



Association of Directors of Public Health (UK)

The Association of Directors of Public Health Submission to the Consultation on Nicotine inhaling products: introducing a minimum age of sale.

The Association of Directors of Public Health (ADPH) is the representative body for Directors of Public Health (DsPH) in the UK. It seeks to improve and protect the health of the population through DPH development, sharing good practice, and policy and advocacy programmes. Directors of Public Health (DsPH) are the frontline leaders of public health working across health improvement, health protection, and health care service planning and commissioning. ADPH has a strong track record of collaboration with other stakeholders in public health, including those working within the NHS, local authorities, government and other sectors.

In December 2014 ADPH issued an Interim Position Statement on [Nicotine Vapourisers and Associated Products](#).

1. Do you have any comments regarding the definition of nicotine inhaling products proposed in the regulations?

ADPH supports the definition of 'nicotine inhaling products' as 'any device intended to enable nicotine to be inhaled through a mouth piece'. This definition not only covers all e-cigarette devices and their refills but is also future-proofed to cover any novel devices designed to enable nicotine to be inhaled in addition to e-cigarettes.

The product category is evolving and new technologies are developing so it is crucial that the definition be future-proofed. All nicotine inhaling products need to be included because:

- Inhaled nicotine products which have not been licensed as medicines are intended for recreational use which distinguishes them from licensed NRT products. Surveys show that there are children and young people who are regular users of these products, albeit currently at relatively low prevalence (and experimentation has grown rapidly). Trends in use are unpredictable and can change quickly, and there is widespread concern about youth oriented marketing of these products.
- There is evidence (albeit much of it from animal models) that adolescence is a critical period of high sensitivity to the effects of nicotine. This is consistent with the evidence that few people who do not start smoking during adolescence later go on to do so. Therefore there is indirect evidence that regular nicotine use in adolescence might heighten the risk of subsequent nicotine dependence. In addition there are potentially irreversible consequences to the adolescent brain from nicotine use. Counotte, whose research is included in the Impact Assessment, concluded that "*nicotine exposure during adolescence can disrupt brain development bearing long-term consequences on executive cognitive function in adulthood.*"

- There is still insufficient evidence about the extent to which the vapour is absorbed through the lungs as opposed to the mouth in such products and what the long-term impact of lung absorption may be. The younger the age of uptake of inhaled nicotine products the greater the number of potential years of exposure so this is of particular concern with under 18s, who are not yet established smokers.
- Inhaled nicotine products have the potential to be faster acting than current licensed nicotine products which are absorbed primarily through the skin, mouth and oral mucosa, and therefore to be more addictive than current licenced NRT products.

2. Do you have any comments regarding the proposals for nicotine inhaling products that are medicines or medical devices?

ADPH supports the updated NICE guidance on tobacco harm reduction and in considering their recommendation on supplying licensed nicotine-containing products, we recognise that this should be interpreted based on the available evidence for the effectiveness of those products and the clients' needs. In our 2014 survey of UK Directors of Public Health, 61% of Directors of Public Health who responded felt that this could include MHRA-licensed nicotine vapourisers. A similar proportion (62%) felt that MHRA-licensed nicotine vapourisers could be made available over-the-counter in pharmacies; however only 48% felt they should be available via GP prescription.

In our survey we also asked Directors of Public Health for their views on whether nicotine vapourisers have a role in niche settings to enable them to become smoke free. The survey results indicated that there was support for their potential use in supporting mental health trusts (65% agreed) and in prisons (64% agreed) to become smoke free. 50% of respondents felt it was not appropriate to extend their use to hospital grounds.

3. Do you have any comments regarding the enforcement arrangements proposed in the regulations, or any views or evidence on enforcement costs?

We support the enforcement arrangements set out in the regulations. They are consistent with the enforcement arrangements for tobacco products which will make them simpler and easier to implement, so making for better regulation.

4. Do you have any comments on the proposal to extend the current proxy purchase offence for tobacco to cover nicotine inhaling products?

We support the extension of the current proxy purchase offence for tobacco to cover nicotine inhaling products. This is consistent with the proposals for tobacco products which will make it simpler and easier to implement.

5. Do you have any additional evidence on the use of e-cigarettes by under 18s as a gateway in or out of smoking? For example, how a minimum age of sale for e-cigarettes would impact on current users aged under 18?

On-going surveillance is required to assess the possibility that electronic cigarettes may prove to be a gateway product to the use of tobacco and nicotine addiction for ex-smokers and never smokers. Until the evidence is clearer the precautionary principle ought to apply.

ADPH is particularly concerned that marketing of nicotine vapourisers and their widespread use in enclosed public spaces will undermine the successful efforts which have been made to de-normalise smoking behaviour.

In our 2014 survey of UK Directors of Public Health, 84% of the Directors of Public Health who responded believed that the restrictions and regulations for the advertising and marketing of smoked tobacco products should also apply to nicotine vapourisers.

In responding to the Committee of Advertising Practice/Broadcast Committee of Advertising Practice consultation (2014) on the advertising and marketing of electronic cigarettes and associated products, ADPH advocated for the following principles:

- Advertising and promotion of products containing an addictive drug should always be subject to close supervision by regulatory authorities, since addiction undermines the principle of informed consent by adult consumers.
- Regulation of un-licenced nicotine vapourisers should be consistent with that for licenced products. For example, celebrity endorsement and free samples are not allowed for licenced nicotine containing products and should not be allowed for nicotine vapourisers either.
- Nicotine vapourisers should not be advertised or promoted in ways that could reasonably be expected to promote smoking of tobacco products. As far as possible, nicotine vapourisers should be advertised as an alternative to smoking cigarettes or other tobacco products.
- Nicotine vapourisers should not be advertised in ways or through channels that could reasonably be expected to make them appealing to non-tobacco users.
- Nicotine vapourisers should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people.

We believe that - in addition to the need to establish clear evidence of safety and long term impact on health - more research is also needed in relation to the impact of advertising and marketing of nicotine vapourisers, as well as on their impact on the re-normalisation of smoking behaviour. A particular concern is the impact on young people.

6. Do you have any additional evidence that restricting the sale of nicotine inhaling products would contribute to reducing health inequalities and/or help us fulfil our duties under the Equality Act 2010?

ADPH is working in collaboration with other Public Health organisations to support the development of evidence based approaches to nicotine vapourisers/ inhaling products.

ADPH is currently considering the emerging evidence and we are cognisant of arguments for the potential impact of nicotine vapourisers/ inhaling products, as a means of quitting or reducing harm by substituting for conventional tobacco products. However, we believe that more research is needed to establish clear evidence of safety and their long term impact on health – as well as on wider questions relating to the re-normalisation of smoking behaviour, and the impact on young people of product development, advertising and marketing.

The involvement of the tobacco industry in product development raises concerns, and whilst efforts to de-normalise tobacco use are welcomed, attempts to maintain a population addicted to nicotine (including tobacco) are not.

We will continue to canvass the views of our members and to review our policy position – both in the light of further research and evidence, and in response to product development.

As demonstrated by our 2014 survey of UK Directors of Public Health, ADPH believes that the use of nicotine vapourisers in enclosed and substantially enclosed public places (including work places) undermines and makes more difficult the enforcement of the current ban on smoking in such places. In our survey, 78% of Directors of Public Health who responded said that the restrictions and regulations relating to the use of smoked tobacco products in public places should also apply to nicotine vapourisers.

Many nicotine vapourisers look similar to regular cigarettes, therefore sending mixed messages to the public about acceptance of smoking. Evidence supports the need for consistency in messages in trying to support behaviour change and culture change. Similarly the use of nicotine vapourisers in an enclosed private vehicle could undermine and make more difficult the enforcement of any ban on smoking in such vehicles.

We are concerned over the second hand effects of vapour on those with respiratory conditions (such as asthma) particularly when nicotine vapourisers are used in enclosed and substantially enclosed public places.

7. Do you have any information or evidence that would inform the consultation-stage impact assessment? We particularly welcome any evidence or information which would improve any of the assumptions or estimates we have made in terms of the impact on retailers, manufacturers and distributors, including our assessment of any loss of profits.

ADPH believes it would be inappropriate for the decision, on whether to proceed with the regulations, to be made on the basis of whether or not there would be lost profits to retailers. Manufacturers and importers have already put a voluntary age restriction on these products because of the potential harm they could cause to young people. Such profits therefore only

accrue from irresponsible sales to minors to the benefit of manufacturers, importers and retailers acting contrary to best practice. These regulations are supported by the Department of Health, the health community, parliamentarians, and by manufacturers, importers and retailers of these products, because they are appropriate, would set a level playing field and bring clarity to the market.

8. Do you have any information or evidence that would improve any of the assumptions we have made in terms of the impact of these proposed regulations on small and micro businesses?

See answer to Q7.

9. Is there anything else you wish to tell us that you think would improve the draft regulations?

We recommend the addition of regulations to prohibit of the sale of nicotine-inhaling devices from self-service vending machines. It is already the case that sales of tobacco via self-service vending machines is prohibited. Prohibiting such sales is appropriate for all products with age of sale restrictions to ensure that the restrictions are effectively enforced.

ADPH also recommends that a review period is built into the regulations given that we are still at the early stages of development of the market for electronic cigarettes and the regulations should be reviewed in the light of the emerging evidence base.

**Association of Directors of Public Health
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