

## Public Health (Wales) Bill: Consultation questions

### Tobacco and Nicotine Products

The Bill includes proposals to ban the use of nicotine inhaling devices, such as e-cigarettes, in enclosed spaces like restaurants, pubs and at work. Shops will also have to join a register for retailers of tobacco and nicotine products, and it will become an offence to “hand over” tobacco and e-cigarettes to anyone under the age of 18.

#### *Question 1*

Do you agree that the use of e-cigarettes should be banned in enclosed public and work places in Wales, as is currently the case for smoking tobacco?

We do not agree with this proposal. The WG in the Explanatory Memorandum (EM) lays out 4 main underpinning concerns which support the proposal:

Concern 1 – Increased difficulty in enforcement of smoke-free policies.

In figure 2 of the EM, there is the list of types and the suggested by the Health Minister that e-cigarette use “looks like smoking” is debunked by figure 3. Fig 3 shows that the majority of the user market ‘second generation’ devices that look nothing like a traditional tobacco cigarette. Furthermore in 2014, a survey of over 10,000 e-cigarette users show the same and an increasing number of respondents preferring larger devices which fall in the ‘Mods’ option.

<http://vaping.com/data/big-survey-2014-initial-findings-hardware>

This survey shows that over 90% of the respondents choose a device that doesn’t resemble a traditional tobacco cigarette in any fashion.

The 4 members of staff that we employ that have fully switched to e-cigarettes use this sort of product, therefore it makes the enforcement of the smoke-free policy easier. This is due to the increased size of the device and the different manner in which the devices are held. Furthermore, the smell of the e-cigarette vapour is very much different. The odours can be fruity or sweet and even the tobacco flavoured e-liquids used do not replicate the unique characteristic smell

of combustible tobacco. In Paragraph 58 of the EM, concerns about the “hand to mouth” movement makes enforcement more difficult, this could also be applied to the “hand to mouth” action of taking a drink or covering ones mouth when yawning. Again in 58 of the EM concerns about the vapour emitted, the emitted vapour from an e-cigarette is much different. The e-cigarette vapour is more dense, whiter and disappears very quickly in the air compared to tobacco cigarette smoke. What is exceedingly worrying is that in Paragraph 50 of the EM states that new criminal offences for using a “nicotine inhaling device”, this not only applies to e-cigarettes but also Nicotine Replacement Therapy products like Nicorette Inhalator, which hold medical licenses, that also do look like cigarettes.

[http://www.nicorette.co.uk/sites/nicorette.co.uk/files/inhalator\\_tab1\\_left\\_1.png](http://www.nicorette.co.uk/sites/nicorette.co.uk/files/inhalator_tab1_left_1.png)

Despite Note 15 of explanatory notes in Annex A which suggests an exemption for medical nicotine inhalation devices but not explicitly.

Concern 2 - E-cigarette use renormalizes smoking.

Decadent Vapours Ltd stance will be covered in Q3

Concern 3 - E-cigarette use act as a gateway to smoking.

Nicotine on its own is not addictive.

<http://www.jneurosci.org/content/25/38/8593> It is only addictive when combined with the various chemical agents in combustible tobacco. This is well established as far back as the 1970s by William Russell. Today, Prof Peter Hajek, who is cited repeatedly in the EM likens the addictiveness of caffeine. Please see this video which links Tobacco Harm Reduction and nicotine use.

<https://www.youtube.com/watch?v=lvDIF9izuMI>

In the ASH Survey on “Use of electronic cigarettes (vapourisers) among adults in Great Britain” published in May 2015

[http://www.ash.org.uk/files/documents/ASH\\_891.pdf](http://www.ash.org.uk/files/documents/ASH_891.pdf) also proves that there is no gateway to smoking among adults. The figure of 0.2% which has stayed consistent for 3 years proves that the existence of e-cigarettes does not provoke non-smoking adults to take them up continuously. Furthermore, this data shows that it is unlikely that those adults using e-cigarettes will move on to combustible tobacco. This document from ASH on page 5 also supports that e-cigarette users are using “mods” which supports the argument for the previous WG concern as discussed in point 1.

Concern 4 - Indoor air quality

Many studies have found that emitted e-cigarette vapour has very little if any effect on indoor air quality. One study published in January 2015 concluded that “ the additional amount of carbonyls contributed into the atmosphere by vaping

under the given conditions can be deemed to be negligible when compared to levels of the same substances typically found indoors.”

<http://www.sciencedirect.com/science/article/pii/S1438463914000972>

There are also beliefs that e-cigarette vapour causes harm to bystanders in the same way that second-hand smoke does. The well established fact that e-cigarettes do not contain the multiple chemical compounds which are in combustible tobacco is one reason why this concern is baseless. In research as recent as July 2015, which concluded “smoke. Under the study conditions cigarette smoke demonstrated a dose-dependent response that resulted in near-complete cell death after a 6 h exposure period. In contrast, e-cigarette aerosol showed no decrease in tissue viability following a 6 h exposure, despite appropriate positive control responses.”

<http://www.sciencedirect.com/science/article/pii/S0887233315001228>

Despite this research being carried out by a tobacco company, the results support that even at second-hand level exposure there is no risk of harm especially if results through directly exposing cells to e-cigarette vapour shows no cell death. This study also confirms similar research from 2013 where heart cells were exposed to both tobacco smoke and e-cigarette vapour.

<http://www.mdpi.com/1660-4601/10/10/5146>

From a business point of view, bringing e-cigarettes under smoke-free legislation is very disproportionate. As this is the preferred option according to points 412 and 413 of the EM from a health perspective, the costs laid in Table 7.12 clearly indicate more obvious reasons. These reasons are that the majority of the cost is not footed by the WG but by public/ work places or e-cigarette industry especially over the 5 year period. Not only will it impact our sales, which we believe is grossly underestimated, but it will also have a very negative effect our manufacturing and quality control processes. This involves using an e-cigarette device to test the quality of the flavour raw materials and the final products. Within Annex A, more specifically “Section 10: Exempt premises” paragraph 28 gives current exemptions includes ‘research or testing facilities’ under smoke-free legislation. We believe that we fall into this category as a manufacturer of nicotine containing liquid (e-liquid) for e-cigarettes.

Unfortunately, this paragraph does not extend to cover our business. We specifically request that this section is extended to cover businesses like ours. What is exceedingly worrying from a business perspective is that our customer base in Wales will be hit twice by the proposals as they are both a workplace and a public space due to being retailers. Despite a very vague exemption from

smoke-free legislation in paragraph 27 but then the retailer is covered by the definition within paragraph 21. As a part of the wider e-cigarette business in Wales we would require that this complication to be avoided and the exemption for “the use of nicotine inhaling devices only” to be explained in detail and cover e-liquid manufacturers and e-cigarette retail businesses.

As an employer we have a duty under Section 2.1 of the Health and Safety at Work Act 1974

<http://www.legislation.gov.uk/ukpga/1974/37/part/I/crossheading/general-duties>

which says that we must minimise the risk of harm to our employees, which includes the risk of second hand smoke exposure. Under the proposals, as a business we would either have to spend further funds to provide a “vapors shelter” which at our current location is unfeasible or send the e-cigarette users among the staff out with the smokers. This clearly undermines our duty under the HASAW Act 1974. The Health and Safety Executive have issued guidance which includes the use of e-cigarettes as part of wider control of risk of smoke exposure. <http://www.hse.gov.uk/contact/fags/smoking.htm>

## *Question 2*

Do you believe the provisions in the Bill will achieve a balance between the potential benefits to smokers wishing to quit with any potential dis-benefits related to the use of e-cigarettes?

No, there is no balance between benefits and dis-benefits relating to e-cigarette use. In paragraph 375 of the EM, it is suggested that e-cigarette users will have to leave the premise to comply with the legislation. (Previously mentioned in the reply to Q1) Through this the WG and local authorities will create an image by the combination of smokers and e-cigarette users in the same area means that there is no difference between the products and hence there are no health benefits in switching. Also, as e-cigarette users will have no immediate enticement to make the switch straightaway which also means that e-cigarette users may not be able to convince smoking family members or friends to switch as the use in social environments will be prohibited. This clear dis-benefit means smoking prevalence will not decrease as sharply as it has in the past year to the 21% from 23%. Our trade association, ECITA, has studied the costs and QALY figures in paragraphs 371 to 373. <http://www.ecita.org.uk/ecita-blog/assessing-potential->

[impact-unintended-consequences-vaping-ban-wales](#) They suggest that even if 10% of the estimated 33,600 exclusive users were to revert to smoking would equate to a loss £199m in shortened lives. This figure also fails to address the additional costs to health services to treat smoking related illness or disease. The WG fails to see the benefit of the extended lives through using e-cigarettes to the wider economy. If the 15% of e-cigarette users that circumvent the smoke-free requirements, revert to smoking that means that almost 5000 QALYs, using the estimated 33,600 users in paragraph 371, are lost and an equivalent to £300m lost at the lowest estimate. I doubt the WG would like to lose that equivalent in just 1 year as most circumventers will begin smoking again immediately. The proposals will restrict the opportunities to make the initial switch e-cigarettes as the e-cigarette retailers are those that aid the switch. E-cigarette retailers, our customers, rely on the ability for their customers to try a variety of nicotine concentrations, flavours and devices. The proposals will prohibit this opportunity and hence a drastically reduce the number of switchers which in turn will decrease the rate of smoking prevalence fall. Without this sort of opportunity the benefits of switching which can include Harm Reversal which is being researched by Riccardo Polosa

<http://www.biomedcentral.com/content/pdf/s12916-015-0298-3.pdf>

<http://gfn.net.co/downloads/2015/Plenary%203/Riccardo%20Polosa.pdf>

### *Question 3*

Do you have any views on whether the use of e-cigarettes re-normalises smoking behaviours in smoke-free areas, and whether, given their appearance in replicating cigarettes, inadvertently promote smoking?

Smoking is still “normal” in society with an estimated 10million smokers in the UK as given by ASH [http://www.ash.org.uk/files/documents/ASH\\_93.pdf](http://www.ash.org.uk/files/documents/ASH_93.pdf) in January 2015. Implying that smoking is not normal is a ridiculous idea. The fact that smokers now have to smoke outside doesn't mean there are less smokers, the number of smokers still visible on the streets backs up that the use of tobacco cigarettes is still normal. Decadent Vapours Ltd firmly believe that e-cigarette use normalises stopping smoking. This view is backed up consistent falls in the percentage of the smoking population, which can be seen from page 2 of the ONS publication [http://www.ons.gov.uk/ons/dcp171778\\_386291.pdf](http://www.ons.gov.uk/ons/dcp171778_386291.pdf) . If the use of e-cigarettes promote smoking then tobacco cigarette uptake would increase and this is simply not the case. Furthermore, only 7.5% of e-cigarette users will use their devices wherever they please and with the remainder of the 1000

respondents vaping outside or doing so indoors after being given permission of the premises owner. This supports that the majority of e-cigarette users are attempting to stop smoking or cut down the number of cigarettes smoked. The use of e-cigarettes for most users are not using e-cigarettes as an avenue to bypass the current smoke-free legislation.

<http://www.ecigarettdirect.co.uk/ashtray-blog/2015/03/e-cigarette-etiquette.html> At a risk of repetition, the current market regarding devices are of second generation or above. First generation e-cigarettes are the imitation of tobacco cigarettes. These devices are proven to be not as effective as higher generation devices, hence the higher prevalence of larger devices. Scientific basis for this opinion can be seen summarised by Dr K Farsalinos here

<http://gfn.net.co/downloads/2015/Plenary%203/Konstantinos%20Farsalinos.pdf>

Therefore the notion of “replicating cigarettes” has no basis nor do e-cigarettes promote smoking.

#### *Question 4*

Do you have any views on whether e-cigarettes are particularly appealing to young people and could lead to a greater uptake of their use among this age group, and which may ultimately lead to smoking tobacco products?

Currently, all advertising for e-cigarettes falls in line with current rules from the Committees of Advertising Practice which were released in October 2014. There is a specific rule which denotes that advertising should not be deliberately aimed at those under 18. This rule is summarised in points 9 and 11 on this post from our trade industry body ECITA <http://ecita.org.uk/ecita-blog/cap-and-bcap-publish-new-uk-advertising-rules-e-cigarettes> It is therefore a ridiculous notion that e-cigarettes are directly aimed at young people. We firmly believe that these rules are more than adequate to aid the prevention of e-cigarettes being appealing to young people especially as e-cigarettes are for adult consumers only. Furthermore under the Tobacco Products Directive in Article 20 in Section 5, all advertising of e-cigarettes is prohibited. This is scheduled to be implemented in May 2016 so any further exposure to e-cigarettes will be very limited to none for young people.

ASH published results of their “Use of electronic cigarettes among children in Great Britain” survey in August 2015.

[http://www.ash.org.uk/files/documents/ASH\\_959.pdf](http://www.ash.org.uk/files/documents/ASH_959.pdf)

We would like to draw your attention to the bottom of page 2. This graph clearly indicates that the current use of e-cigarettes is low compared to the current use

of combustible tobacco cigarettes. The graph also backs up previous comments that smoking is still normal through the “ever tried smoking” data. If e-cigarettes are particularly appealing then the “ever tried e-cigarettes” data would be significantly higher.

Professor Linda Bauld and Cancer Research UK published data also on youth use of e-cigarettes and it ultimately concluded that e-cigarettes do not ultimately lead to tobacco cigarette use.

<http://medicalxpress.com/news/2015-06-children-regularly-e-cigarettes.html>

Even ASH Wales, published the results of their “Young people and the use of e-cigarettes in Wales” survey in April 2015. Particular attention must be brought to Figures 13 (p23) and 15 (p25) of [http://ashwales.org.uk/assets/factsheets-leaflets/ecigyoungpeoplereport\\_2015.pdf](http://ashwales.org.uk/assets/factsheets-leaflets/ecigyoungpeoplereport_2015.pdf) . The first graph Figure 13 shows clearly that non-smoking youth don’t try e-cigarettes in large numbers therefore the notion of appeal is wrong and only youth that are currently smoke are likely to take up using e-cigarettes. Figure 15 shows that despite a small sample size, those who went on to smoking tobacco after the use of e-cigarettes is 2.4%. This low figure do not warrant any sort of enclosed public space ban on the basis of a gateway effect that simply does not exist. Youth experimentation with tobacco cigarettes will always be present. However, we prefer that if youth were experimenting with e-cigarettes, this would be a far safer option, 95% safer compared to tobacco cigarettes. This figure was released by Public Health England on August 19<sup>th</sup> in the following release.

<https://www.gov.uk/government/publications/e-cigarettes-an-evidence-update>

On top of this, they said that regular use of e-cigarettes is rare among youth. In addition, experimenting with e-cigarettes among youth is 0.3% or less. This data confirms that there is no particular appeal of e-cigarettes to young people.

Without the visible presence of e-cigarettes, those young people experimenting will try tobacco and will stay on tobacco cigarettes which is proven to be a deadly product.

If the WG ignore the surveys from home soil, they clearly have no ambition for the long term health of the smoking public nor the health of the current e-cigarette using population in Wales.

### *Question 5*

Do you agree with the proposal to establish a national register of retailers of tobacco and nicotine products?

The proposal is sensible. However, with the current growth of the e-cigarette market, it will become highly costly to maintain.

### *Question 6*

What are your views on creating a new offence for knowingly handing over tobacco and nicotine products to a person under 18, which is the legal age of sale in Wales?

We support this idea. ECITA already operate a sanction system for members that knowingly sell products to under 18s. This offence will enforce the cohesive stance across much of the current e-cigarette business community which Decadent Vapours already enforce and so do our customers.