



HEALTH AND SPORT COMMITTEE

AGENDA

23rd Meeting, 2015 (Session 4)

Tuesday 8 September 2015

The Committee will meet at 9.45 am in the James Clerk Maxwell Room (CR4).

1. **Declaration of interests:** Malcolm Chisholm will be invited to declare any relevant interests.
2. **Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill:** The Committee will take evidence on Part 1 of the Bill at Stage 1, in round table format, from—

Mark Feeney, Policy and Development Pharmacist, Community Pharmacy Scotland;

Katherine Devlin, President, ECITA (EU) Ltd;

Guy Parker, Chief Executive, Advertising Standards Authority;

John Lee, Head of Public Affairs, Scottish Grocers Federation;

Charlie Cunningham-Reid, UK Head of Corporate Affairs and Communications, JTI UK (E-Lites);

Alan Teader, Marketing Manager, Vapourized.

3. **Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill (in private):** The Committee will consider the main themes arising from the oral evidence heard earlier in the meeting.
4. **Carers (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

HS/S4/15/23/A

Jane Williams
Clerk to the Health and Sport Committee
Room T3.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5210
Email: jane.williams@scottish.parliament.uk

Health (Tobacco, Nicotine etc. and Care)(Scotland) Bill**Community Pharmacy Scotland****Who are we?**

Community Pharmacy Scotland is the organisation which represents community pharmacy contractor owners in almost every aspect of their working lives, and is the voice of these vital healthcare professionals as they deliver pharmaceutical care to the people of Scotland.

It is empowered to represent the owners of Scotland's 1256 community pharmacies and negotiates on their behalf with the Scottish Government. This covers all matters of terms of service and contractors' NHS service activity including remuneration and reimbursement for the provision of NHS pharmaceutical services.

Community pharmacies are situated across Scotland and it has been recognised that they are frequently sited in areas where levels of health inequalities are greater. In these areas, community pharmacies also offer members of that community an opportunity for skilled and sustainable employment.

What do we do?

Community Pharmacy Scotland works with the Scottish Government on the development of new pharmaceutical care services and works to ensure that the framework exists to allow the owners of Scotland's community pharmacies to deliver these services.

The Scottish community pharmacy contract puts the care of the individual right at its centre and with its focus on pharmaceutical care and improving clinical outcomes, community pharmacy contractors and their employee pharmacists are playing an increasingly important role in maximising therapeutic outcomes and improving medicine safety. Community pharmacy is at the heart of every community and plays an important part in the drive to ensure that the health professions provide the services and care the people of Scotland require and deserve.

2013 saw the publication of *Prescription for Excellence*, A Vision and Action Plan for the right pharmaceutical care through integrated partnerships and innovation. We participated in the session held by the Health and Sport Committee on 29th April 2014 to consider and explore it and welcomed the opportunity that gave to interact with officials and other stakeholders.

Community Pharmacy Scotland is happy to provide further information to the Health and Sport committee as required in support of this submission.

CPS Response to the call for evidence**NVPs and smoking in hospital grounds****1. Do you support the Bill's provisions in relation to NVPs?**

We welcome many aspects of the bill including the age restrictions on sales, prohibiting sales from vending machines, prohibiting proxy sales. These restrictions should help reduce the risk of young people in particular starting a potential nicotine addiction through these products. We do however note that there is little evidence to suggest NVPs are acting as "gateway" devices to nicotine addiction.

We have concerns about retailers having to be on the tobacco retailers' register. NVPs have a lot of potential to reduce the massive harm caused by smoking tobacco. The stigma of having to be on the tobacco retailers' register will likely mean that many community pharmacies will choose not to supply NVPs. This will reduce the likelihood of "vapers" coming into contact with trained healthcare staff who may be able to advise them on reducing their use of NVPs or encourage them to enter NHS smoking cessation services.

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

Yes, we are supportive of the ban.

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

We would remove the need for retailers to be on the tobacco register as we believe it stigmatises a product which evidence has shown is around 20 times safer than combustible tobacco. We accept any legislation in this a difficult balancing act but care must be taken to ensure the benefits these products appear to have in reducing tobacco use are realised.

Duty of candour and wilful neglect**4. Do you support the proposed duty of candour?**

No, we do not support a statutory duty of candour.

Along with other UK regulators of healthcare professionals, the General Pharmaceutical Council (GPhC) has signed a joint statement on openness and honesty - the professional duty of candour. The statement reflects the GPhC's requirement that pharmacists and pharmacy technicians need to be open and transparent at all times, and serves as a reminder that candour is an essential duty for all professionals. The implications of need for this should be understood by all of our members and should be reflected in current practices.

Community Pharmacy Scotland fully understands the need for a duty of candour following recommendations of the Berwick and Francis reports; however we feel it is not necessary to underpin this through legislation. Current arrangements with the Regulator and Health Boards (through the

2009 General Pharmaceutical Regulations in Scotland, Patient Rights Act 2011) should be enough to ensure that duty of candour takes place in a professional way ensuring improvement in practice and appropriate disclosure with patients.

There are fundamental advantages of regulation over legislation. While they should have the same effect, regulation is far easier to modify and should therefore cost less in both time and money.

We have seen an example in the pharmacy profession such as the criminalisation of dispensing errors where legislation has had a negative impact on encouraging an open and honest culture. We note that recommendation 10 from the Berwick Report states “We support responsive regulation of organisations, with a hierarchy of responses. Recourse to criminal sanctions should be extremely rare, and should function primarily as a deterrent to wilful or reckless neglect or mistreatment.”

We would therefore state that legislating in this matter could be seen as a regressive step.

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

Yes we support the proposal in line with the recommendations of the Berwick report.

6. Is there anything you would add/remove/change in the Bill with regards to these provisions? - See more at:

No comment.

Community Pharmacy Scotland

Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill**ECITA (EU) Ltd**

We address herein only the provisions relating to Electronic Cigarettes, and not to the other policy areas covered by the Bill, i.e. the first of the three key parts identified in the call:

1. Nicotine Vapour Products and smoking in hospital grounds –

The Bill will introduce restrictions on the sale of nicotine vapour products (NVPs) such as e-cigarettes and shisha pipes. These restrictions will include: a minimum purchase age of 18, prohibiting the sale of NVPs via vending machines, requiring NVP retailers to register on the tobacco retailer register, prohibit 'proxy-purchasing' for under 18s, restrict domestic advertising and promotions, implement an age verification policy for the sale of NVPs and ban staff under the age of 18 from selling tobacco and NVPs. The Bill would also make it an offence to smoke in parts of hospital grounds.

We shall endeavour to address our views to the specific questions put in relation to this first part, as follows:

"NVPs and smoking in hospital grounds"

1. Do you support the Bill's provisions in relation to NVPs?
2. Do you support the proposal to ban smoking in hospital grounds?
3. Is there anything you would add/remove/change in the Bill with regards to NVPs or smoking in hospital grounds?"

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

We are pleased to note that the proposed definition of nicotine vapour products is well-constructed, and carefully sets out the parameters of what is and is not covered. Unfortunately, however, despite the specific mention of "shisha pipes" in the call for written views, the Bill itself specifically *excludes* non-nicotine containing electronic cigarette products. This includes the vast majority of the e-shisha products, as opposed to the shisha pipes which are used with tobacco, and are not part of the vaping product sector. This is a matter of considerable concern, particularly in the context of the young people which the Bill is aimed at protecting. Non-nicotine shisha vaping products have become increasingly popular amongst teenagers, and we have always taken the view that, irrespective of nicotine content, products designed for inhalation – such as all vaping products, with and without nicotine – must meet appropriate standards and be carefully regulated. Furthermore, we have always believed that vaping products should be age-restricted in the same way as tobacco products, whether or not they contain nicotine.

BSI PAS 54115 has now been published, and defines ‘vaping product’ as follows:

“vaping product (VP)

Product, and/or part of product, which is used within a device designed to produce vapour for inhalation, and which may or may not contain nicotine

NOTE Includes electronic cigarettes, e-shisha products, e-liquids, mixing kits, mods, batteries and all other products and accessories which are sold for the purpose of vaping.”

This definition was very carefully constructed to ensure that all vaping products were captured, irrespective of nicotine content. We are concerned that the Scottish Bill leaves all vaping products without nicotine outside of the provisions in Part 1, Chapter 1, sections 2, 3, 4 and 5 of the Bill – provisions which we find to be entirely reasonable, and with appropriate recourse to defence clearly set out.

Treating all vaping products in the same way, regardless of nicotine content, would aid enforcement since otherwise a test for the presence or absence of nicotine would need to be undertaken before deciding which set of regulations would apply. As currently proposed, an enforcement officer would be unable to ascertain whether or not a sale to an underage person was in breach of the Act at the time the sale occurred; if the product did not contain nicotine, no offence would have been committed. This would add considerable complexity and cost to enforcement actions.

Section 6’s prohibition of proxy sales is also sensible in our view, on the understanding that there will be ‘intelligent enforcement’, as your civil servants described it to us, to ensure that parents or older siblings trying to help a teenage smoker out of their habit would be treated reasonably and appropriately.

Section 7 extending the vending machine prohibition seems to be entirely appropriate.

Sections 8, 9, 10, 11, 12, 14 and 15 are problematic because of the exclusion of such a significant part of the market, i.e. the non-nicotine containing vaping products. We are grateful to the Scottish government for having taken on board our concerns about the name of the register, but believe that the more generic term ‘vaping products’, defined to specifically *include* non-nicotine containing products, would provide a better and more useful (and enforceable) cover for all the provisions in the Bill.

Chapter 2, section 17 provides a very ‘wide power’ (as described in the explanatory notes) for the Scottish Ministers to introduce prohibitions and/or restrictions on advertising, and to provide specific exemptions, should they so choose. Without knowing how Scottish Ministers might choose to exercise such powers, it is difficult to support or oppose this provision. We should be most grateful if you would carefully consider our letter of 8th June, which

specifically addresses the issues surrounding advertising restrictions on vaping products, and the Committees of Advertising Practice (CAP) Rules. (The problem of the term ‘nicotine vapour product (NVP)’ occurs in this context, too. How would the Scottish Ministers decide whether an advert for a vaping product was advertising a nicotine or non-nicotine containing device?)

Section 18 has the potential for unfortunate unintended consequences. It is a crucial part of the operation of the vast majority of the specialist retailers to allow adult consumers to try products before they purchase them. While we agree with the aim of the Bill, i.e. to avoid the indiscriminate promotion of nicotine products, there are circumstances in which providing products free can assist in moving people away from tobacco smoking, with the obvious public health benefits. (Please see the documents attached herewith.) Again, as with sections 17 and 19, there is no clarity as to what the regulations might look like, since this Bill merely provides wide-ranging powers to introduce regulation. This makes it very difficult to assess how Scottish Ministers might choose to exercise such powers.

In section 19, while there may be some forms of sponsorship which are clearly inappropriate, the ability to promote the products to demographics which include large numbers of smokers should not be arbitrarily ruled out because of the potential gains for public health if more smokers can be persuaded to stop smoking tobacco.

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

Since the definitions of “smoke” and “no-smoking premises” in the Smoking, Health and Social Care (Scotland) Act 2005 very clearly *exclude* vaping products (with and without nicotine), this does not fall within our remit.

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

To summarise the points made above, here are the specific changes we should like to see in the Bill:

- The title of the Bill would be more representative of its contents if changed to ‘Health (Tobacco, Vaping Products and Care) (Scotland) Bill.
- In a similar vein, every occurrence of the term “nicotine vapour products” and/or “NVP” would benefit from being replaced with “vaping products” and “VP”. This should include any occurrences of the term “nicotine vapour products” and/or “NVP” suggested for other Scotland Acts.
- It would probably be helpful to alter the definition in Part 1, Chapter 1, Section 1 to define ‘vaping products’ in line with the definition in BSI PAS 54115 as:

Product, and/or part of product, which is used within a device designed to produce vapour for inhalation, and which may or may not contain nicotine

NOTE Includes electronic cigarettes, e-shisha products, e-liquids, mixing kits, mods, batteries and all other products and accessories which are sold for the purpose of vaping.

and specifically exclude the list provided at subsection 2 (a) to (d) inclusive, but stating:

“But the following are not vaping products---“.

ECITA (EU) Ltd

Health (Tobacco, Nicotine etc. and Care)(Scotland) Bill**The Advertising Standards Authority and Committees of Advertising Practice****1. Introduction**

1.1 The Advertising Standards Authority, the Committee of Advertising Practice and the Broadcast Committee of Advertising Practice (the 'ASA system') welcome the opportunity to respond to the Health and Sport Committee's call for written views on the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill.

1.2 We are grateful for the invitation to the ASA to discuss our response and the practical aspects of the Nicotine Vapour Products (NVP) proposals with the Health and Sport Committee in September 2015.

1.3 We would like to provide our views in relation to Question 1, which asks whether respondents support the Bill's provisions in relation to NVPs. Based on the available evidence, we think the current advertising rules for e-cigarettes, which were updated on the 10 November 2014, provide the correct level of protection for consumers across the UK.

1.4 The ASA system previously submitted a response to the Scottish Government's Consultation on Electronic Cigarettes and Strengthening Tobacco Control in Scotland (Annex A). To supplement and update this response, the ASA system wishes to make the following key points:

2. Sector-specific rules

2.1 On the 10 November 2014, after a period of public consultation, CAP and BCAP put in place specific rules for the advertising of e-cigarettes in the UK. Those rules apply across all media and are administered by the ASA.

2.2 The rules place an emphasis on the protection of young people and ads must avoid containing anything that promotes tobacco. The rules address key concerns about the advertising of e-cigarettes:

- Ads must not be likely to appeal to people under 18, especially by reflecting or being associated with youth culture (including using celebrities popular with young people)
- People shown using e-cigarettes or playing a significant role must neither be nor seem to be under 25
- Ads must not be directed at those under 18 either through the choice of media or the context in which they appear
- Ads must not encourage non-smokers or non-nicotine users to use tobacco products and must do nothing to promote tobacco smoking
- Ads must make clear that the product is an e-cigarette, not a tobacco product, and must not cross-promote tobacco brands

- Ads must not contain health claims or (illegal) medicinal claims

2.3 More detail on the rules and relevant policy decisions can be found in CAP and BCAP's Joint Regulatory Statement (Annex B) and in Annex A.

3. Evidence base

3.1 CAP and BCAP will always consider whether any new evidence has regulatory implications for the Advertising Codes, where necessary taking into account the public health context. In the e-cigarette sector, that context includes concerns around the safety of e-cigarettes and their potential to 'normalise', and be a gateway in to, smoking. It also includes the arguments and evidence for the potentially significant public health benefit at the population level if smokers or would-be smokers switch some or all of their tobacco consumption to e-cigarettes and the part responsible advertising might play in encouraging that switching.

3.2 When the new rules were introduced, CAP and BCAP were mindful that there had already been at least two years of steadily increasing advertising of e-cigarettes, mostly in non-broadcast media. Despite the increase in advertising, the evidence base showed then, and continues to show now, that the use of e-cigarettes amongst children and young people remains rare and confined to those who currently or have previously smoked tobacco.¹

3.3 Similarly e-cigarettes are used almost exclusively by adult current and ex-smokers and that use amongst never smokers remains negligible.² The available evidence does not show a gateway effect from e-cigarettes into smoking. The CAP and BCAP rules reflect the gradient of risk and, were this evidential picture different, the rules would be different.

4. Pre-clearance

4.1 It is a licence condition of all UK broadcast television channels that the ads they air comply with the BCAP Code. All the major broadcasters operate a regime of pre-clearance via Clearcast which ensures that ads are examined carefully prior to broadcast to ensure compliance.³ In the rare event that a broadcast ad is found to breach the Code it is removed from air instantly using the same system.

4.2 Companies who market in non-broadcast media have access to CAP's Copy Advice service, which educates and advises industry on how to make sure their advertising is compliant with the CAP Code before it appears. This

¹ Use of electronic cigarettes in children in Great Britain – May 2015, ASH Fact Sheet. Data taken from YouGov Poll. http://www.ash.org.uk/files/documents/ASH_959.pdf.

² Use of electronic cigarettes among adults in Great Britain – May 2015, ASH Face Sheet, Data taken from YouGov Poll. http://www.ash.org.uk/files/documents/ASH_891.pdf

³ Clearcast <http://www.clearcast.co.uk/>

includes a [dedicated advice webpage on e-cigarette advertising](#) and access to free one-to-one advice, provided within 24 hours.⁴

5. ASA enforcement

5.1 In the eight months⁵ since the inception of the new rules the ASA received a total of 644 individual complaints about e-cigarette advertisements. Approximately 250 of those complaints objected to e-cigarettes being advertised at all. These complainants often take the view that e-cigarettes are the same as tobacco in some way or present the same health risks, or that they can act as a gateway to tobacco. Given the growth of the e-cigarette sector and the strength and divergence of opinion, we expect to continue to receive such complaints. However, our decision to allow responsible advertising for e-cigarettes, subject to strict rules, is based on a consultation in which the majority of respondents supported responsible advertising and on an evidence base (discussed above) that continues to show that the products are overwhelmingly used by smokers as a tobacco alternative.

5.2 The remaining complaints related to 88 actual cases (cases broadly correspond to ads). In a pattern consistent with our wider work, 71 of those cases did not need to be taken forward, generally because the complaint did not raise issues under the Codes. For example, in one case the complaint was that the ad was making a smoking cessation claim for an unlicensed product and in another the complainant felt that the ad was encouraging illegal drug use. However, after obtaining copies of these ads and assessing them, we did not consider that they were likely to be interpreted by most consumers in the ways suggested by the complainants. In another case the complainant believed that she had seen an e-cigarette advertisement on a children's channel, but enquiries with the broadcaster and our media monitoring databases revealed this not to be the case.

5.3 Of the remaining 17 cases, six were judged by the ASA Council not to be in breach of the rules and were closed. A further six presented minor or clear cut breaches of the Codes and were resolved on an informal basis by the advertiser agreeing to make changes to their ads to bring them in line with the Codes. Five cases were formally investigated and ruled on by the ASA Council. Of those, four were found to be in breach of the Code either in whole or in part, and one was found not to be in breach.

5.4 In the same period we received a total of 19,062 complaints and 10,186 cases about all ads⁶ meaning that e-cigarette advertisements account for 3.4% of complaints and 0.9% of ASA casework since the inception of the new rules. In that light our view is that the number and nature of e-cigarette

⁴ CAP AdviceOnline Electronic Cigarettes <https://www.cap.org.uk/Advice-Training-on-the-rules/Advice-Online-Database/Electronic-cigarettes.aspx>

⁵ 10 November 2014 to 30 June 2015 inclusive

⁶ In the 12 months of 2014 we received 37,073 complaints about 17,002 cases across all sectors.

complaints and cases does not reveal a systemic problem with the sector's advertising at the moment.

6. Review of the rules

6.1 CAP and BCAP recognise the importance of ensuring that the rules for e-cigarettes remain fit-for-purpose. For that reason, in November the ASA system will conduct a formal 12 month review, looking particularly at the detailed data from ASA complaints and investigations during that time and conducting a monitoring exercise to look at media and issues that have not been brought to our attention by complainants.

6.2 The review will evaluate the up-to-date evidence base on e-cigarette use and trends and will also explore whether there is scope for bespoke research on, for example, whether ads for e-cigarettes are likely to particularly appeal to under 18s. If any of these factors give us concerns about either the rules themselves or the way in which we administer them, we are committed to making any changes that are required.

7. The ASA System's views on Question 1

7.1 The ASA System understands that a strict transposition of the Tobacco Products Directive (TPD) would allow some non-broadcast domestic marketing to remain. The Bill at issue empowers ministers to enact a comprehensive ban on domestic advertising of NVPs. We think the current rules continue to provide the right level of protection for consumers across the UK and are capable of continuing to do so should the Scottish Parliament, or ministers subsequently, allow any advertising in this sector to remain.

7.2 Additionally the Health and Sport Committee will be aware that the TPD does not apply to e-cigarettes licensed as medicines. It is important to note therefore that advertising of medicinal e-cigarettes will legally be able to continue across the UK in all media even after the transposition of the TPD. Recognising that advertisements for such products still present many of the same concerns as unlicensed products, the CAP and BCAP rules on e-cigarette advertising, in addition to rules on the advertising of medicines, will apply to these advertisements.

7.3 In light of the current evidential picture, the ASA system considers that e-cigarette advertising, when conducted responsibly and in line with the relevant rules, has a significant positive role to play in attracting more smokers to a tobacco-free source of nicotine.

8. Summary

8.1 We recognise the key concerns surrounding the use of e-cigarettes. The e-cigarette rules, developed by CAP and BCAP and administered by the ASA, are comprehensive and robust. The ASA system will shortly be conducting a review of the rules and is committed to making any changes to the rules should the up-to-date evidence base on e-cigarette use and trends indicate that change is required.

8.2 Current evidence appears to show the potentially significant public health benefit at the population level if smokers or would-be smokers switch some or all of their tobacco consumption to e-cigarettes. Responsible advertising has the potential to encourage that switching.

8.3 If the Scottish Parliament, or ministers subsequently, allow any advertising in this sector to remain, we think the current rules continue to provide the right level of protection for consumers across the UK.

8.4 We welcome the opportunity and look forward to working further with the Health and Sport Committee on the practical aspects of the NVP proposals.

Advertising Standards Authority

[Annex A - The Advertising Standards Authority and Committees of Advertising Practice response to the Scottish Government Consultation on Electronic Cigarettes](#)

[Annex B -New rules for the marketing of e-cigarettes - CAP and BCAP's Joint Regulatory Statement](#)

Health (Tobacco, Nicotine etc. and Care)(Scotland) Bill**Scottish Grocers' Federation**

SGF is the national trade association for the independent convenience store industry. There are 5,545 convenience stores in Scotland, these stores provide over 42,000 jobs and the total value of sales is approximately £4 billion per annum.

Convenience store retailers are fully committed to the responsible retailing of age-restricted products. They have fully and effectively implemented the Challenge 25 age verification regime for both alcohol and tobacco products (in relation to tobacco they have done so entirely voluntarily). They have also fully embraced the tobacco retail register.

We welcome the opportunity to respond to the Health and Sport Committee's call for evidence. In our short submission, we have made reference to a statement of principles on the control of e-cigarettes, produced by a panel of leading experts in nicotine science and public health policy, which was sent to the World Health Organisation. We believe the Committee may find this statement to be of further interest and have attached a copy with our submission.

Overall our view is that electronic cigarettes have significant potential to enable people to move away from tobacco products: this potential should not be quashed by regulations which lack balance and proportionality.

Chapter 1. Sale and Purchase of Tobacco and Nicotine Vapour Products**Sale of NVPs to persons under 18**

We agree that NVP's should be age-restricted – our members already treat these products as being age-restricted - and that it should be an offence to sell these products to persons under the age of 18. We also agree that demonstrating 'due diligence' should be a defence in such instances: the seller believed the customer to be aged 18 and over and took reasonable steps to establish the customer's age.

Age Verification Policy

We agree that retailers should operate a mandatory age verification policy for NVPs, but this need not be a written policy. The introduction of an age verification regime, such as Challenge 25, will reinforce best practice. However, we do not believe that Scottish Ministers should be given the power to amend the age specified in the Bill (25) as this could only cause inconsistency in practice. Challenge 25 has become an effective benchmark for preventing underage sales; varying the age would only undermine retailers' efforts to continue this success. We recommend that the tobacco and nicotine vapour products age verification policy should reflect the alcohol age verification policy specified in the Alcohol etc. (Scotland) Act 2010 section

6, which does not give Scottish Ministers the power to amend the age specified.

In 2013 the Scottish government amended existing regulations to enable national identity cards issued by EU member states and UK Ministry of Defence ID cards to become acceptable proof of age documents in relation to the purchase of tobacco and alcohol. To ensure consistency these documents should have the same usage in respect to the purchase of NVPs.

Purchase of NVPs on Behalf of Persons Under 18

We agree that the 'proxy purchase' of NVP's should be an offence liable to a fine not exceeding level 5 on the standard scale.

Sales by Persons Under 18

We support the provision in the Bill to ban unauthorised sales of tobacco and NVPs by under-18s. We believe that the sale or supply of tobacco and e-cigarettes by young people under the age of 18 should reflect the same regulations for the sale of alcohol in Section 142 paragraph 262 of the Licensing (Scotland) Act 2005.

Ban on the Sale of NVPs from Vending Machines

SGF support the measures contained in the Bill to prohibit the sale of NVPs from vending machines.

Chapter 2 Advertising and Promotion of Nicotine Vapour Products

In our view the provisions in the Bill relating to prohibiting advertising are much too vaguely defined. Therefore they could lead to regulations on advertising that are neither evidence-based, balanced nor proportionate and which could adversely impact on the potential of NVPs to assist in smoking cessation, including the Scottish Government's target for a 'tobacco free' nation by 2034.

The Explanatory Notes accompanying the Bill suggests that point of sale material displayed in-store will not be included in an advertising ban. However, this is not stated in the Bill itself. In our view it is extremely important that point of sale material should not be included in any advertising restrictions and that should be clearly stated in the Bill as amended.

As the Convenor of the Health and Sport Committee said at the launch of the call for evidence, it is imperative that the Bill strikes a balance between regulating the use of e-cigarettes and helping smokers who wish to use the devices to quit smoking. In our response to the original Scottish Government Consultation (*Electronic Cigarettes and Strengthen Tobacco Control in Scotland*), we highlighted a 'position statement' produced in May of 2014 by 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 – and issued to Dr Margaret Chan, DG of the World Health Organisation. The statement aimed to highlight

the potentially vital role e-cigarettes can play in helping people stop using tobacco products and listed 10 principles which should underpin the public health approach to electronic cigarettes and tobacco harm reduction.

One of the key principles in the position statement relates to the advertising of e cigarettes:

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.

We would urge the Committee to take cognisance of the approach recommended by this panel of experts – that banning advertising of NVPs is counterproductive. If adult smokers are to fully embrace the cessation potential offered by NVPs, it is vital that a market for these products is in place. This will allow customers to make decisions on which products are most suitable for them in terms of price and individual preference – advertising is clearly a key mechanism for this. A ban on domestic advertising and promotion will simply stop this market from fully developing and the tobacco cessation potential will never be realised.

The market for e-cigarettes is relatively new but there are already safeguards in place to prevent inappropriate and irresponsible advertising. We would like to draw the Committee's attention to the existing frameworks for governing the advertising and promotion of NVPs. The Committees of Advertising Practice (CAP) write and maintain the UK Advertising Codes, which are administered by the Advertising Standards Authority. CAP currently have a robust and comprehensive code of practice for advertising, sales promotion and direct marketing. Section 22 of the code applies to electronic cigarettes and stipulates *inter alia* that:

- Marketing communications for these products must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture;
- Marketing communications must state clearly if the product contains nicotine;
- Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

Clearly the existing market for NVPs' already has standards on advertising which manufacturers have to adhere to. It is difficult to see how this could be added to without an outright ban on advertising, a move which would significantly inhibit the tobacco harm reduction potential of NVPs.

Finally, there is currently no robust evidence that e-cigarettes are acting as a 'gateway' to smoking tobacco for young people – the use of these products by people who have never smoked is extremely low. As ASH stated in its factsheet (May 2015) on the use of electronic cigarettes:

“ASH estimates that there are currently 2.6 million adults in Great Britain using electronic cigarettes. Of these, approximately 1.1 million are ex-smokers while 1.4 million continue to use tobacco alongside their electronic cigarette use. Regular use of the devices is confined to current and ex-smokers and use amongst never smokers remains negligible.....In summary the ASH Smokefree Youth Survey shows that regular use of electronic cigarettes amongst children and young people is rare and is confined almost entirely to those who currently or have previously smoked.”

Scottish Grocers' Federation

Health (Tobacco, Nicotine etc. and Care)(Scotland) Bill**Japan Tobacco International (JTI)****Organisation name**

Japan Tobacco International (JTI) is part of the Japan Tobacco group (JT Group) of companies, a leading international tobacco product manufacturer.

JTI has its UK headquarters in Weybridge, Surrey, and has a long-standing and significant presence in the UK. JTI manufactures a range of tobacco products for the UK market in Northern Ireland and other EU Member States (Germany, Romania and Poland). In the UK alone, JTI employs over 1,800 people. Gallaher Limited is the registered trading company of JTI in the UK.

In 2014 the JT Group acquired Zandera Ltd, one of the UK's largest electronic cigarette companies and integrated it into JTI. E-Lites is the main brand of Zandera Ltd. With electronic cigarettes being an increasingly popular alternative to cigarettes among many adult smokers, E-Lites is a logical and important extension to JTI's portfolio and is its first non-tobacco, nicotine-containing product. The JT Group further expanded its portfolio of electronic cigarettes with the acquisition of Logic Technology Development LLC in 2015, one of the leading U.S. electronic cigarette brands. As part of JTI, the E-Lites and Logic brands have access to:

- JTI's extensive manufacturing expertise (enabling standards of product quality to be further enhanced);
- The JT Group's wider technological, research and scientific resources (facilitating compliance with future regulatory requirements, driving the development of next generation products to meet evolving consumer expectations, and delivering ever better electronic cigarette products); and
- JTI's global distribution network in over 120 countries.

Introduction

Under-18s should not smoke and should not have access to tobacco products or nicotine containing products. This belief is central to the way JTI does business.

JTI supports regulation that is proportionate, carefully defined, necessary and appropriate to achieve a clearly articulated and legitimate public policy objective. Regulation should be made in accordance with internationally-accepted Better Regulation principles, which are supported by the Scottish Government, the UK Government and the European Commission. In essence, these principles require regulation to be transparent, accountable, proportionate, consistent and targeted at cases where action is needed.

JTI actively seeks dialogue, either written or oral, with government authorities around the world regarding the regulation of tobacco products and all other

nicotine containing products that it makes and sells. JTI has a right – and an obligation – to express its point of view regarding regulation that affects its products and the industry. It is our belief that we have the responsibility, when engaging in a consultation process, to be open and transparent in our dialogue with government authorities, and to propose alternative, less restrictive and more targeted solutions that meet Better Regulation principles where we believe proposed regulations to be excessive.

JTI supports reasonable and proportionate regulation of electronic cigarettes. It believes that:

- Adults should be free to choose whether they wish to use electronic cigarettes, including as an alternative to tobacco products;
- All marketed electronic cigarettes should comply with all relevant regulations concerning general consumer product safety, electrical safety and consumer protection from misleading marketing claims;
- Regulation of electronic cigarettes should aim to keep electronic cigarettes out of the hands of under-18s and to remind users of the risks associated with their use; and
- Governments and regulators should avoid excessive regulation that prevents adult consumers from choosing these products.
- JTI strongly supports the objective of preventing under-aged consumers from having access to electronic cigarettes and other nicotine containing products. However, the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill (***the Bill***) contains various provisions with which we do not agree. We therefore welcome the opportunity to provide this written response.

Chapter 1:

Sale and Purchase of Tobacco and Nicotine Vapour Products

JTI fully supports both the Scottish Government's decision to make it an offence to sell e-cigarettes to under-18s and the introduction of a ban on proxy purchases. We believe that these measures could make a significant contribution to reducing young people's access to nicotine containing products.

JTI does not market electronic cigarettes, or any other nicotine containing product, to under-18s or to non-users of tobacco or nicotine-containing products. In line with our core principle that children should not smoke, or have access to tobacco products, we also believe that children should not have access to electronic cigarettes or other nicotine containing products.

As such we support the proposal to introduce legislation that would make it an offence to sell electronic cigarettes to under-18s. JTI also supports the introduction of legislation making it an offence to allow a person under the age

of 18 to sell tobacco, unless specifically authorised to do so by a responsible person as laid out in Section 4C.

Age Verification policy

JTI believes it would be inappropriate to legislate to make it a criminal offence for a retailer to fail to operate an age-verification policy when selling tobacco or electronic cigarettes which would require them to verify the age of a person they suspect to be under the age of 25 (or older).

JTI accepts that voluntary age verifications schemes, such as Challenge25, provide helpful guidance for retailers in preventing under-age sales; indeed we endorse the Challenge25 scheme as part of our Responsible Tobacco Retailing training programme for retailers, which is designed to support the trade in youth access prevention. There already exists a high level of recognition and familiarity with this scheme and JTI believes that, rather than introducing a criminal offence, the Scottish Government should work with retailers to expand it and other voluntary schemes.

However, any moves to put age verification with a target age of 25 on a legislative footing may be confusing for the retail trade because the law makes it clear that tobacco – and as per new legislation, e-cigarettes – are subject to an 18 or over age restriction. Retailers already operate within a burdensome regulatory operating environment, and there is a high demand from retailers for support in complying with the existing law surrounding age-restricted products. Legislating for it to be illegal to fail to carry out an age verification on someone who is legally entitled to purchase a product will exasperate this confusion.

An example of how the Scottish Government could support tobacco and electronic cigarette retailers is the 'No ID No Sale' campaign, which JTI has backed since 2004. The campaign aims to educate retailers and creates an expectation that customers will be asked for proof of age. Since 2004 more than 504,000 'No ID No Sale' information packs, which include age display posters and guidance on how to respond when faced with customers who are unable to provide proof of age, have been distributed to retailers across the UK, including those operating in Scotland.

JTI's emphasis is on supporting retailers and we think it would be inappropriate to create legislation that makes it an offence for a retailer to sell tobacco or electronic cigarettes without operating an age-verification policy. Therefore we advocate that this part of Bill is removed.

Extension of vending machine prohibition

JTI is fundamentally opposed to a ban on electronic cigarette vending machines. Adults who choose to use electronic cigarettes are entitled to be treated fairly and equally, and have the right to choose and the ability to obtain the products they prefer. We believe that under-18s should not be able to obtain electronic cigarettes either via vending machines or any other sales channels, and therefore access to vending machines should be strictly controlled.

In our opinion a very clear and convincing justification needs to be present before restricting the means by which adult users can access electronic cigarettes. In addition, the Scottish Government must show that there are no more proportionate methods of achieving the goal of preventing under-18s from accessing electronic cigarettes via vending machines. As no such justification has been presented, we do not support an extension of the vending machine prohibition to include electronic cigarettes.

Registration

JTI does not object to the expansion of the tobacco retailers register to include electronic cigarette retailers, though we strongly believe that there should be no fee to register and as limited an administrative burden on retailers as possible. As the Bill proposes to use the current tobacco register, which is available online and is free, we support this section of the Bill.

Chapter 2

Advertising and Promotion of Nicotine Vapour Products

JTI is opposed to all provisions within Chapter 2, as the ability to advertise and promote a product is an essential commercial freedom and is fundamental to any consumer goods company's ability to build their brands and compete for market share. Prohibiting such advertisement and promotion would favour incumbent manufacturers over new entrants to the market. Advertising and promotion also benefits consumers, by promoting competition, increasing consumer choice and encouraging manufacturers to introduce new, better quality products. A prohibition on the advertising and promotion of electronic cigarettes may also have the unintended effect of reducing the number of adult smokers choosing to switch from tobacco products to electronic cigarettes.

We are committed to advertising and promoting our products responsibly. JTI's advertising is only targeted at existing adult users of electronic cigarettes and existing adult smokers. JTI advertises and promotes its electronic cigarettes for three reasons: to maintain brand loyalty among our existing customers; to encourage existing adult users of electronic cigarettes to switch from competitor brands to our products; and to provide information about our electronic cigarettes to existing adult smokers and vapers.

JTI's ability to advertise and promote our products is protected under Article 10 of the European Convention on Human Rights ("**ECHR**"). Prohibiting the advertising and promotion of electronic cigarettes would amount to a deprivation and/or impairment of that fundamental right to freedom of expression. Any restriction on this freedom must be justified by one of the exemptions available under Article 10 of the ECHR, meaning that it must pursue a legitimate aim and be both necessary and proportionate.

JTI recognises that certain standards should exist for advertising electronic cigarettes and supports the existing [UK Committee of Advertising Practice \(CAP\) code for electronic cigarette advertising](#). The CAP Code was introduced in 2014 and outlines various provisions for electronic cigarette advertising. The main points are:

- Adverts must be socially responsible and should not encourage non-smokers or non-nicotine users to use e-cigarettes;
- Adverts must contain nothing which promotes any design, imagery or logo that might be associated with a tobacco brand;
- Adverts must not contain health or medicinal claims unless the product is authorised for those purposes by the Medicines & Healthcare products Regulatory Agency;
- Advertisers cannot claim or imply that the product can act as a smoking cessation device unless the product is authorised for those purposes by the MHRA; and
- If the product contains nicotine, a statement to make this clear must be included in the advert.

We believe that the two advertising Codes produced by the CAP strike the right balance between allowing responsible advertising and preventing the targeting of under-18s and non-smokers, while also respecting companies' rights to communicate with adult consumers of electronic cigarettes.

The revised Tobacco Products Directive 2014/40/EU (TPD2) is due to be implemented by May 2016, affecting electronic cigarettes which contain up to 20mg/ml of nicotine. Electronic cigarettes with a nicotine content above that level will need to be granted marketing authorisation as medicinal products. The measures outlined in Chapter 2 go over and above even the requirements of TPD2, which is currently under challenge in the EU courts. TPD2, if found to be lawful, will prohibit cross-border advertising, sponsorship and promotion of electronic cigarettes. Going further than this, as Chapter 2 does, will be disproportionate, further stifle competition and restrict consumer choice. We believe it would be premature to introduce domestic restrictions until the lawfulness of TPD2, and the existence of a proper evidence base, has been determined.

Finally, JTI notes that the proposed advertising restrictions will need to be subject to further, and more detailed, enabling legislation. If the Scottish Government is minded to proceed with such legislation, which would represent a fundamental restriction on JTI's rights, we expect there to be a full public consultation.

Chapter 3

Smoking Outside Hospitals

JTI believes that it would be inappropriate for the Scottish Government to introduce smoke-free legislation that covers NHS grounds and considers that this chapter should be removed from the Bill.

We recognise that cigarettes are a legal but controversial product; as such, we believe adults have a fundamental right to make an informed choice about whether they want to smoke. More generally, it is not legitimate to seek to

discriminate against, stigmatise or ostracise existing adult smokers, or to treat the use of tobacco as abnormal, unacceptable, or tainted.

Therefore we believe it is inappropriate for the Scottish Government to prohibit adult smokers from undertaking a lawful activity when going about their everyday lives. It is JTI's strong belief that since tobacco smoke is easily dispersed in the atmosphere and highly diluted in outdoor environments, there is no basis on which to regulate smoking outdoors. JTI notes that there is limited scientific literature on outside tobacco smoke. Even well-known anti-tobacco advocates have questioned the scientific basis for restrictions on smoking outdoors¹. Considering these factors JTI considers that any smoking ban in outdoor spaces is excessive.

There already exists a high level of public awareness regarding the health risks associated with smoking, particularly amongst those who work in the healthcare profession. Nevertheless, JTI supports public health authorities' efforts to continue to inform the public about those risks.

Japan Tobacco International (JTI)

Note: 1. Jordan Raphael, in his discussion of American municipal outdoor smoking bans, indicated that outdoor smoking bans go "*beyond what is justified by the scientific findings on ETS*" (Raphael, 2007). Researchers also caution that it is premature to draw policy conclusions from their findings: Cameron et al. (2010) "*do not advise that the present results are used to advocate for outdoor smoking restrictions at the expense of other tobacco control policies known to reduce smoking prevalence*".

Health (Tobacco, Nicotine etc. and Care)(Scotland) Bill**Vaporized (CCHG Ltd)**

Thank you for providing Vaporized with the opportunity to respond to the Health (Tobacco, Nicotine etc. and Care (Scotland) Bill.

With regards to this Bill, Vaporized would like to express their opinions on some of the proposed inclusions.

With reference to Chapter 1, Section 2 that discusses “sale of nicotine vapour products to persons under 18”, Vaporized backs the inclusion of this entire Section unreservedly. Vaporized currently operates an age policy in all of their stores and believes that this policy is best for both the company and for the consumer.

As NVP’s are almost exclusively used by consumers looking for an alternative method of nicotine delivery, which is regarded as an addictive substance, we only sell our products to adults. We believe that other electronic cigarette retailers who currently do not operate under this policy should in order to introduce universal compliance for the industry.

In addition, Vaporized also agrees with the inclusion in Sections 3, 4, 5, 6 and 7 as we feel that these are necessary in order to effectively introduce and monitor the age restriction scheme proposed in Section 2.

In regards to Chapter 1, Sections 8 through 12, referring to the “Register of tobacco and nicotine vapour product retailers”, we feel that this inclusion is acceptable. We do believe that stronger compliance and regulation is needed for the industry in order to be as safe and accessible as possible, and as such, being required to register as an electronic cigarette sales outlet is welcomed. This, hopefully, will have the effect of fewer ‘pop-up’ style outlets opening and selling items which would not be considered acceptable.

We would like to stress, however, that our agreement with Chapter 8 is dependent on the proposed name change of the register to include “nicotine vapour products”. As NVP’s are not a tobacco product, and the electronic cigarette industry is trying to distance itself from any tobacco product comparisons, we would not be comfortable as being listed as a retailer of tobacco products.

Chapter 2, Sections 17 through 19, are unfortunate additions to the Bill which Vaporized do not agree with. Specifically, the proposal to allow Ministers to prohibit advertising, including coupons and gift vouchers. While we agree, and comply with, current regulations implemented by organisations such as CAP, ASA and ECITA, the ability to completely prohibit forms of marketing would be detrimental to many electronic cigarette focused retail businesses around Scotland.

Scottish businesses which specialise in electronic cigarette retail are already facing tough competition from outlets and websites which focus on the sale of items sourced from outside the UK, or made at home. These are not self-regulated in the same way as many larger companies such as Vaporized are. We rely on being able to promote ourselves and distribute information, such as our membership to ECITA, to our customers so that they are able to make an informed decision on the safety and viability of our products.

By removing advertising and marketing options from ourselves, and from other large electronic cigarette businesses, this only serves to make price points and second hand information the main deciding factor for someone wanting to move away from traditional tobacco products. We feel that focusing on correct regulations, rather than removal, of marketing and advertising options would be a better focus of the Bill.

Overall, we feel that there are many good points proposed in the Bill, but we also believe that certain inclusions, such as the potential banning of marketing and advertising would only be detrimental to both the end user and legitimate retail business across Scotland.

Vaporized (CCHG Ltd)



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

Survey: Controlling E-Cigarettes and Restricting Smoking in Parts of Hospital Grounds

Introduction

This report summarises the results of an online survey that was conducted to gather the views of members of the public on two proposals in the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill:

1. To introduce restrictions on the sale of nicotine vapour products (NVPs) such as e-cigarettes. These restrictions will include; a minimum purchase age of 18, a requirement for NVP retailers to register on the tobacco retailer register and the power to restrict or prohibit domestic advertising and promotions.
2. To make it an offence to smoke in a designated no-smoking zone outside of hospital buildings.

Overview

The survey was promoted on the Scottish Parliament's social media channels (twitter and facebook) and on the Scottish Parliament website. A news release was issued to local and national media and stakeholders were e-mailed details of the survey. A total of 845 responses were received. As respondents were self-selecting and due to the way in which the survey was promoted, responses are not necessarily representative of the Scottish population as a whole.

Participants were asked 20 questions relating to these proposals. Most of the questions consisted of statements followed by a choice of five responses: Strongly Agree, Agree, Neither Agree or Disagree, Disagree and Strongly Disagree. There were also two open questions where participants could make written comments. The questions are detailed at the end of this report.

The survey found most respondents were in favour of restricting the sale of e-cigarettes to those aged 18 or over and requiring retailers to verify the age of those wanting to buy e-cigarettes and tobacco products. However, the majority of those surveyed were against imposing a limit or restriction on advertising and sponsorship of e-cigarettes and restrictions on businesses giving away e-cigarettes for free or cheaply. There is also concern that any further restrictions on smoking in public spaces might also include e-cigarettes.

Headline Results

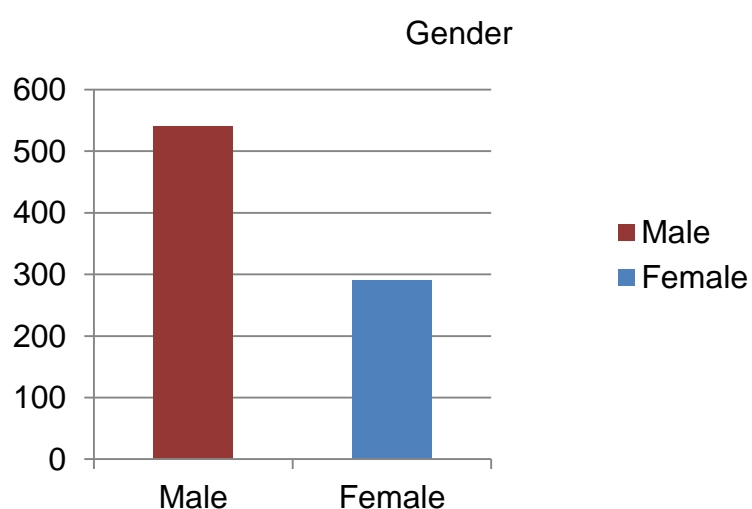
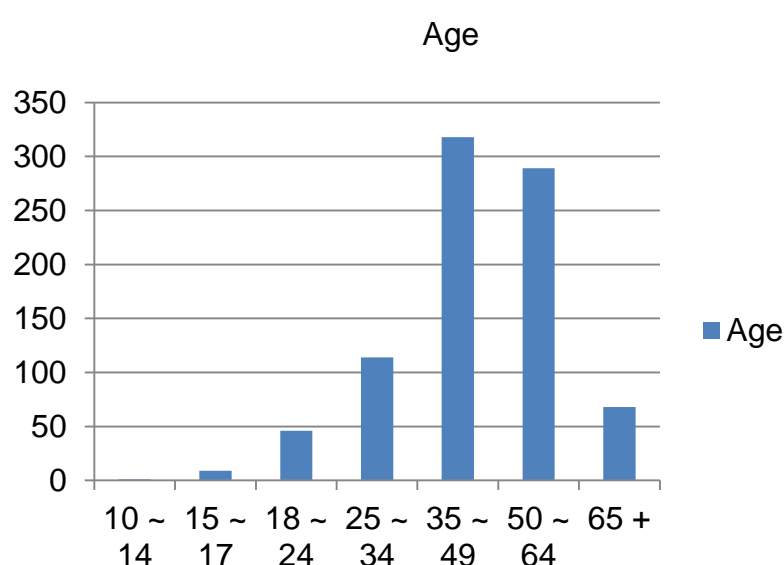
- Over 70% agree with restricting the sale of e-cigarettes to those aged 18 or over and requiring retailers to verify the age of those wanting to buy e-cigarettes and tobacco products.
- 86% of those responding to Q17 about the use of e-cigarettes in giving up smoking agreed that they had used e-cigarettes to help them quit smoking.
- 62% of those surveyed disagree with the proposal to make it an offence to smoke in any part of the 'no smoking' area of NHS hospital grounds.
- Many respondents view e-cigarettes as a preferable alternative to tobacco products, demonstrated in written responses to questions 18 and 19.
- The vast majority of smokers surveyed (97%) did not use e-cigarettes before taking up smoking.

Contents

Survey Participants.....	3
Restricting the sale of E-cigarettes and Tobacco.....	4
Banning Smoking in Parts of NHS Hospital Grounds.....	8
E-cigarettes and Smoking.....	9
Written Responses to Questions 18-19.....	11
Key Themes / Summary.....	12
List of Survey Questions.....	14

Survey Participants

A total of 845 responses were received. Most of the survey participants (72%) were aged 35-64. Around two-thirds (65%) of respondents were male and a third (35%) were female. As such, the survey should not be interpreted as being representative of the population as a whole. Across the population as a whole, only 40% are aged 35-64 and 49% are male.¹



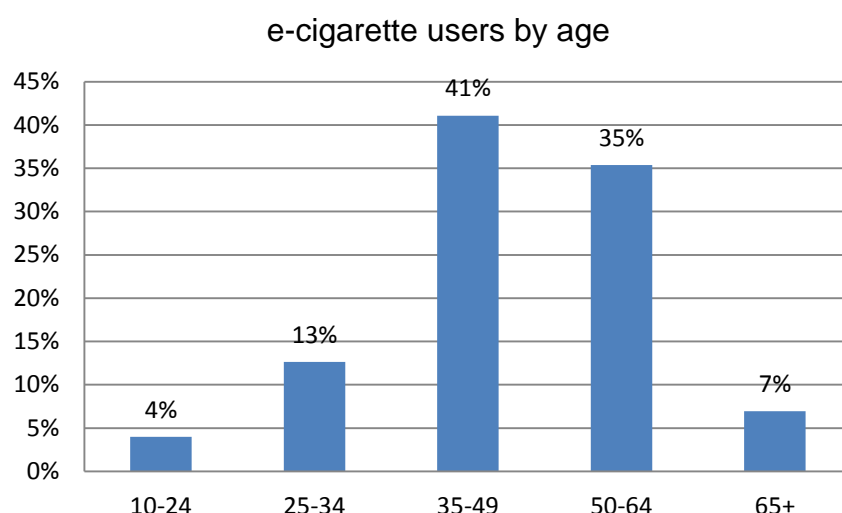
A third (32%) of the participants did not reside in any of the listed Scottish postcode areas and a further 12% lived abroad. Of those who lived in areas listed most respondents (37%) gave their postcode as Edinburgh (EH) or Glasgow (G).

In terms of e-cigarette and tobacco consumption 54% of respondents reported having stopped smoking tobacco products, while 11% currently smoke and 13%

¹ <http://www.nrscotland.gov.uk/files//statistics/population-estimates/midyear-2014/14mid-year-pe-cahb-tab2.xlsx>

have never smoked tobacco products. 68% of participants in the survey currently use e-cigarettes, 15% have never used e-cigarettes and 3% have stopped using e-cigarettes.

The age profile of those respondents who said that they used e-cigarettes is shown below. Of those who said that they used e-cigarettes, around two-thirds were aged 35-64. Only 4% of e-cigarette users were under 25, but this will in part reflect the relatively low number of responses from this age group. [Only 7% of respondents were aged 10-24, but this age group represents 18% of the Scottish population.]



Restricting the sale of E-cigarettes and Tobacco

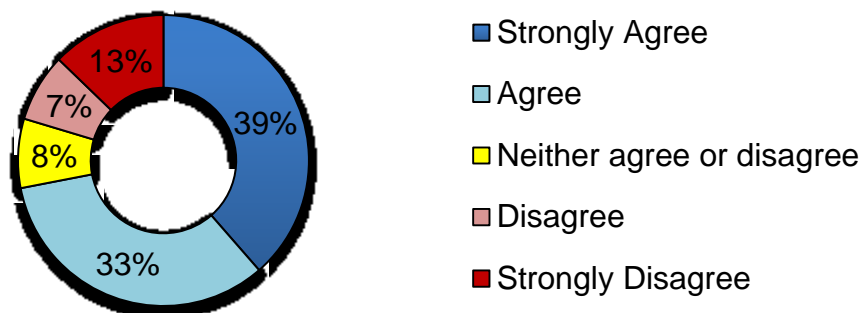
Over two thirds of respondents (72%) agreed with the proposal to restrict the sale of e-cigarettes to those aged 18 or over. Approximately the same proportion (75%) either agreed or strongly agreed with the notion of requiring retailers to verify the age of those wanting to buy tobacco products or e-cigarettes if they look under 25.

Over half of respondents (59%) either agreed or strongly agreed with the statement: “The Bill will make it illegal to buy e-cigarettes on behalf of someone who is under 18.” The survey demonstrates considerable support for these three proposals.

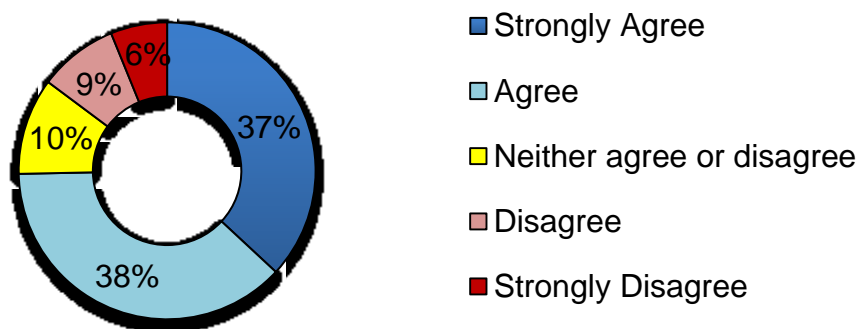
The majority (62%) of those surveyed agreed with the statement: “The Bill will require employers to authorise employees aged under 18 in order for them to sell e-cigarettes or tobacco,” however, a significant proportion (22%) responded that they neither agreed nor disagreed.

However, there was a mixed response to the proposal to ban the sale of e-cigarettes from vending machines. 48% of respondents strongly agreed or agreed with this statement, 32% either disagreed or strongly disagreed with the statement and 20% neither agreed nor disagreed.

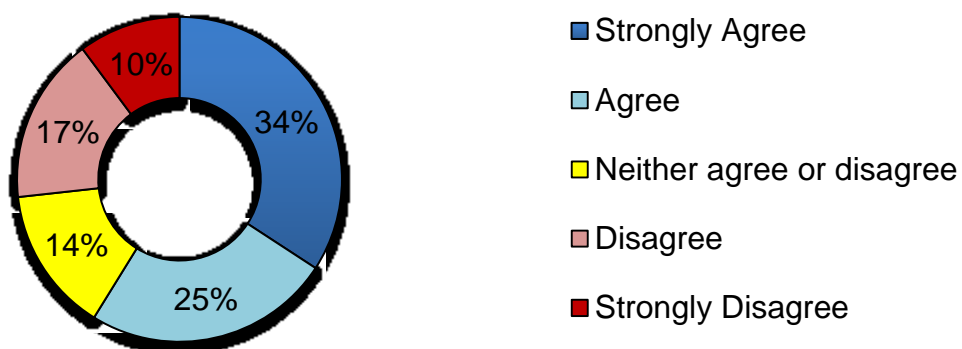
1. The Bill will restrict the sale of e-cigarettes to those aged 18 or over



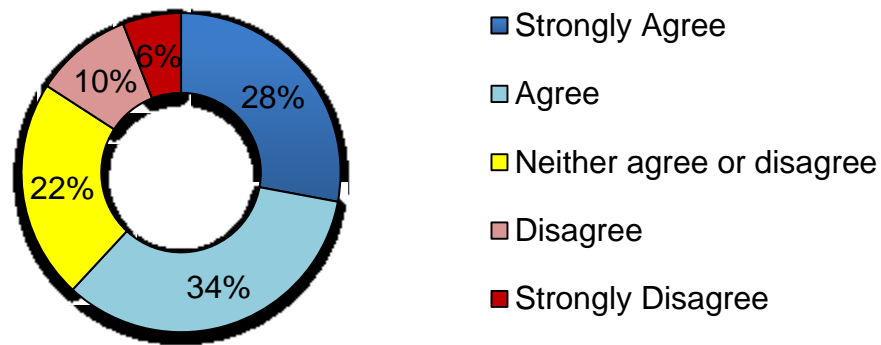
2. The Bill will require retailers to verify the age of those wanting to buy tobacco products or e-cigarettes if they look under 25. If they can prove they are 18 or over the sale can go ahead



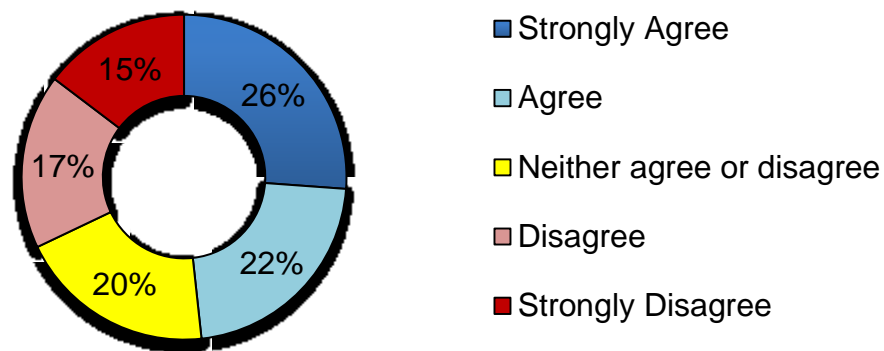
3. The Bill will make it illegal to buy e-cigarettes on behalf of someone who is under 18



4. The Bill will require employers to authorise employees aged under 18 in order for them to sell e-cigarettes or tobacco



5. The Bill will ban the sale of e-cigarettes from vending machines



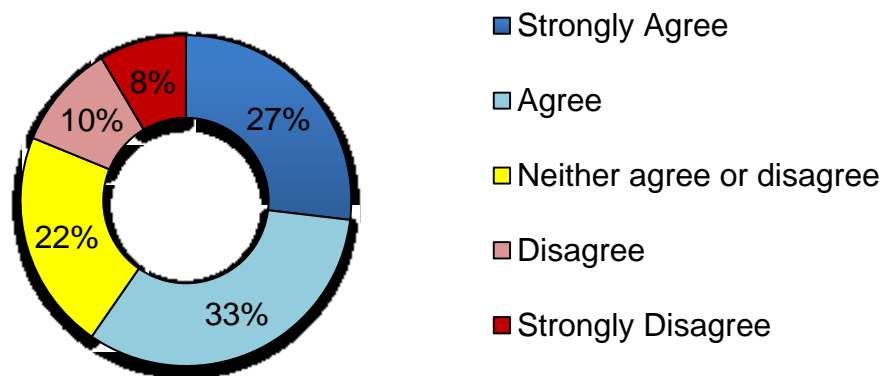
The majority of those surveyed (60%) either agreed or strongly agreed with the statement: “The Bill will provide for retailers to be banned from selling e-cigarettes if they repeatedly fail to comply with some of the Bill’s requirements.”

Approximately two thirds of respondents disagreed with the notion of enabling Scottish Ministers to limit or restrict advertising of e-cigarettes and to limit or restrict businesses from giving away e-cigarettes for free or cheaply, with 64% and 63% respectively stating that they disagreed or strongly disagreed with these statements.

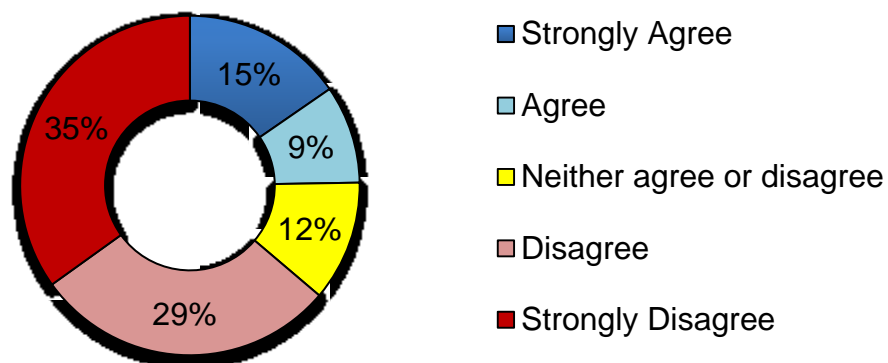
Two thirds of respondents either disagreed or strongly disagreed with the notion of enabling Scottish Ministers to limit or restrict sponsorship of an event, activity or person which would promote e-cigarettes. 41% of respondents strongly disagreed with this statement, more than those who strongly agreed, agreed or were indifferent put together.

The majority of those surveyed were in favour of age-related measures to restrict the sale of e-cigarettes and tobacco products such as a “Challenge 25” policy for retailers, limiting the sale of e-cigarettes to those aged 18 and over and making it illegal to purchase e-cigarettes on behalf of someone who is under 18. However there was a significant majority that opposed measures that would limit the sale or promotion of e-cigarettes through sponsorship advertising or promotions.

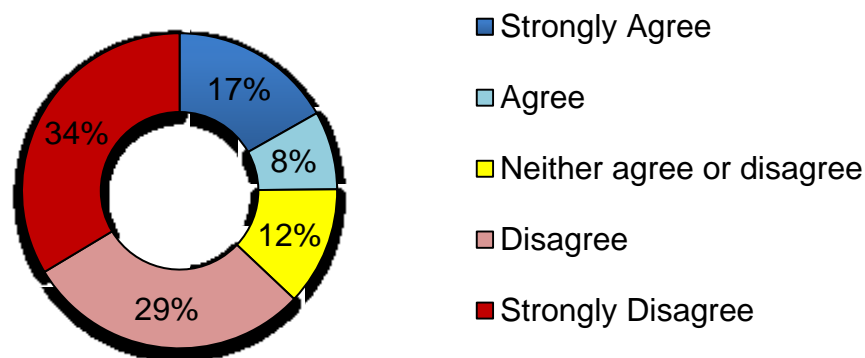
6. The Bill will provide for retailers to be banned from selling e-cigarettes if they repeatedly fail to comply with some of the Bill’s requirements



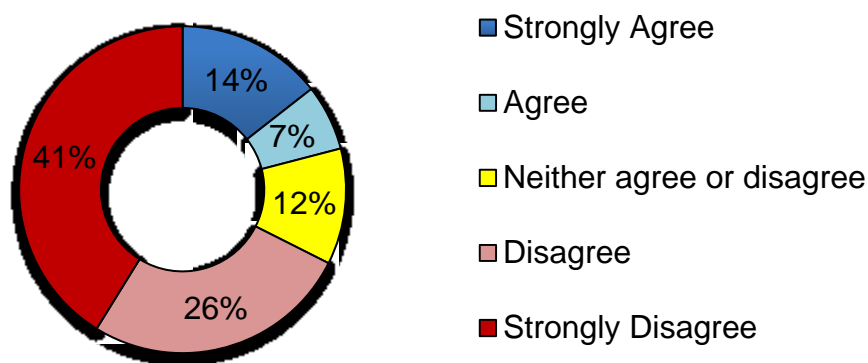
7. The Bill will enable Scottish Ministers to limit or restrict advertising of e-cigarettes



8. The Bill will enable Scottish Ministers to limit or restrict businesses from giving away e-cigarettes for free or cheaply



9. The Bill will enable Scottish Ministers to limit or restrict sponsorship of an event, activity or person which would promote e-cigarettes

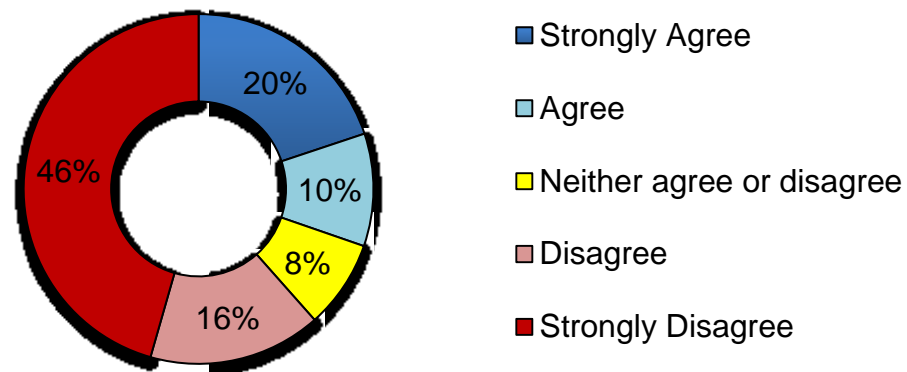


Banning Smoking in Parts of NHS Hospital Grounds

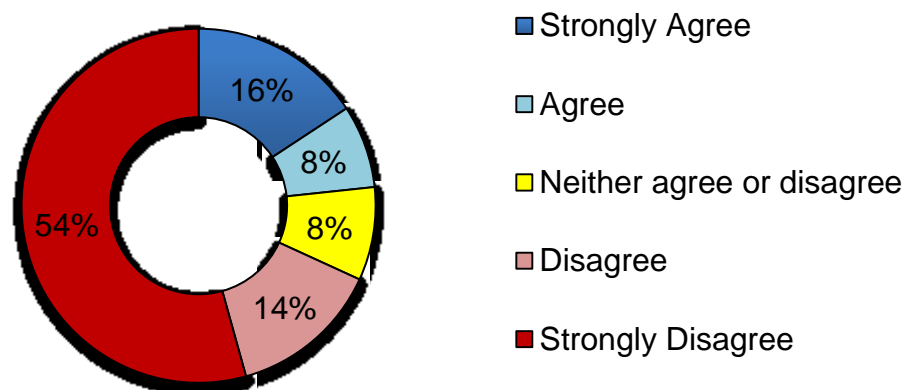
The majority of those surveyed either strongly disagreed or disagreed with this proposal (46% and 16% respectively). However, the phrasing of Question 10 may have contributed to this negative response as the statement does not specify whether it refers exclusively to smoking cigarettes or includes the smoking of e-cigarettes. This was reflected in several comments made at the end of the survey ("You need to clarify your questions regarding 'smoking' in a 'no smoking' area. I thought this survey was about e-cigarettes?" "The question on smoking in hospital grounds is not clear - does this include vaping?" etc).

Over half of respondents (54%) strongly disagreed with the notion of imposing a fine of up to £1000 on any person convicted of the offence of smoking in a no-smoking area in hospital grounds. Over two thirds of those surveyed (68%) either disagreed or strongly disagreed. Again, responses may have been influenced by a lack of clarity over whether such a ban would include e-cigarettes.

10. The Bill will make it an offence to smoke in any part of the 'no smoking' area of NHS hospital grounds



11. The Bill provides that a person who is convicted of the offence of smoking in a no-smoking area in hospital grounds can be fined up to £1,000



E-cigarettes and Smoking

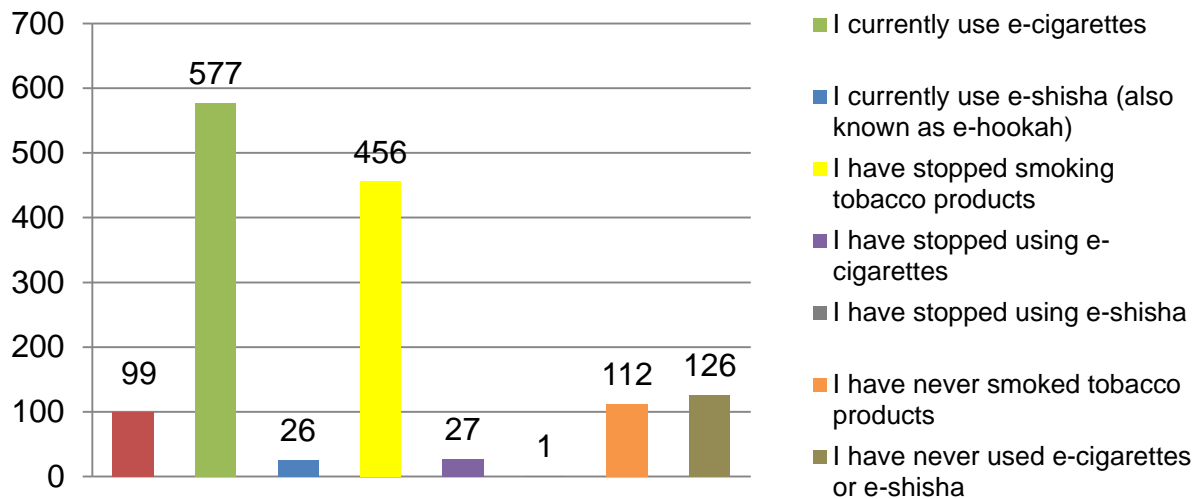
Participants were asked questions about the impact of e-cigarettes on their consumption of tobacco products. The question about use of e-cigarettes **prior** to taking up smoking tobacco appears to have been mis-interpreted, as the small number who said they had used e-cigarettes prior to taking up smoking tobacco also (with one exception) said that they did not smoke tobacco.

Of those who answered yes or no to "Have you used e-cigarettes to help you quit smoking?" 86% agreed that they had used e-cigarettes for this purpose. 18% of respondents selected "not applicable" which roughly corresponds to the proportion that reported that they have never smoked or used e-cigarettes.

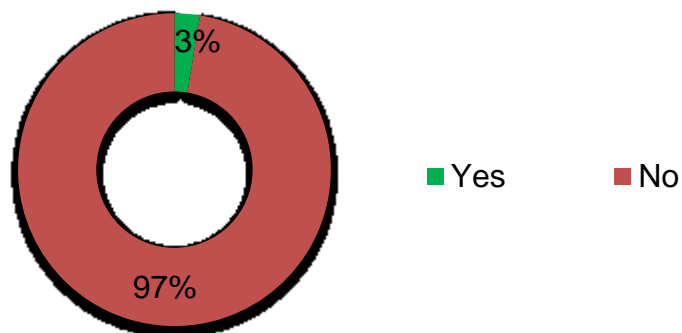
Asked what impact e-cigarette use has had on their smoking cigarettes 64% of respondents (81% excluding those who answered "Not Applicable") reported that e-cigarettes had stopped them smoking tobacco. Less than 5% of respondents

reported no impact and 8% (10% excluding N/A) answered that e-cigarettes reduced their consumption of tobacco cigarettes. 263 participants left written comments following this question.

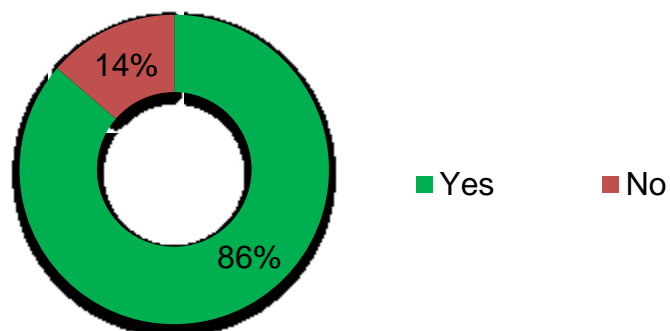
15. Please tick all the options that currently apply to you:



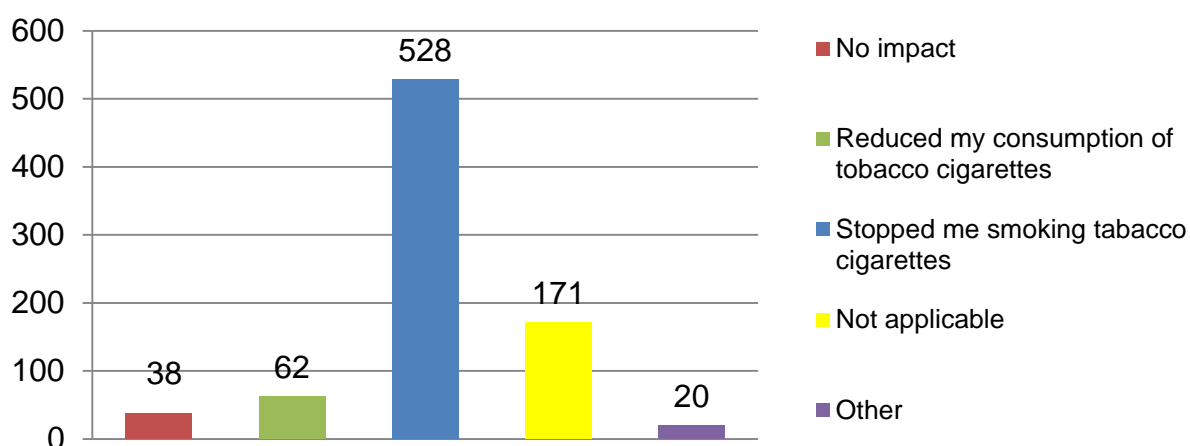
16. If you are a tobacco smoker, did you start using e-cigarettes before taking up a tobacco product? (excluding N/A)



17. Have you used e-cigarettes to help you quit smoking? (excluding N/A)



18. What impact has using e-cigarettes had on you smoking cigarettes?



From the responses to Questions 15-18 it can be inferred that most e-cigarette users are current or former smokers, many of whom use e-cigarettes in order to reduce their tobacco consumption. The written comments following Question 18 support this view and will be considered in the following section.

Written Responses to Questions 18 and 19

Participants were invited to leave comments following Question 18: “What impact has using e-cigarettes had on you smoking cigarettes?” and Question 19 at the end of the survey: “Please provide any additional comments you may have on the Bill’s proposals on controlling e-cigarettes or banning smoking in parts of NHS hospital grounds”. 263 participants left comments following Q18 and 431 following Q19 therefore approximately half of respondents provided at least one written comment.

The majority of written contributions are statements in favour of e-cigarettes as a safer alternative to smoking or an effective means of reducing tobacco consumption. One respondent writes “E-cigarettes have enabled me to stop smoking tobacco when all other methods failed” and many others write to similar effect: “e-cigarettes are [the] beginning of my route to stop smoking tobacco,” “e-cigarettes are amazing and save lives,” “I smoked for 30 years, tried everything to stop - only Vaping has worked,” “without e-cigarettes I could not have given up smoking” etc.

The second most common response is an expression of hostility towards further regulation of either tobacco and/or e-cigarettes: “Restricting the sale of e-cigarettes is slamming the door shut on a smoke-free future,” “the government should back off when it comes to personal choices,” “Nanny state,” “Regulation is not the answer. E-cigarettes should be encouraged because they help people to stop smoking” “Overly restrictive bans on e-cigarettes are liable to remove one of the reasons why tobacco smokers first try using this less harmful alternative” etc.

Various respondents also opposed the idea of a blanket ban on smoking on hospital grounds as potentially distressing to patients “the idea that anyone suffering and having to visit a hospital could be fined £1k just for relieving their symptoms of nicotine addiction on NHS grounds is disgusting”

Several respondents raised concerns that Question 10 did not specify whether the proposed smoking ban on hospital grounds would include e-cigarettes: “Banning smoking on hospital grounds is very sensible but I do not think e-cigarettes should also be banned. They are a healthier alternative to smoking,” “You don't mention vaping bans on hospital grounds, that would be an extremely bad idea, permitting vaping would give good incentive for sick, inveterate smokers to switch to a less harmful alternative.”

There were a small number of responses that were negative about e-cigarettes in general, usually on the grounds that their health effects have yet to be properly established (i.e. “It's far too early to say how safe they are”). There were also a small number of responses that supported in favour of a blanket ban on e-cigarettes. Those in favour of the hospital smoking ban cite the potential harm caused by passive smoking, and the bad example set by those who are smoking - or appear to be smoking in the case of e-cigarette use.

The number of responses either in praise or criticism of the proposed ban on smoking (and/or vaping) in hospital grounds was more evenly divided in the responses to Q19 compared with Q18 though the majority were still against.

Opposition to the smoking ban in hospital grounds was often on the basis of freedom of choice “stop trying to control our lives” or suspicion that such a ban would be applied to e-cigarettes as well as tobacco “I would strongly object to their [e-cigarettes] use being curtailed anywhere on NHS grounds as they are a means of harm reduction when compared with conventional tobacco use.” Several respondents argue banning e-cigarettes could de-incentivise smokers who currently are tempted to switch from tobacco out of convenience, or “accidental quitters.”

There were a small number of comments in favour of the smoking ban, against smoking or e-cigarette use in general or matters of pedantry (i.e. “vaping isn't smoking”). However, the key themes that emerge from the written comments are support for e-cigarettes and opposition towards government measures that to discourage or prohibit their use.

Key Themes

Three main themes emerged from a review of survey respondents' comments:

Harm Reduction

Many of the comments in support of e-cigarettes refer to them in terms of “harm reduction,” as they are safer to consume than tobacco products. Most written responses to questions 18 and 19 were statements in support of e-cigarette use, either in the form of personal testimonials or “harm reduction” arguments in favour of their use over tobacco cigarettes.

The Nanny State

The second most common type of comment was an objection to the idea of a further smoking ban on hospital grounds, either due to suspicion that such a ban might include e-cigarettes or a more general objection to government measures to influence individual's behaviour (the "nanny state" argument).

E-cigarettes vs Smoking

Various respondents were keen to highlight the distinction between smoking and "vaping": "vaping is NOT smoking" "E-cigarettes should not be subjected to the same regulation as tobacco products as they are fundamentally different" etc.

Summary

The responses to this survey demonstrate is that there is considerable support for legislation to control the sale of e-cigarettes but hostility towards any measures to deter their use, as can be seen in the responses to questions 1-9. This survey also clearly demonstrates hostility to the notion of a smoking ban on hospital grounds and the imposition of a fine on those who contravene such a ban. This is evident in the response to questions 10 and 11 as well as in the written responses to questions 18 and 19.

It is unclear whether the exemption of e-cigarettes to the ban on smoking in NHS hospital grounds would significantly alter the proportion of respondents that were against the proposal. Support for e-cigarette use as a less harmful alternative to smoking and opposition to any measures to prohibit their use are the key findings of this survey.

Michael Shea
Nicola Hudson

SPICe Research
2 September 2015

List of Survey Questions

E-cigarettes and age restrictions:

1. The Bill will restrict the sale of e-cigarettes to those aged 18 or over.
2. The Bill will require retailers to verify the age of those wanting to buy tobacco products or e-cigarettes if they look under 25. If they can prove they are 18 or over the sale can go ahead.
3. The Bill will make it illegal to buy e-cigarettes on behalf of someone who is under 18.
4. The Bill will require employers to authorise employees aged under 18 in order for them to sell e-cigarettes or tobacco.

E-cigarettes - Vending machines, retailers and advertising:

5. The Bill will ban the sale of e-cigarettes from vending machines.
6. The Bill will provide for retailers to be banned from selling e-cigarettes if they repeatedly fail to comply with some of the Bill's requirements.
7. The Bill will enable Scottish Ministers to limit or restrict advertising of e-cigarettes.
8. The Bill will enable Scottish Ministers to limit or restrict businesses from giving away e-cigarettes for free or cheaply.
9. The Bill will enable Scottish Ministers to limit or restrict sponsorship of an event, activity or person which would promote e-cigarettes.

Banning smoking in parts of NHS hospital grounds:

10. The Bill will make it an offence to smoke in any part of the 'no smoking' area of NHS hospital grounds.
11. The Bill provides that a person who is convicted of the offence of smoking in a no-smoking area in hospital grounds can be fined up to £1,000.

About you:

12. Your age
13. Gender
14. Where do you live? Please select your postcode area.
15. Please tick all the options that currently apply to you.

1. I currently smoke tobacco products (cigarettes, cigars, roll-ups, pipe)
2. I currently use e-cigarettes
3. I currently use e-shisha (also known as e-hookah)
4. I have stopped smoking tobacco products
5. I have stopped using e-cigarettes
6. I have stopped using e-shisha
7. I have never smoked tobacco products
8. I have never used e-cigarettes or e-shisha

16. If you are a tobacco smoker, did you start using e-cigarettes before taking up a tobacco product?

17. Have you used e-cigarettes to help you quit smoking?

18. What impact has using e-cigarettes had on you smoking cigarettes?

19. Please provide any additional comments you may have on the Bill's proposals on controlling e-cigarettes or banning smoking in parts of NHS hospital grounds.

20. If you would like to keep up to date with what's happening in the Scottish Parliament, please provide your email address (in the box) below, and we'll send you a weekly bulletin (You can unsubscribe easily at any time).