

# **Results of the Equality Impact Assessments for the provisions of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill**

**August 2015**

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## EQUALITY IMPACT ASSESSMENT - RESULTS

<b>Title of Policy</b>	Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill Part 1 - non-medicinal nicotine vapour products (NVPs), tobacco control and smoking on NHS hospital grounds
<b>Summary of aims and desired outcomes of Policy</b>	The aims of these policies are: <ul style="list-style-type: none"> <li>• to reduce the availability of tobacco products and nicotine vapour products to children and young people under 18;</li> <li>• reduce the attractiveness of nicotine vapour products to children, young people under 18 and adult non-smokers; and</li> <li>• to support NHS Boards in creating enforceable smoke-free areas on NHS hospital grounds.</li> </ul>
<b>Directorate: Division: team</b>	Directorate for Population Health Improvement: Public Health Division: Tobacco Control Team.

### Executive summary

A full EQIA was carried out to assess the impact of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill Part 1 - non-medicinal nicotine vapour products (NVPs), tobacco control and smoking on NHS hospital grounds.

The EQIA process identified:

- A lack of evidence on NVP use by equality groups;
- That age-related policies would improve the health of young people – this is their primary aim;
- That the policy to support enforceable smoke-free areas in hospital grounds could disproportionately impact the elderly, the disabled and the heavily pregnant in terms of both positive and negative impacts;
- That the requirement for retailers to register to sell NVPs and keep written records of young employees under the age of 18 authorised to sell NVPs and tobacco would disproportionately impact on retailers who do not speak English as a first language; and
- That the prohibition of unauthorised sales by under 18s may discourage retailers from employing under 18s.

The policies in this Bill have a strong public health rationale and the positive outcomes they will deliver outweigh any disproportionate impacts on protected characteristic groups.

## **Background**

The Scottish Government's 2013 strategy, *Creating a Tobacco-Free Generation*, set the ambitious target of achieving a tobacco-free generation by 2034. This means that a child born in 2013 would turn 21 in a country largely devoid of smoking, with an adult smoking rate of 5% or less. Scotland cannot realise that ambition without far-reaching policies which prevent young people and children from starting to smoke in the first place.

The policies in this Bill build on some of the actions in the strategy, such as supporting enforceable smoke-free areas on NHS hospital grounds. There was no commitment to take action on NVPs in the strategy until MHRA and NICE guidance had been published (this was in 2014). Since then the revised EU Tobacco Products Directive, which will come into force in May 2016, has been introduced. It regulates product specification and quality and will ban advertising of e-cigarettes with a cross-border

effect, but it encourages member states to go further, for example by introducing an age restriction for e-cigarette purchase and regulating domestic advertising and promotion.

The NVP and tobacco control policies within this Bill will:

- A. Introduce an age restriction on NVPs to prohibit them being sold to children and young people aged under 18 (supported by policies B-E and a ban on vending machine sales of NVPs);
- B. Prohibit the proxy purchase of NVPs;
- C. Introduce a mandatory registration scheme for retailers of NVPs;
- D. Introduce a requirement for retailers to operate an age verification policy for the sale of NVPs and tobacco products;
- E. Prohibit the unauthorised sales of NVPs and tobacco by under 18s and allow employers to grant a young employee with authorisation for sales;
- F. Prohibit smoking within a set perimeter of NHS hospital buildings;
- G. A power to prohibit and restrict the domestic advertising and promotion of NVPs. The intention is to exempt most point of sale advertising from such prohibitions and restrictions.

These policies contribute to the following National Outcomes:

- Our children have the best start in life and are ready to succeed;
- We live longer, healthier lives; and
- We have tackled the significant inequalities in Scottish society; and
- Our public services are high quality, continually improving, efficient and responsive to local people's needs.

## **The Scope of the EQIA**

We have a good understanding, based on decades of data, of who smokes tobacco across the Scottish population in terms of

some equalities characteristics and socio-economic status. In contrast, there is currently a shortage of good quality population data on who uses NVPs in the adult population. The Scottish Health Survey (SHeS) will publish the first population-level figures on adult e-cigarette use in autumn 2015. We have good data on the use of e-cigarettes by school pupils from the 2013 Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS).

NVPs have only been easily available in the UK for around five years. The products and the market continue to evolve. The profile of NVP users is not yet as settled as with tobacco smoking. As with other consumer products and technological innovations, data from other countries suggested that early adopters of NVPs were younger and more affluent but this may change with time as the range of products and their accessibility widen.

Even though there is a shortage of data across all protected characteristic groups to inform the EQIA, there is a strong public health rationale to justify policies A-E to help prevent children and young people from smoking tobacco or from using NVPs. The health impacts of NVPs use are not yet understood and their use may lead to nicotine addiction. The introduction of an age-restriction on the sale of NVPs and supporting policies aim to protect young people from using nicotine- which can have a negative effect on brain development - and from becoming addicted to a product and a behaviour which mimic tobacco smoking.

The ban on domestic advertising and promotion and the prohibition of sales of NVPs from vending machines will affect the wider population, not just young people. There would be no disproportionate impacts on most protected characteristic groups, however; smokers who are housebound or rely on others to shop for them due to a disability may not have the opportunity to find out about NVPs at point of sale and to decide whether they wish to use them.

Creating a designated smoke-free area in NHS hospital grounds will impact protected characteristic groups who work in or use hospitals as patients, the elderly, disabled and pregnant. These positive and negative impacts are discussed below.

The Scottish Government's consultation, *Electronic Cigarettes and Strengthening Tobacco Control in Scotland*, which covered topics in part 1 of the Bill, asked respondents to identify any issues, opportunities and negative impacts of the proposals outlined on those with protected characteristics.

The following organisations were also contacted and asked to suggest any impacts on people of the protected characteristic they represent:

- Age Scotland;
- Children First Scotland;
- Inclusion Scotland;
- Black and Ethnic Minority Infrastructure Scotland;
- Scottish Women's Convention;
- Engender;
- Equality Network;
- Interfaith Scotland; and
- Scottish Transgender Alliance.

Only the Scottish Transgender Alliance responded in relation to the age restriction for NVPs and age verification policy for NVPs and Tobacco. They noted that policies which have a requirement for individuals to show photographic proof of age identification could negatively impact on those who have undergone gender reassignment as it could mean that they may be unable to purchase NVPs or tobacco without revealing their transgender status if their identification shows their birth gender. However, they thought that this impact was justified by the public health aims of protecting young people.

## Key Findings

The EQIA process identified that the main impact of these proposals would be a positive impact upon the health of young people.

### POLICIES ON AGE RESTRICTION AND ADVERTISING

#### Age

Most smokers start when they are young and adolescents are more susceptible to nicotine addiction; the younger a person starts to smoke the more likely they are to smoke over a longer period and the more heavily they are likely to smoke in adulthood. The policies on tobacco will reinforce the current age restriction on tobacco products and protect them from the long-term health effects of smoking.

The policies will introduce and support an age restriction for the sale of NVPs, limiting young people's access to these products and discouraging them from nicotine use. Nicotine also has negative effects on adolescent brain development. Although most of the harms from tobacco smoking come from the combustion process, we do not know whether NVPs might have negative effects on health more generally, whether or not they contain nicotine.

Some policies will have mixed impacts on equality groups. The prohibition of unauthorised sales of tobacco and NVPs by under 18s will support young people in making responsible sales of these products. However, it may discourage retailers from employing young people due to the additional burden of completing the appropriate authorisation. Various options were considered: completely banning under 18s from selling tobacco and NVPs, requiring a responsible person to authorise each individual sale of these products or requiring a responsible person to make an authorisation which allows a young person to sell these products unsupervised. The last, chosen option will allow an authorised young person to sell these products



unsupervised, which is aimed at ensuring they are trained, supported and confident in challenging the age of their peers or those who are older than them. Rather than discouraging retailers from employing young people, this measure should encourage them to ensure that they are supported to make responsible sales, as this is in the retailers' best interests.

### **Gender reassignment**

A potential negative impact on those undergoing gender reassignment was also identified. The age restriction and age verification policies will require the customer to show photographic proof of age identification when asked, in order for a sale to be made. Someone who has undergone gender reassignment may not be able to provide this without revealing their transgender status. This may be distressing for the individual or result in them being denied access to products which they could otherwise have legitimately purchased if they are over 18. However, the Scottish Government believe that the public health aim of protecting young people from these harmful products objectively justifies the requirement for photographic identification.

### **Race**

People who do not speak English as a first language or do not speak it well may struggle to comply with the policies which require forms to be filled out or documentation to be kept, for example, the requirement for NVP retailers to register, keeping a record of authorised under 18s who can sell NVPs and tobacco and keeping a record of refusals to aid a due diligence defence. This group may be more liable to commit an offence unintentionally under these policies, even though they may be trying to retail responsibly. However, in practice, it is intended that Trading Standards would provide the support these retailers need to sell NVPs and tobacco responsibly in the first instance, rather than solely about enforcement. Indeed, one of the primary aims of the requirement for retailers of NVPs to register – as with the current Scottish Tobacco Retailers Register – is to allow Trading Standards to identify retailers and provide them

with the support they need to comply with legislation. It is not the intention to take enforcement action against those who are trying to retail responsibly. Without registration, it would be harder to identify retailers who need such support. Many retailers who will be affected by the policies, are likely to be familiar with tobacco legislation, including mandatory registration, and will be required to comply with employment, health and safety legislation, and possibly the more complex alcohol licensing scheme.

### **Disability**

If the only exception to the prohibitions and restrictions on domestic advertising and promotion of NVPs are at point of sale, smokers who are unable to leave the home or purchase products for themselves due to a disability may not have the opportunity to find out about NVPs and make an informed choice about whether they wish to switch to them. Unfortunately, no specific action can be taken to mitigate this impact without undermining the policy's aim of reducing the appeal of NVPs to young people and adult non-smokers. It is possible that a model of NVP could be licensed by the Medicines and Healthcare Products Regulatory Agency (MHRA) in future and this would not be subject to the restrictions in this Bill. Medicines are regulated at a UK level.

## **SMOKE-FREE HOSPITAL PERIMETERS**

### **Disability, Age and Pregnancy/Maternity**

The policy to create enforceable smoke-free areas on NHS hospital grounds supports NHS Boards to become exemplars in providing smoke-free environments and promotes healthy lifestyle choices. However, it will have mixed equality impacts. Certain protected characteristic groups – the disabled, elderly and pregnant women and new mothers – are more likely to be hospital patients and are exposed to others' smoking when entering and the leaving the building. These groups may feel vulnerable to the effects of second-hand smoke and may find it more difficult to move away from groups of smokers which

currently congregate near entrances at many hospital sites so this policy would be positive for them.

The policy would also be beneficial for smokers in this group who have been advised to give up or cut down on smoking during their treatment (for example, a very high proportion of pregnant smokers are referred for cessation support). Evidence shows that increased exposure to smoking cues (including seeing other people smoke) can reduce the likelihood of a quit attempt being successful, so this policy may support people in these groups in attempts to quit smoking. We also know that people with mental health conditions are more likely to smoke than the general population.

However, some people in these equality groups may experience negative impacts by being more at risk of committing an offence. Smokers in these groups who struggle with mobility may find it harder to comply with the smoke-free area rules and may be more tempted to knowingly commit an offence. Smokers who do not have capacity to fully understand the policy may inadvertently commit an offence by smoking within the perimeter. Various options were considered, including NHS hospitals continuing to implement workplace policies, legislating to implement grounds-wide bans or introducing smoke-free areas. It was decided that the best way to achieve the policy aim while taking equality impacts into consideration is to implement a smoke-free areas, as it is a more reasonable and compassionate to expect people to leave a perimeter than to exit extensive grounds. Staff will continue to offer cessation support to patients.

Setting a perimeter around buildings focusses on the areas where there is the highest level of traffic of people on foot leaving and entering the hospital and where there is a risk of smoke entering hospital buildings as a result of people smoking close to the building, in particular at entrances. It is also easier to enforce a prohibition backed by the criminal law near buildings given that some hospital grounds are vast in size.

Another potential impact of this policy on equality groups is that those who would be unable to read the required signage due to visual impairments or because they do not read English well may be more likely to inadvertently commit an offence. The fact that the intention is for the signage to feature the international no-smoking symbol should mitigate the impact on the latter group to a degree although they may still not understand that there is a smoke-free perimeter in place. No further mitigating action can be taken in legislation, however it is intended that enforcement officers and hospital staff would offer the necessary support to such individuals in the first instance to prevent them from inadvertently committing an offence.

### **Recommendations and Conclusion**

The majority of these proposals will have the positive impact of improving health, especially that of children and young people, by protecting them from the health harms of smoking and nicotine addiction. Where potential negative equality impacts have been identified, these have been taken into consideration during policy development. Regarding the introduction of smoke-free perimeters on NHS hospital grounds and the prohibition of unauthorised sales of tobacco and NVPs by under 18s, the policy options chosen reflect the desire to take into account the impacts on protected characteristic groups without sacrificing the policy aim.

Data on smoking prevalence rates among protected characteristic groups will continue to be monitored as it becomes available. However, information on rates of NVP use is currently limited and there is little breakdown of use among equality groups. It will therefore be harder to assess the long-term equality impacts of the policies relating to NVPs. It is likely that research into NVPs use will become more robust over time although it will be hard to draw reliable conclusions about trends in minority groups.

Reliable surveys of young people now include questions on NVP use and this data will be monitored for policy impacts. However, the NVP market is still new so any increase or decrease in use by young people may be reflective of the growth of the market, rather than these policies.

The policies in this Bill have a strong public health rationale and the positive outcomes they are expected to deliver should have particular benefits for some protected characteristics.

Disproportionate negative impacts on individuals within protected characteristic groups will be outweighed by the Bill's positive health benefits at a population level.

## EQUALITY IMPACT ASSESSMENT - RESULTS

<b>Title of Policy</b>	Organisational Duty of Candour for Health and Social Care Organisations
<b>Summary of aims and desired outcomes of Policy</b>	To require organisations providing health and social care to follow the duty of candour procedure when there has been an unintended or unexpected incident or event resulting in death or harm; and to impose requirements as to reporting and monitoring.
<b>Directorate: Division: team</b>	Healthcare Quality and Strategy Directorate: Planning and Quality Division: Person-Centred and Quality Team

### Executive summary

The new organisational duty of candour will create a legal requirement for health and social care providers to inform people (or their families/carers acting on their behalf) when they have been harmed (physically or psychologically) as a result of the care or treatment they have received. The procedure to be followed will be set out in regulations and will include matters such as support to be given to those affected and steps to review incidents. There will be a requirement too for organisations to report annually on the duty of candour.

Equality issues were considered during the policy development process and the proposals were not considered to give rise to the possibility of those affected being treated less favourably due to any of the protected characteristics.

It was therefore considered that a relatively limited Equality Impact Assessment (EQIA) would be appropriate. The focus of the data gathering and consideration was on determining whether there may be any inadvertent effects on different groups by examining the populations likely to be affected by the proposals.

The EQIA confirmed that the proposals are unlikely to have any negative effect on the basis of the protected characteristics. There is potential for the provisions to have some positive differential effects to ensure that everyone who is affected by unexpected or unintended events that have resulted in harm receives an organisational responses that is supportive.

No changes to the policy were considered necessary following the EQIA. However, the Scottish Government will continue to work with stakeholders to ensure full account is taken of equality issues.

## **Background**

The Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry , chaired by Robert Francis, QC included recommendations in support of an essential aim to ensure openness, transparency and candour throughout the health system about matters of concern. It was recommended that every healthcare organisation and everyone working for them must be honest, open and truthful in all their dealings with patients and the public, and organisational and personal interests must never be allowed to outweigh that duty to be honest, open and truthful.

The Inquiry recommended that where death or serious harm has been or may have been caused to a patient by an act or omission of the organisation or its staff, the patient (or any lawfully entitled personal representative or other authorised person) should be informed of the incident, given full disclosure of the

surrounding circumstances and be offered an appropriate level of support, whether or not the patient or representative has asked for this information.

The Berwick Report 'A Promise to learn - a commitment to act' emphasised the importance of the requirement that patient or carers affected by serious incidents should be notified and supported. It recommended that where an incident qualifying as a serious incident occurs the patient or carers affected by the incident should be notified and supported.

The Dalton Williams Review clearly outlined the expectations that all those involved in caring roles have a responsibility to be open and honest to those in their care. They noted that the evidence they heard reaffirmed what was already known: that when things do go wrong, patients and their families expect three things: to be told honestly what happened, what can be done to deal with any harm caused, and to know what will be done to prevent a recurrence to someone else.

Improvements in arrangements to support the disclosure of harm, is a key element supporting a continuously improving culture of safety. There are several healthcare systems and organisations worldwide that have introduced initiatives or arrangements to support open disclosure of harm. For example, The Australian Open Disclosure Framework is a national initiative of the Australian National, state and territory governments, in conjunction with private health services, through the Australian Commission on Safety and Quality in Health Care. It is intended to contribute to improving the safety and quality of health care.

## **The Scope of the EQIA**

Policy officials from the Scottish Government were involved in carrying out the EQIA.



## **Key Findings**

People who are in receipt of care or treatment in healthcare or social care settings will not be adversely affected by these proposals. From conducting our EQIA we have found no evidence of unlawful discrimination which our proposals need to address.

In respect of advancing equality of opportunity, there is no evidence to suggest that the Bill will have either a positive or negative impact on anyone due to their protected characteristic.

On promoting good relations, there is no evidence to suggest that the Bill will have either a positive or negative impact on anyone due to their protected characteristic.

## **Recommendations and Conclusion**

The Scottish Government has concluded that no changes to the policy are necessary as a result of the EQIA, as the proposals in the Bill are intended to apply equally to all affected, and appear to have no significant differential effect on the basis of the protected characteristics.

## EQUALITY IMPACT ASSESSMENT - RESULTS

<b>Title of Policy</b>	New offences in relation to wilful neglect or ill-treatment of those receiving care or treatment in health and social care settings
<b>Summary of aims and desired outcomes of Policy</b>	To create new criminal offences which will allow the criminal justice system to deal with extreme cases of neglect and ill-treatment in health and social care settings.
<b>Directorate: Division: team</b>	Healthcare Quality and Strategy Directorate: Planning and Quality Division: Person-Centred and Quality Team

### Executive summary

Creating offences in relation to wilful neglect or ill-treatment will ensure that there is consistency in the options available to the Police and prosecutors to deal with cases of ill-treatment or neglect wherever they occur in the health and social care system. The legislation will have a positive impact in allowing access to justice for those not currently covered by the existing offences in the Mental Health (Care and Treatment) (Scotland) Act 2003 ("2003 Act") and the Adults with Incapacity (Scotland) Act 2000. The proposals will affect those users and providers of health and social care as well as the courts, Crown Office and Procurator Fiscal Service, the Police, and the Scottish Prison Service .

Equality issues were considered during the policy development process and the proposals were not considered to give rise to

the possibility of those affected being treated less favourably due to any of the protected characteristics.

It was therefore considered that a relatively limited Equality Impact Assessment (EQIA) would be appropriate. The focus of the data gathering and consideration was on determining whether there may be any inadvertent effects on different groups by examining the populations likely to be affected by the proposals.

The EQIA confirmed that the proposals are unlikely to have any negative effect on the basis of the protected characteristics. There is potential for the provisions to have some positive differential effects for victims of neglect and ill-treatment.

Available data is of limited value in assessing the true extent to which individuals with protected characteristics will be affected by these provisions in the Bill. There are challenges in establishing credible information about levels of wilful neglect or ill-treatment. In considering the possible numbers of cases we have looked at the number of prosecutions in relation to the existing offence in the 2003 Act.

No changes to the policy were considered necessary following the EQIA. However, the Scottish Government will continue to work with stakeholders to ensure full account is taken of equality issues.

## **Background**

7. Existing legislative and regulatory provisions (including the 2003 Act) which may apply in some cases of wilful neglect or ill-treatment are not considered sufficient to cover all situations of neglect or ill-treatment that may arise.

8. The intention of the provisions on wilful neglect or ill-treatment is to ensure that the worst cases of ill-treatment or deliberate neglect, which may be uncommon, can be dealt with effectively by the criminal justice system. The provisions on wilful neglect or ill-treatment will establish a new criminal offence which will apply to individual care workers, managers and supervisors, either employed, or volunteering on behalf of a voluntary organisation, who provide care or treatment. There will also be an offence which will apply to organisations.

## **The Scope of the EQIA**

9. Policy officials from the Scottish Government were involved in carrying out the EQIA. The data on wilful neglect or ill-treatment under existing offences is restricted to information on prosecution, conviction and sentencing for such offences and is not available broken down in relation to protected characteristics.

## **Key Findings**

10. People who are in receipt of care or treatment in healthcare or social care settings will not be adversely affected by these proposals. From conducting our EQIA we have found no evidence of unlawful discrimination which our proposals need to address.

11. In respect of advancing equality of opportunity, there is no evidence to suggest that the Bill will have either a positive or negative impact on anyone due to their protected characteristic.

12. On promoting good relations, there is no evidence to suggest that the Bill will have either a positive or negative impact on anyone due to their protected characteristic.

## Recommendations and Conclusion

13. The Scottish Government has concluded that no changes to the policy are necessary as a result of the EQIA, as the proposals in the Bill are intended to apply equally to all affected, and appear to have no significant differential effect of the basis of the protected characteristics.



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