds**

**29. Should national legislation be introduced to make it an offence to smoke or allow smoking on NHS grounds?**

Yes ☐ No ☐

**30. If you support national legislation to make it an offence to smoke on NHS grounds, where should this apply?**

- a. All NHS grounds (including NHS offices, dentists, GP practices) a ☐  
b. Only hospital grounds b ☐  
c. Only within a designated perimeter around NHS buildings c ☐  
d Other suggestions, including reasons, in the box below

Comments

**31. If you support national legislation, what exemptions, if any, should apply (for example, grounds of mental health facilities and / or facilities where there are long-stay patients)?**

Comments

**32. If you support national legislation, who should enforce it?**

Comments

**33. If you support national legislation, what should the penalty be for non-compliance?**

Comments

**34. If you do not support national legislation, what non-legislative measures could be taken to support enforcement of, and compliance with, the existing smoke-free grounds policies?**

Comments

**Smoke-free (tobacco) children and family areas**

**35. Do you think more action needs to be taken to make children's outdoor areas tobacco free?**

Yes ☐ No ☐

**36. If you answered 'yes' to Question 35, what action do you think is required:**

- a. Further voluntary measures at a local level to increase the number of smoke-free areas a ☐
- b. Introducing national legislation that defines smoke-free areas across Scotland b ☐
- c. That the Scottish Government ensures sufficient local powers to allow decisions at a local level as to what grounds should be smoke-free c ☐
- d. Other actions. Please specify in the box below

Comments

**37. If you think action is required to make children's outdoor areas tobacco-free, what outdoor areas should that apply to?**

Comments

**Age verification policy 'Challenge 25' for the sale of tobacco and electronic cigarettes**

**38. Do you agree that retailers selling e-cigarettes, refills and tobacco should be required by law to challenge the age of anyone they believe to be under the age of 25?**

Yes ☐ No ☐

**39. Do you agree that the penalties should be the same as those which are already in place for selling tobacco to someone under the age of 18?**

Yes ☐ No ☐

**Unauthorised sales by under 18 year olds for tobacco and electronic cigarettes**

**40. Do you agree that young people under the age of 18 should be prohibited from selling tobacco and non-medical e-cigarettes and refills unless authorised by an adult?**

Yes ☐ No ☐

**41. Who should be able to authorise an under 18 year old to make the sale, for example, the person who has registered the premises, manager or another adult working in the store?**

Comments

**42. Do you agree with the anticipated offence, in regard to:**

**a. the penalty**

a ☐

**b. the enforcement arrangements**

b ☐

**Equality Considerations**

**43. What issues or opportunities do the proposed changes raise for people with protected characteristics (age; disability; gender reassignment; race; religion or belief; sex; pregnancy and maternity; and sexual orientation)?**

Comments

**44. If the proposed measures are likely to have a substantial negative implication for equality, how might this be minimised or avoided?**

Comments

**45. Do you have any other comments on or suggestions relevant to the proposals in regard to equality considerations?**

Comments

**Business and Regulatory Impacts Considerations**

**46. What is your assessment of the likely financial implications, or other impacts (if any), of the introduction of each of these proposals on you or your organisation?**

Comments

**47. What (if any) other significant financial implications are likely to arise?**

Comments

**48. What lead-in time should be allowed prior to implementation of these measures and how should the public be informed?**

Comments

**49. Do you have any other comments on or suggestions relevant to the proposals in regard to business and regulatory impacts?**

Comments

As a party to the World Health Organization's Framework Convention on Tobacco Control (FCTC), Scotland has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To meet this obligation, we ask all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. We will still carefully consider all consultation responses from the tobacco industry and from those with links to the tobacco industry and include them in the published summary of consultation responses.

Comments



**\*\*By email\*\***

[tobaccocontrolteam@scotland.gsi.gov.uk](mailto:tobaccocontrolteam@scotland.gsi.gov.uk)

18 December 2014

## **BMA Scotland response to the Scottish Government's 'A consultation on Electronic Cigarettes and Strengthening Tobacco Control in Scotland'**

**Dear Sir/Madam**

The British Medical Association (BMA) is a registered trade union and professional association representing doctors from all branches of medicine. The BMA has a total membership of around 150,000 representing around two-thirds of all practising doctors in the UK. In Scotland, the BMA represents around 16,000 members.

We welcome the opportunity to respond to the Scottish Government's consultation on 'Electronic Cigarettes and Strengthening Tobacco Control in Scotland'. Doctors witness first-hand the devastating effects of smoking-related harms on their patients. This includes secondhand smoke (SHS) and the adverse health effects it has on non-smokers and children. Doctors also have a vital role in providing information to their patients about the risks of smoking and exposure to SHS, and in helping their patients to stop smoking.

It is widely recognised that the health risks associated with electronic cigarette use are likely to be significantly lower than the well-established risks associated with smoking tobacco. The BMA therefore recognises e-cigarettes potential for supporting tobacco harm reduction. There is, however, a lack of robust research and evidence in this area, and any public health benefit is not yet well established. This highlights the need for a strong regulatory framework for e-cigarettes to ensure that:

- All products on the market are effective in helping smokers cut down, with the aim being to quit
- Their marketing and promotion does not appeal to children/young people and non-smokers, or make any claims of effectiveness as a smoking cessation aid unless approved for that purpose by the UK Medicines and Healthcare Products Regulatory Agency (MHRA)
- Their use does not undermine smoking cessation and prevention, or reinforce the normalcy of tobacco smoking behaviours.

**Scottish Secretary:** Jill Vickerman  
**Chief Executive:** Keith Ward

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### **Age Restriction for e-cigarettes**

The BMA believes that there should be an age restriction for the purchase of e-cigarettes and their refills and that they shouldn't be sold to anyone under the age of 18 years, in line with current tobacco regulation. Concerns have been expressed in relation to e-cigarettes being entry portals to nicotine use and addiction. While awareness of e-cigarettes among children in the UK is high (66% among 11-18 year olds, and 83% among 16-18 year olds), only two per cent of 11-18 year olds have been found to use e-cigarettes monthly or weekly, and seven per cent have tried them at least once. Of these users, the vast majority are those who have already tried smoking – among those who had never smoked a cigarette, 99 per cent report never having tried e-cigarettes, with one per cent reporting to having tried them “once or twice”.<sup>1</sup>

Although levels of use are low in the UK, experiences in other countries (such as Italy, Korea and the US – where e-cigarette use has rapidly increased over a similar time period as the UK) suggest the need to closely monitor use among children and young people.<sup>2 3 4</sup> For example, research based on the US national youth tobacco survey indicates that ‘ever’ e-cigarette use doubled among high school students between 2011 (3.3%) and 2012 (6.8%).<sup>5 6</sup> Twenty per cent of US middle school students, and seven per cent of high school students, who had ever used e-cigarettes were found to have never tried a tobacco cigarette, amounting to an estimated 160,000 young people.<sup>7</sup> Various evaluations of the US national youth tobacco survey have suggested that adolescents using e-cigarettes are more likely to intend to use conventional cigarettes, more likely to be current or heavy smokers, and less likely to quit or attempt to quit smoking.<sup>8 9 10</sup>

While we have concerns around e-cigarettes being potential portals to tobacco use there have also been concerns raised by members of the risks associated with inhaling the components of e-cigarette vapours. The components include nicotine, as well as a range of other chemicals. While the BMA supports the use of licensed NRT as a smoking cessation aid, it should be recognised that the consumption of nicotine is not entirely risk free.

### **Domestic advertising and promotion of e-cigarettes**

Concerns have been expressed by BMA members over the e-cigarette marketing methods used across a range of advertising media and locations that are likely to appeal to children, young people and non-smokers. These include point-of-sale displays; advertising via television, radio, in print media and online; on billboards near schools; at university freshers fairs; and the marketing of flavoured e-cigarettes<sup>11</sup>. The BMA is also concerned that e-cigarette marketing may have an adverse impact, reinforcing conventional cigarette smoking habits, as well as indirectly promoting tobacco smoking, and increasing the likelihood of young people starting to smoke<sup>12 13 14</sup>.

Analysis of the growing market for e-cigarettes suggests that marketing targets two distinct audiences: current smokers who want to quit, and children / young people and non-smokers.<sup>15 16</sup> For children / young people and non-smokers, e-cigarettes are positioned as socially attractive, appealing and popular,

using flavouring, promotional discounts, sports sponsorship and celebrity endorsement to attract new customers.<sup>17 18</sup> A review by the US Senate in 2014 concluded that e-cigarette companies are employing the same marketing tactics that the tobacco industry first pioneered to attract young customers to their product: sponsored sports and music events; free samples; television advertising during youth programming, sports events or daytime television; celebrity spokespeople and endorsement; social media presence; and product flavouring. The review noted the rapid increase in marketing spending by e-cigarette companies in the US, and the lack of regulation of sales to children under 18 years of age.<sup>19</sup>

For smokers, e-cigarettes are marketed as healthier, safer, cheaper and a way for smokers to cut down or stop smoking.<sup>20 21</sup> In the UK media, e-cigarettes are frequently portrayed as a healthier and cheaper alternative to tobacco cigarettes, and encouraged for use to circumvent smokefree laws.<sup>22</sup> The UK Advertising Standards Authority (ASA) has previously ruled that certain e-cigarette advertisements were considered misleading and made unsubstantiated claims relating to health.<sup>23</sup>

#### **Inclusion of electronic cigarettes on the Scottish Tobacco Retailer Register**

The BMA believe that e-cigarettes and their refills should be an age restricted product and therefore agree with the need to extend the Scottish Tobacco Retailer Register to include these items allowing for support and advice to be directed at those trading in these items to avoid illegal sales, and for easier enforcement of the law.

#### **E-cigarettes – use in enclosed public places**

The BMA believes that e-cigarette use should be prohibited in public places where smoking is prohibited. This approach is supported by the WHO, the American Heart Association and the Forum of International Respiratory Societies<sup>24 25 26</sup>.

The BMA believes that stronger controls are needed on where e-cigarettes can be used in order to:

- protect others from being exposed to e-cigarette vapours. Studies have indicated that bystanders can be exposed to vapour emitted from e-cigarette use<sup>27 28 29 30</sup> and the WHO has warned of the potential adverse health effects of exposure to toxicants and particles contained within e-cigarette vapour<sup>31</sup>
- ensure their use does not undermine existing restrictions on smokefree public places and workplaces by leading people to believe it is acceptable to smoke. Of particular concern to BMA members is their use by patients, visitors and staff in hospitals and other healthcare settings, and their use may become a source of conflict between staff and patients. Similar concerns exist in other settings, such as the use of e-cigarettes on airplanes
- ensure their use does not undermine the success of conventional tobacco control measures by reinforcing the normalcy of smoking behaviour in a way that other nicotine containing products do not<sup>32</sup>. This specifically relates to the way some of these devices commonly resemble tobacco cigarettes in terms of appearance, nomenclature and the way they are used.

### **Smoking in Cars carrying children aged under 18**

Smoking in vehicles is a source of concentrated SHS, and the act of smoking while driving is also a potential distraction with implications for road safety. Doctors involved in treating the long term damage caused by smoking, SHS and trauma have a vested interest in preventing smoking in cars.

In November 2011, the BMA published a briefing paper 'Smoking in Vehicles' setting out the BMA's views on smoking in vehicles and the supporting evidence. Although the BMA believes that there should be an outright ban on all smoking in vehicles, regardless of the age of passengers, the BMA welcomes the proposed offence of failing to prevent smoking in private vehicles when children aged under 18 are present. This is an important first step in reducing tobacco harm through restricting the prevalence of SHS in private vehicle.

Private vehicles are an important source of SHS exposure in children. A ban would protect children's health without significantly affecting the autonomy of smokers. Precedents have been set for the introduction and enforcement of legislation regarding the behaviour of drivers and passengers in motor vehicles, including the implementation of legislation in relation to seat belt and mobile phone use.

The varying experiences of implementing these legislative changes show that public awareness of the offence and the health issues of SHS in vehicles will be crucial to enforce the proposed measure. Robust enforcement would also be necessary for legislation prohibiting smoking in private vehicles to be effective.

The BMA's report, *Smoking in vehicles*, gives more detail on the health and safety risks of smoking when driving (<http://bma.org.uk/working-for-change/improving-and-protecting-health/tobacco/smoking-while-driving>).

Thank you for the opportunity to respond and please do not hesitate to get in touch if you require any further detail on any of the points raised.

Yours sincerely



**Peter Bennie**  
Chair of BMA Scotland

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<sup>1</sup> Action on Smoking and Health (2014) *Fact sheet. Use of electronic cigarettes in Great Britain*. London: Action on Smoking and Health.

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- <sup>2</sup> Gallus S, Lugo A, Pacifici R et al (2014) E-cigarette awareness, use, harm perception in Italy: a national representative survey. *Nicotine & Tobacco Research* (Epub ahead of print 31.7.14)
- <sup>3</sup> Lee S, Grana R & Glantz SA (2014) Electronic cigarette use among Korean adolescents: A cross-sectional study of market penetration, dual use, and relationship to quit attempts and former smoking. *Journal of Adolescent Health* 54: 684-90
- <sup>4</sup> Sutfin EL, McCoy TP, Morell HER et al (2013) Electronic cigarette use by college students *Drug and Alcohol Dependancy* 131 (3): 214-221
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- <sup>6</sup> Dutra LM & Glantz SA (2014) Electronic cigarettes and conventional cigarette use among US adolescents. A cross-sectional study *JAMA Paediatrics* 168: 610-7
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- <sup>11</sup> English PM (2013) Re: EU policy on e-cigarettes is a “gog’s dinner,” says UK regulator (rapid response). *BMJ* 347: f6871.
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- <sup>15</sup> Ibid
- <sup>16</sup> Cobb NK, Brookover J & Cobb CO (2013) Forensic analysis of online marketing for electronic nicotine delivery systems. *Tobacco control* (Epub ahead of print 13.9.13)
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- <sup>23</sup> [www.asa.org.uk/Ruling/Adjudications/2013/Nicocigs-ltd/SHP\\_ADJ\\_219974.aspx](http://www.asa.org.uk/Ruling/Adjudications/2013/Nicocigs-ltd/SHP_ADJ_219974.aspx) (last accessed October 2014).

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