

Tobacco Control Team  
Scottish Government  
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**Scottish Government consultation: Vaping products - tightening rules on advertising and promotion: consultation 2022**

We have reviewed the document, *Tightening rules on advertising and promoting vaping products*, 24 February 2022. We respectfully offer our comments in this submission.

The New Nicotine Alliance is a non-profit UK charity representing the interests of current and future consumers of low-risk alternatives to cigarettes such as vaping products, nicotine pouches, smokeless tobacco, and heated tobacco products. We confirm we have no ties to any of the industries involved, and our engagement raises no issues under Article 5.3 of the Framework Convention on Tobacco Control.

We would like to preface our answers to the specific questions in the consultation with five main points to inform our responses:

1. Vaping is much less harmful than smoking and may ultimately prove to have negligible risks. Extensive clinical and biomarker data support this point. We dispute some of the claims about vaping harms made in the consultation document.
2. Vaping can be used to quit or displace smoking. Dual-use is often part of a transition from smoking to exclusive vaping. Multiple strands of evidence from RCTs, observational studies, market data, economic experiments and population data support this point.
3. Advertising and promotion have several functions – to reach new users, shape the brand preferences of existing users, and create premium brands. In the case of regular vaping, new users are overwhelmingly drawn from the pool of smokers or those who would otherwise progress to smoking. The vast majority of regular vapers at any age are current or former smokers. The public health effect of vaping and its harm reduction impact rely on smokers deciding that vaping is an appealing alternative. Advertising has an important role to play in that. Our concern about the proposed restrictions is because vaping product advertising functions as *anti-smoking advertising* with the additional benefit of no cost to the public purse.
4. All policies face the risk of perverse unintended consequences. In the case of vaping policies, it is easy to see how restrictive policies could lead to less switching from smoking to vaping and, therefore, to more smoking and more harm. The proposed bans amount to regulatory protection of the incumbent cigarette trade and will increase smoking-related harms by inhibiting the development and diffusion of safer alternatives.

5. We believe that the public health objectives are best met by controls on the themes and placement of advertising and promotion, not by prohibitions.

We have set out this argument in more detail in response to the consultation questions in the memo attached below.

We would be happy to address any questions or have a follow-up discussion if that would be useful.



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Chair  
New Nicotine Alliance



**Sarah Jakes**  
Trustee  
New Nicotine Alliance



**Robert Innes**  
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## Consultation questions and responses

### Do you support the proposal:

In general, no. The proposal is based on an incomplete model of how vaping products work to the benefit of public health. Vaping works by offering consumers an alternative to smoking at much lower risk. Vaping and other smoke-free products compete with cigarettes in a market that cigarettes have dominated for decades. Smoke-free products are effectively entrants to this market. The effect of tighter restrictions on marketing will be to protect the incumbent cigarette trade, increase smoking and cause more harm.

The Scottish Government acknowledges “significant levels of misinformation and misunderstanding about the respective risks of smoking and vaping”. Restricting e-cigarette advertising and marketing in the same way as combustible tobacco can only increase public misperception by equating two nicotine delivery options with vastly different harm potential.

With appropriate controls, advertising and promoting vaping is a form of anti-smoking advertising that does not draw on public funds but does encourage health-improving behaviour change. The broad approach to advertising and promotion of vaping and other smoke-free nicotine products should be to control themes and placement. The aim should be to ensure marketing is responsible and appropriately targeted, not eliminated. There is no health case for applying the rules that apply to cigarette advertising or a more stringent regime than that used for alcohol, which is more dangerous and offers no harm reduction benefits.

### 1. that vaping products should be used only as a cessation aid and exposure should be reduced for non-smokers (Q1)?

The question suggests an incomplete understanding of how vaping works for public health. There are essentially two models. The first is a more clinical model, in which vaping functions as a smoking cessation aid. In this model, e-cigarettes are like a variant of NRT with controlled trials suggesting greater smoking cessation efficacy. But the second, far more critical, model is consumer-based. In this model, vaping products function as a rival to cigarettes, in which the appeal of the product attracts nicotine users away from smoking. This appeal comes in part from branding and marketing as well as the characteristics of the products themselves. To deny vaping products the means to build their brands and appeal to smokers is no different to intervening to protect the cigarette trade. The proposal will harm many small businesses but not trouble the tobacco industry.

While reducing advertising exposure to non-smokers may sound reasonable, this must be qualified by the adverse effects it would cause to smokers and would-be smokers, including those non-smoking adolescents who would become smokers as they follow current trends. Because vaping is far lower risk than smoking, policymakers’ concerns for public health and consumer wellbeing should be dominated by the effects – including unintended effects – of tobacco policy on *smoking*.

### 2. to extend restrictions on advertising these products in the ways described (Q2)

This would be a mistake. It would be much better to place controls on themes and placement of advertising. This is the approach adopted in the Committee of Advertising Practice guidance for e-cigarettes, and it has been successful so far. It is also the approach used for alcohol advertising. By

comparison, alcohol use – especially among the young - is much more harmful than vaping. Unlike vaping, alcohol does not displace anything far more harmful. However, alcohol is regulated through controls on themes and placement. Scotland can craft the rules it wants for vaping, and smarter controls would be a better approach than the blunt instrument of a ban.

### 3. with proposal that in-store promotional displays should be banned (Q3)

This makes little sense, especially in specialist vape stores. In-store promotion is a way of engaging smokers at the point of sale. It also functions as an encouragement to retailers to contribute to switching smokers to low-risk alternatives. Again, the effect of a ban is to protect the incumbent cigarette trade from competition from low-risk alternatives.

### 4. to make brand-sharing an offence (Q4)

This denies tobacco companies the option to interest smokers of its cigarette brands in rival products with the same branding. Brand sharing with tobacco products was prohibited under the EU Tobacco Advertising Directive, and there are some risks with opening it up for brands used on cigarettes. However, if Scotland wished to take an aggressive approach to cigarettes, it could allow brand-stretching *within* the smoke-free categories, including nicotine pouches.

### 5. to make free distribution of vaping products an offence (Q5a)

### 6. that nominal pricing of vaping products should be an offence (Q5b)

There are good arguments for controlling the situation in which free distribution or nominal pricing is allowed. The aim should be to ensure that such distribution is not focused on adolescents or non-users. But there are circumstances where it would be appropriate to give someone a vaping product to try as an alternative to smoking. Such cases might include specialist over-18 vape stores, care homes, hospitals, smoking cessation services, prisons, sheltered housing and facilities for rough sleepers etc. In particular, low-income smokers may need help to get over the financial hurdle of trying vaping. Rather than specify the type of organisation (i.e. businesses, NHS or charities) that are barred from free distribution, it would be better to specify the *purposes* of free distribution that are allowed or not allowed.

### 7. to make sponsorship agreements in respect of vaping products an offence (Q6)

The same arguments apply to both advertising and sponsorship. In both cases, marketing is used to build a rival proposition to smoking, and sponsorship functions as anti-smoking promotion that does not draw on the public purse. This may also be a way to reach harder to reach groups.

### 8. to introduce exemptions to allow advertising at trade-only events (Q7)

This makes sense, and it is essential to enable business-to-business promotion to take advantage of pro-health innovation in the industry. The exemption should also be extended to Expos and events where trade exhibits its products for days on which the public are admitted. Attendance at these events is strictly controlled to exclude minors, and visitors are predominantly current vapers interested in new products on the market.

## 9. fines and penalties should mirror those already in place for tobacco products (Q8a)

No, this would be highly disproportionate, given that smoking kills around 10,000 Scots every year and causes over 300,000 hospital admissions. Vaping may not be risk-free, but we have yet to see material health impacts caused by vaping – and more importantly, we see significant health gains when people switch from smoking to vaping.

## 10. defences should be as laid out as stated (Q8b); and

The defences are reasonable, given the offences. But the offences are not reasonable given the risks and benefits of vaping products and the likely perverse consequences of banning vaping advertising.

## 11. that officers of local authorities should be responsible for enforcement (Q8c)

This is a waste or misdirection of local authority resources. Any additional available effort that can be spent on the enforcement against vaping marketing would be better spent on tougher and more persistent controls on the cigarette trade. Given money and people are not unlimited, the effort directed at vaping product marketing has an opportunity cost. It could be better used to control products and behaviours that are genuinely harmful. Scotland has not yet exhausted these alternatives for spending on enforcement.

Three further questions and a request for any additional comments are included in the consultation material. Our responses are below.

## 12. the impact the proposed policy would have on individuals (Q9a)

We would expect policymakers who propose such measures to have considered this in an impact assessment. Likely effects include:

- Adult smokers not switching to vaping (high harm)
- Dual-users who remain dual users instead of becoming exclusive vapers (high harm)
- Young people not diverted from smoking (high harm)
- Young people who would never have used nicotine take up vaping (low harm)

We would also like to stress the importance of role model effects and ‘denormalisation’ of smoking in the lives of young people. As Public Health Scotland correctly states:

*A child born in a more socially deprived area of Scotland is more likely to*

- *grow up around smokers*
- *be born into a family that smokes*
- *have a mother who smoked during her pregnancy.*

*Children of smokers are more likely to start smoking themselves.<sup>1</sup>*

There is high value to young people if the adults in their lives move away from smoking, and vaping is seen as an alternative pathway for those who would otherwise smoke. There is increasing evidence that vaping functions as a diversion from smoking for young people.

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<sup>1</sup> Public Health Scotland, Smoking Prevention, 24 December 2021, <http://www.healthscotland.scot/health-topics/smoking/smoking-prevention>

### 13. your view on the impact of the proposed policy on people living with socio-economic disadvantage (Q9b)

The measure will disproportionately harm people with socio-economic disadvantages for two main reasons. First, smoking is over-represented in these groups. As Public Health Scotland points out:

*Smoking rates are still highest in the most deprived areas, with 35% of people living in the most deprived areas of Scotland smoking compared to 10% in the least deprived areas*

The marketing of vaping products, including at the point of sale and in specific settings and media that reach this group, may help reduce smoking. People in poorer groups tend to find smoking cessation more challenging and are more tightly bound to smoking. Switching (rather than stopping) is easier for more dependent smokers because it does not involve quitting nicotine and retains several behavioural and sensory aspects of smoking but at much lower risk.

Secondly, many in disadvantaged groups can be hard to reach or persuade. Many will not be attracted by smoking cessation offered as a clinical pathway but may be attracted to what they see as a different and better way of smoking. While smoking cessation may be ideal, it does little for public health if few people succeed in doing it, especially in the most disadvantaged groups.

### 14. identify communities or groups who may be impacted by these proposals (Q9c)

In addition to the populations listed in 1 & 2 above, we would emphasise the non-smoking children of current smokers and children living in deprived communities with high smoking prevalence. Smoking initiation emerges from the adult norms in which young people are immersed.

We would also add the retailers and small producer businesses that will be harmed by the proposals and the cigarette supply chain that will be aided and protected by the proposals. We see no justification for the Scottish Government intervening to assist the cigarette trade in this way.

### 15. Finally, at Question 10, we offer you an opportunity to comment further

We have four additional comments

1. The sponsors of this bill should set out the hoped-for outcomes and plausible perverse consequences in a robust evidence-based impact assessment. Such an assessment should be based on a realistic model of how vaping is beneficial to public health through consumer choice and market innovation, taking account of the powerful incumbency of the cigarette trade. This should highlight the trade-offs in such a proposal and who is likely to be beneficially and harmfully affected.
2. We are concerned that the sections addressing the health risks of vaping (paragraphs 6-14) and on quitting smoking (15-25) have not set out the risks and benefits in a way that facilitates the best decision-making. There is no real doubt that vaping is very much safer than smoking and considerable biomarker and clinical data support this. There is also no real doubt that vaping is successful as an alternative to smoking and will enable a larger segment of the smoking public to respond to the more punitive and stigmatising pressures of the traditional tobacco control measures. There is a solid body of clinical trials, observational studies, population trends, market data, and economic experiments to support this.

3. One example of a poor presentation of the evidence is the reference to COPD. The claim that vaping is implicated in COPD (paragraph 11) is based on a 2016 study in which mice were given near-lethal acute doses of nicotine.<sup>2</sup> A rapid response in *Thorax* showed that, on conservative assumptions, the experiment exposed the mice to the equivalent of eighty times more nicotine than an adult smoking 25 cigarettes per day. There is, however, credible and more recent literature on how switching to vaping helps relieve COPD in living human smokers.<sup>3 4</sup>
4. Furthermore, it is claimed that although the UK Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment found no immediate risks to health, that “the long-term effects from repeated exposures are unknown.” However, it is inconceivable that the vastly lower risk of vaping products will not lead to better health outcomes for smokers who are encouraged to switch. There is a large body of toxicology that does not rely on long-term epidemiology to quantify long-term risk. The first modern e-cigarette was invented 20 years ago, and they have been on the market in the UK for over a decade with no serious health risks identified so far. Just as we would not need to wait decades to discover that smoking was dangerous if it was introduced today, citing uncertainty as justification for proposals that would hide far safer products from smokers is reckless rather than precautionary.

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<sup>2</sup> Garcia-Arcos, I., Geraghty, P., Baumlin, N., et al.. Chronic electronic cigarette exposure in mice induces features of COPD in a nicotine-dependent manner. *Thorax*, 71(12), 1119–1129, 2016. <https://bit.ly/3KKvWTL> [rapid response]

<sup>3</sup> Polosa R, Morjaria JB, Prosperini U, et al. COPD smokers who switched to e-cigarettes: health outcomes at 5-year follow up. *Therapeutic Advances in Chronic Disease*. January 2020 <https://bit.ly/35XMGs0>

<sup>4</sup> Polosa, R., O’Leary, R., Tashkin, D., et al. The effect of e-cigarette aerosol emissions on respiratory health: a narrative review. *Expert Review of Respiratory Medicine*, 13(9), 899–915, 2019. <https://bit.ly/35XgsNq>