



Consultation on legislation for the sale of tobacco products and non-medicinal nicotine delivery system, including e-cigarettes

Policy Group on Tobacco

Jan 2015

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This document has been prepared in response to the Department of Health public consultation, launched on 2nd December 2014 on legislation for the sale of tobacco products and non-medicinal nicotine delivery system (NMNDS), including e-cigarettes. This paper represents the views of the Policy Group on Tobacco of the Royal College of Physicians of Ireland. It responds to the measures put forth in the consultation paper¹ published by the Department of Health in December 2014 and references recommendations made by the Policy Group in its Policy Statement on Tobacco², published in March 2014.

Background

As part of its mission, the Royal College of Physicians of Ireland seeks to promote health nationally and internationally and play a leading role in the delivery of high quality patient care by setting and maintaining standards of medical practice and promoting clinical excellence.

While the mission is achieved primarily through training, continuing professional development, professional competence and examination activities, the College also has an advocacy role and is at the forefront of improving healthcare and public health. This is achieved by providing evidence-based advice to the profession, policy makers, healthcare providers, and the public and working with government and other agencies to influence health and healthcare policy.

As part of this commitment to improving healthcare and public health, the College convenes a number of issue-focused policy groups where medical and other experts can meet to discuss the issues and concerns about a specific health matter with the aim of producing evidence based policy statements that outline the issues, propose specific steps to deal with the issues, and clarify RCPI's position.

In response to the continuing public health consequences associated with tobacco, and building on past work on smoking, a policy group on tobacco was established in early 2014. The overall aim of the policy group is to influence national tobacco policy and legislation, particularly in support of the *Tobacco Free Ireland* plan launched by the Minister for Health in 2013. The policy group comprises representatives from a range of medical specialties from within the College's own Faculties and Institute, and from other external bodies such as the Irish College of

General Practitioners, the Irish Thoracic Society and the Psychological Society of Ireland.

Policy Group Recommendations Relating to This Consultation

In its policy statement of March 2014, the Policy Group on Tobacco of the Royal College of Physicians of Ireland made the following observations and recommendations relating to sale of tobacco products and electronic cigarettes:

- Support for the introduction of a licensing system for sale of tobacco products, similar to the licensing system that exists for sale of alcohol.
- Stricter enforcement of tobacco legislation and tougher penalties for retailers who break tobacco laws. The current penalties outlined in the Public Health (Tobacco) Act, 2002 are inadequate to deter retailers from breaking legislation. Enhanced resources should also be made available to Environmental Health Officers to ensure enforcement.
- Introduction of legislation to enable the HSE to publish the details of all retailer outlets in contravention of tobacco sale legislation, as is currently the case with FSAI closure orders, for example.
- A ban on sale of electronic cigarettes to children.

Consultation Response

General Comments

1. NMNDS are new products and as such more research is required to determine their safety and their role in reducing harm caused by cigarette smoking. At the same time recent research suggests that they will have some role in helping some smokers quit smoking long term.³
2. In addition to regulation of sales of NMNDS, there is a need to regulate the content and other ingredients in those products, as laid out in the Tobacco Products Directive.
3. There is also an urgent need for the introduction of design regulations and child resistant packaging to minimise the risk of nicotine ingestion by children with toxic effects on children.
4. In addition to regulating the dosing of NMNDS product, safety warnings on products safety warning should include the harmful effects on young children if ingested and advice on storing them out of children's reach etc.

5. It is likely that tobacco retailers will argue that this legislation will reduce sales of tobacco products and thus damage their business and this is the case; It will not be possible to reach aim of reducing smoking prevalence to the 5% specified in *Tobacco Free Ireland* without a reduction in sales of tobacco products. Given the negative health impact of smoking, and in pursuit of this 5% target, public health should be prioritised over commercial (retail) interests.

Response to Consultation Questions

A. Licensing system for the sale of tobacco products

Q1) In addition to compliance with tobacco control legislation, what criteria should an applicant applying for a licence to sell tobacco products fulfil - for example, should an applicant:

- (a) be over 18 years of age? **Yes**
- (b) provide proof of identity and age? **Yes**
- (c) be tax compliant? **Yes**
- (d) hold a valid Revenue Commissioner Business Identifier? **Yes**
- (e) be a fit and proper person? **yes**
- (f) other?, please provide details.

Q2) Do you have any other comments on the licensing system for the sale of tobacco products? If yes, please provide details.

The proposed licensing system is welcomed on the basis that stricter regulations will reduce the easy availability of tobacco products and lead to a reduction in tobacco use. As an addictive substance that kills when used as intended, it is appropriate that a robust licensing system be put in place that reflects the serious nature of tobacco products.

B. Licensing system for the sale of non-medicinal nicotine delivery systems (including e-cigarettes)

Q3) In addition to compliance with this legislation and the relevant articles in the *Tobacco Products Directive* (2014/40/EU), what criteria should an applicant

applying for a licence to sell non-medicinal nicotine delivery systems (including e-cigarettes) fulfil -for example, should an applicant:

- (a) be over 18 years of age? **Yes**
- (b) provide proof of identity and age? **Yes**
- (c) be tax compliant? **Yes**
- (d) hold a valid Revenue Commissioner Business Identifier? **Yes**
- (e) be a fit and proper person? **Yes**
- (f) other?, please provide details.

Q4) Do you have any other comments on the licensing system for the sale of non-medicinal nicotine delivery systems (including e-cigarettes)? If yes, please provide details.

Nicotine is an addictive substance that has a number of physiological effects and long term nicotine use may be associated with increased risk of cardiovascular disease (CVD). A review of the biochemical mechanisms of smoking, nicotine, and cardiovascular disease by The American Heart Association has concluded that while other components of combustible cigarette smoke are more important contributors to smoking related CVD, nicotine may also be a contributing factor.⁴

A WHO report published in July 2014⁵ stated that there was sufficient evidence to to caution children and adolescents, pregnant women, and women of reproductive age about use of NMNDS because of the potential for fetal and adolescent nicotine exposure to have long-term consequences for brain development.

In high concentrations nicotine ingestion can lead to both local adverse effects and acute and chronic toxicity. There are also potential negative health effects from other components of NMNDS, including propylene glycol and formaldehyde (a known carcinogen). Second hand exposure to vapours of NMNDS may also be an issue.

As such, the regulation of the sale of such products is appropriate to in the interest of protecting public health.

C. Prohibition of the sale of tobacco products from self-service vending machines

Q5) What impacts, if any, would the prohibition of the sale of tobacco products from self-service vending machines have?

A significant proportion of under-18 year olds access tobacco products from self-service vending machines. This measure will contribute towards reducing smoking uptake, prevalence among under-18s and would reduce morbidity arising from cigarette consumption. It will also create a more supportive environment for those who are trying to quit.

To illustrate the potential economic benefit, a 2012 impact assessment from the UK Department of Health on prohibition of sale of tobacco products from vending machines in that jurisdiction estimated health benefits to adults and children of between £691 and £2,074 million over a ten year period. ⁶ To put this context, the cost to society of smoking in the UK has been estimated by ASH UK at £12.9 billion).⁷

It is important also that there is oversight and accountability for every sale to ensure it is not to a minor. This is not currently the case. The removal of vending machines will also reinforce denormalisation.

Q6) Do you have any other comments on the prohibition of the sale of tobacco products from self-service vending machines? **No**

D. Prohibition of the sale of tobacco products from temporary or mobile units/containers

Q7) What impacts, if any, would the prohibition of the sale of tobacco products from temporary or mobile units/containers have?

Q8) Do you have any views on the types of temporary or mobile units/containers which should be included in this provision? If yes, please provide details.

Q9) Do you have any other comments on the prohibition of the sale of tobacco products from temporary or mobile units/containers? If yes, please provide details.

The fact that there is only one type of outlet for tobacco sales with better accountability will also help reinforce denormalisation and possibly help decrease sales.

E. Prohibition of the sale of tobacco products at events/locations primarily intended for persons under 18 years of age

Q10) What impacts, if any, would the prohibition of the sale of tobacco products at events/locations primarily intended for persons under 18 years of age have?

Actions to protect minors from exposure to tobacco products can help to reduce uptake and smoking prevalence among minors. We welcome the prohibition of sale of tobacco products at events/locations primarily intended for persons under 18 years of age. If tobacco can be purchased at such venues it will offset the benefits of restrictions elsewhere.

Q11) Do you have any views on the types of events/locations which should be included in this provision? If yes, please provide details.

All events where more than 30 % of the attendance is expected to be under- 18

Q12) Do you have any other comments on the prohibition of the sale of tobacco products at events/locations primarily intended for persons under 18 years of age? If yes, please provide details.

The legislation or regulations will need to be as watertight as possible -see above re displacement of sales.

F. Prohibition of the sale of tobacco products by persons under 18 years of age

Q13) What impacts, if any, would the prohibition of the sale of tobacco products by persons under 18 years of age have?

This measure would serve to reduce exposure of young people working in the retail environment to tobacco products. It also highlights the serious nature of tobacco products, and ensures that responsibility for sale of those products is an adult responsibility. It may also serve to reduce sales to u-18s by their peers.

Q14) Do you have any other comments on the prohibition of the sale of tobacco products by persons under 18 years of age? If yes, please provide details.

G. Prohibition of the sale of NMNDS by persons under 18 years of age and to persons under 18 years of age

Q15) What impacts, if any, would the prohibition of the sale of NMNDS by persons under 18 years of age have?

This measure reduces exposure of young people working in the retail environment to NMNDS products. By assigning responsibility to adults for the sale of those products, it also highlights that these products are not innocuous consumer goods, but that they contain addictive substances, with potential long term health effects, and that they have possible gateway and normalisation effects (to tobacco use).

Q16) Do you have any other comments on the prohibition of the sale of NMNDS by persons under 18 years of age? If yes, please provide details.

Q17) What impacts, if any, would the prohibition of the sale of NMNDS to persons under 18 years of age have?

Prohibition of sale to under 18s makes it clear that NMNDS products are not innocuous consumer goods, but that they contain addictive substances, with potential long term health effects, and that they have possible gateway and normalisation effects (to tobacco use).

Q18) Do you have any other comments on the prohibition of the sale of NMNDS to persons under 18 years of age? If yes, please provide details.

Earlier this year, the World Health Organisation recommended that retailers should be prohibited from selling ENDS products to minors. Therefore this provision is welcomed. In a 2014 survey conducted by the WHO into regulation and policies on the sale of ENDS, 29 countries of 90 surveyed had policies on sales to minors. Where specified, the minimum age required for purchase ranged from 18 to 21 years. Thus the prohibition on sale to those aged less than 18 years of age is appropriate and in line with international practice.

H. Minimum suspension periods for retailers convicted of certain offences under tobacco control legislation

Q19) What impacts, if any, would the introduction of minimum suspension periods for retailers convicted of certain offences have?

Q20) Do you have any views on the length of minimum suspension periods which should be imposed on conviction? If yes, please provide details.

Q21) Should different offences under tobacco control legislation carry different periods of suspension? If yes, please provide details.

Q22) Do you have any other comments on the introduction of minimum suspension periods for retailers convicted of certain offences? If yes, please provide details.

We welcome stricter enforcement of tobacco legislation (some judges have imposed suspension periods of a few days) and tougher penalties for retailers who break tobacco laws. The current penalties outlined in the Public Health (Tobacco) Act, 2002 are inadequate to deter retailers from breaking legislation. Enhanced resources should also be made available to Environmental Health Officers to ensure enforcement.

Response on Additional Issues

I. Fixed penalty notices (on the spot fines) for certain offences under tobacco control legislation

Q23) What impacts, if any, would the introduction of fixed penalty notices (on the spot fines) for certain offences have?

Q24) Do you have any views on the fixed penalty amounts which should be imposed? If yes, please provide details.

The fixed penalty amount should be sufficient to act as a deterrent- €500 is considered appropriate.

Q25) Should different offences under tobacco control legislation carry different fixed penalty amounts?

Yes. Penalties for sale to minors, for example, should carry a more severe penalty. Repeat offences should also carry a more severe penalty than first offences.

Q26) Do you have any other comments on the introduction of fixed penalty notices (on the spot fines) for certain offences? If yes, please provide details.

ii. Publication of information in respect of any person on whom a fine, other penalty or conviction is imposed by a court or pursuant to fixed penalty notices ('name and shame')

Q27) What impacts, if any, would the publication of information in respect of any person on whom a fine, other penalty or conviction is imposed by a court or pursuant to fixed penalty notices ('name and shame') have?

Q28) What information should be published?

Name and address of business fined

Description of the offence

Details of the fine, penalty or conviction

Q29) Do you have any other comments on the publication of information in respect of any person on whom a fine, other penalty or conviction is imposed by a court or pursuant to fixed penalty notices ('name and shame')? If yes, please provide details.

We welcome the introduction of legislation to enable the HSE to publish the details of all retailer outlets which break tobacco sale legislation, as is currently the case with FSAI closure orders, for example.

References

¹ Department of Health (2014). *Consultation paper on legislation in relation to the sale of tobacco products and non-medicinal nicotine delivery systems, including e-cigarettes*. Dec 2014.

² Royal College of Physicians of Ireland (2014). *Policy Statement - Towards a Tobacco Free Society*. March 2014

³ McRobbie H, Bullen C, Hartmann-Boyce J, Hajek P. (2014) Electronic cigarettes for smoking cessation and reduction. *Cochrane Database Syst Rev*. 2014 Dec 17;12:CD010216

⁴ Piano MR, Benowitz NL, Fitzgerald GA, Corbridge S, Heath J, Hahn E, et al. (2010) *Impact of smokeless tobacco products on cardiovascular disease: implications for policy, prevention, and treatment: a policy statement from the American Heart Association*. *Circulation*. 122. United States 2010. p. 1520-44.

⁵ World Health Organisation (2014) *Report on e-cigarettes to WHO Framework Convention on Tobacco Control*. July 2014

⁶ Department of Health- UK (2012) *Impact assessment for the prohibition on the sale of tobacco from vending machines*. I/A number 3062.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213414/Tobacco-Vending-Machine-IA-final-04052012.pdf

⁷ Action on Smoking and Health (2014). Fact Sheet- The Economics of Tobacco.
http://www.ash.org.uk/files/documents/ASH_121.pdf