

Introduction

In May of 2014 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 – issued a statement to Dr Margaret Chan, DG of the World Health Organisation. The statement listed 10 principles which should underpin the public health approach to electronic cigarettes and tobacco harm reduction.

SGF suggests that the Scottish government should take cognisance of these principles and base their own approach to legislation on them.

The 10 principles are:

1. *Tobacco harm reduction is part of the solution, not part of the problem.* It could make a significant contribution to reducing the global burden of non-communicable diseases caused by smoking, and do so much faster than conventional strategies. If regulators treat low-risk nicotine products as traditional tobacco products and seek to reduce their use without recognising their potential as low-risk alternatives to smoking, they are improperly defining them as part of the problem.
2. *Tobacco harm reduction policies should be evidence--based and proportionate to risk, and give due weight to the significant reductions in risk that are achieved when a smoker switches to a low risk nicotine product.* Regulation should be proportionate and balanced to exploit the considerable health opportunities, while managing residual risks. The architecture of the Framework Convention on Tobacco Control (FCTC) is not currently well suited to this purpose.
3. *On a precautionary basis, regulators should avoid support for measures that could have the perverse effect of prolonging cigarette consumption.* Policies that are excessively restrictive or burdensome on lower risk products can have the unintended consequence of protecting cigarettes from competition from less

hazardous alternatives, and cause harm as a result. Every policy related to low risk, non-combustible nicotine products should be assessed for this risk.

4. *Targets and indicators for reduction of tobacco consumption should be aligned with the ultimate goal of reducing disease and premature death, not nicotine use per se, and therefore focus primarily on reducing smoking.* In designing targets for the non-communicable disease (NCD) framework or emerging Sustainable Development Goals it would be counter-productive and potentially harmful to include reduction of low-risk nicotine products, such as e-cigarettes, *within these targets*: instead these products should have an important role in *meeting the targets*.

5. *Tobacco harm reduction is strongly consistent with good public health policy and practice and it would be unethical and harmful to inhibit the option to switch to tobacco harm reduction products.* As the WHO's Ottawa Charter states: "*Health promotion is the process of enabling people to increase control over and to improve, their health*". Tobacco harm reduction allows people to control the risk associated with taking nicotine and to reduce it down to very low or negligible levels.

6. *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.

7. *It is inappropriate to apply legislation designed to protect bystanders or workers from tobacco smoke to vapour products.* There is no evidence at present of material risk to health from vapour emitted from e-cigarettes. Decisions on whether it is permitted or banned in a particular space should rest with the owners or operators of public spaces, who can take a wide range of factors into account. Article 8 of the FCTC (Protection from exposure to tobacco smoke) should not be applied to these products at this time.

8. *The tax regime for nicotine products should reflect risk and be organised to create incentives for users to switch from smoking to low risk harm reduction products.* Excessive taxation of low risk products relative to combustible tobacco deters smokers from switching and will cause more smoking and harm than there otherwise would be.

9. *WHO and national governments should take a dispassionate view of scientific arguments, and not accept or promote flawed media or activist misinterpretations of data.* For example, much has been made of 'gateway effects', in which use of low-risk products would, it is claimed, lead to use of high-risk smoked products. We are unaware of any credible evidence that supports this conjecture. Indeed, similar arguments have been made about the use of smokeless tobacco in Scandinavia but the evidence is now clear that this product has made a significant contribution to reducing both smoking rates and tobacco-related disease, particularly among males.

10. *WHO and parties to the FCTC need credible objective scientific and policy assessments with an international perspective.* The WHO Study Group on Tobacco Product Regulation (TobReg) produced a series of high quality expert reports between 2005 and 2010. This committee should be constituted with world-class experts and tasked to provide further high-grade independent advice to the WHO and Parties on the issues raised above.

SGF would also highlight recent data from the UK Office for National Statistics, which indicates that those who use e-cigarettes are almost entirely current or former smokers. As such the concern that electronic cigarettes are a gateway to smoking may well be unfounded.

Overall we would suggest that the 'tobacco harm reduction' potential of e-cigarettes should not be overlooked or deliberately ignored.

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

Given the addictive properties of nicotine it is reasonable to assume that the younger an individual becomes addicted to it, the longer the addiction could last. As such we support this proposal.

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?

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

c

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

No comments

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

No Comments

Proxy purchase for e-cigarettes

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

Yes

We support this proposal. However, it is extremely difficult for retailers to identify a proxy purchase as and when it happens. The key aim should be to reduce the incidence of proxy purchase. This can only be done through a multi-agency approach involving key local stakeholders such as police Scotland, health and social services (potentially along similar lines as the Community Alcohol Partnership model). In turn these agencies must develop effective and supportive partnerships with retailers. The Scottish government should take a lead role in initiating these initiatives.

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?

Please see 'principle 6' in the introduction to this submission.

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?

As above

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

As above

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

As above

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)?

Please see 'principle 6' in the introduction to this submission.

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?

Please see 'principle 6' in the introduction to this submission.

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?

No

We do not agree that convenience store retailers, who are already listed on the tobacco retailer register, should be required to amend their registration details to show that they also sell e-cigarettes.

Our members will comply with any legislation to age-restrict electronic cigarettes; as mentioned previously they already do this on an entirely voluntary basis. However, we see no real benefit in adding any additional burden of compliance onto retailers.

Given the potential to reduce tobacco related harm it may be unwise to create any new barriers to the sale of electronic cigarettes.

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

No. As we have stated above we see no value in such a register and therefore no penalties would apply.

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

n/a

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?

Please see 'principle 7' in the introduction to this submission.

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?

n/a

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

Please see 'principle 7' in our introduction to this submission.

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

Please see 'principle 7' in our introduction to this submission.

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?

No comments

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

No comments

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

n/a

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

n/a

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

n/a

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

No comments

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

n/a

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

n/a

Smoke-free (tobacco) NHS grounds

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

No comment

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 <input type="checkbox"/> |
| b. Only hospital grounds | b <input type="checkbox"/> |
| c. Only within a designated perimeter around NHS buildings | c <input type="checkbox"/> |
| d Other suggestions, including reasons, in the box below | |

n/a

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)?

n/a

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

n/a

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

n/a

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?

n/a

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?

No comments

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

n/a

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

n/a

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

The majority (if not all) of SGF's members already operate a challenge 25 policy in relation to e-cigarettes. This new legal requirement should also be recognised as a form of due diligence to allow retailers to show that they have taken all reasonable steps to prevent under-age purchases.

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, although this is purely to facilitate a consistent approach with tobacco legislation.

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-medicinal e-cigarettes and refills unless authorised by an adult?

Yes

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?

The store manager or a senior supervisor.

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

- | | |
|---------------------------------|-----|
| a. the penalty | Yes |
| b. the enforcement arrangements | Yes |

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)?

none

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

n/a

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

No 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?

Although not in themselves significant there will be cost implications in relation to staff training. These will add to the already considerable cost of compliance.

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

None

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

12 months.

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

Any new legislation should be consistent with existing tobacco and alcohol legislation on age verification etc.

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.

The Scottish Grocers' Federation derives funding from Retailer Subscriptions and Corporate Membership mainly.

Corporate Members include a cross-section of the manufacturers involved in our trade sector, covering grocery, confectionery, soft drinks, alcohol and tobacco. Currently in membership are JTI, Imperial, Philip Morris and BAT.

In relation to policy for SGF, no supplier has any influence on decisions made on behalf of the independent convenience store sector. All policy decisions are made by the SGF (Holdings) Ltd National Executive, which is made up entirely of retailers and the SGF Chief Executive.