ACS Submission: Call for Evidence - Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the Health and Sport Committee’s call for evidence on a range of new regulations for nicotine vapour products (NVPs), such as age restrictions and registration schemes, included within the Health (Tobacco, Nicotine etc. and care) (Scotland) Bill. E-cigarettes are a new and growing product category in the convenience sector and we believe it is right to introduce regulations for the correct management of the category. ACS represents 33,500 local shops across the country with 5,545 convenience stores in Scotland. ACS’ members include the Co-operative Group, Spar UK, Nisa Retail and thousands of independent retailers.

ACS has consistently supported a legal age restriction on NVPs in order to provide retailers with complete clarity about what constitutes as a legal sale for these products. The introduction of this legislation will ensure consistency across the UK providing retailers with clarity on age restrictions and proxy purchasing laws. Whilst we support age restriction regulations, we have highlighted concerns about registration schemes and the burden of administration costs being placed on retailers.

Do you support the Bill’s provisions in relation to NVPs?

Sale of nicotine vapour products to persons under 18

ACS supports the proposed minimum age of sale of 18 years of age for NVPs. The majority of our members already employ voluntary age restrictions for e-cigarettes and therefore welcome the introduction of a mandatory minimum age of sale for NVPs. This will support best practice, provide consistency with other age restricted products in store, and reflect similar legislation on the minimum age of sale for e-cigarettes elsewhere in the UK.

Sale by persons under 18

ACS supports the proposal 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. The Act states:

“The Act provides that the offence is not committed where any sale by a child or young person of alcohol is made for consumption off the premises or the alcohol is sold or supplied for consumption with a meal in a part of the premises used only for this purpose. However, the sale or supply must also be authorised by a responsible person or any other person over the age of 18 who is authorised by a responsible person for the purposes of section 107 of the Act.”
Purchase of nicotine vapour products on behalf of persons under 18

ACS supports the proposal to extend the current proxy purchase offence for tobacco to include nicotine vapour products. However, proxy purchase sales are difficult for retailers to identify, this is reflected in the low detection rates for proxy purchasing for other age restricted products, such as alcohol¹.

Proxy purchasing is a symptom of an effective age-restriction framework and action by retailers to prevent underage sales. According to the Scottish School Adolescent Lifestyle and Substance Use Survey (SALSUS) 2013, the most common source for 13 year old regular smokers to access cigarettes was by being "given cigarettes" (50%), while 15 year old regular smokers would "get someone else to buy them for me" (56%). Further findings from the Health & Social Care Information Centre (HSCIC) Smoking, Drinking and Drug Use report found that in 2014, almost all regular smokers aged 11-15 years old (96%) and occasional smokers (94%) had been successful in getting someone else to buy cigarettes on their behalf.

Proxy purchasing is a concerning issue for retailers because they believe they are providing a legitimate sale. Not only is it difficult for a retailer to identify proxy purchasing, but also to challenge it. Tackling proxy purchasing can only be achieved by a multi-agency approach involving local stakeholders such as local police, retailers and local government.

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

Age verification policy

We support the proposal to impose a mandatory age verification policy for tobacco and nicotine vapour products. It is mandatory in Scotland for retailers to have an age verification policy (Challenge 25) in place in their stores for the sale of alcohol. Therefore including an age verification policy for tobacco and NVPs would provide consistency for retailers.

We believe that the introduction of an age verification policy, 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 is a long established industry standard that has proved successful in preventing underage sales, moving the age would only fragment industry efforts. We recommend that the tobacco and nicotine vapour products age verification policy should reflect the alcohol age verification policy specified in Alcohol etc. (Scotland) Act 2010 section 6, which does not give Scottish Ministers the power to amend the age specified.

Register of tobacco and nicotine vapour product retailers

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¹ Only 16 people were found guilty between 2005 and 2009 of buying alcohol for a person under the age of 18 (House of Commons Health Committee – Government’s Alcohol Strategy, Third Report of Session 2012-13 Volume II)
We have concerns about the burdens that registration schemes place on retailers, both in terms of cost and administration. We previously argued strongly against the introduction of a tobacco registration scheme in Scotland and we have similar concerns about the necessity of extending the register to include NVPs.

E-cigarettes are relatively new products on the market, and it will take some time before we can properly understand the impact of their use on health (for individual users and for the wider population). Evidence on the use of e-cigarettes is divided, but the most recent provisional ONS figures found that those who use e-cigarettes are (nearly exclusively) current smokers (12%) or ex-smokers (5%)\(^2\). The fear of e-cigarettes acting as a gateway to smoking may be unfounded as the report found that only 0.14% of the proportion of non-smokers use e-cigarettes\(^3\).

There is widespread agreement that these products present much less risk than traditional tobacco products. As such, we are not convinced of the usefulness of adding NVPs to the Scottish Tobacco Retailers Register.

*Advertising and promotion of nicotine vapour products*

The current provisions, ‘advertising and brand sharing’ and ‘free distribution and nominal pricing’ are too broad which could mean that any advertisement of nicotine vapour products could fall under the regulations, including display of nicotine vapour products at point of sale.

The explanatory notes of the Bill and the Bill itself are at odds over what would be covered by these regulations and what would be exempt. The explanatory notes suggest that the display of NVP at the point of sale and specialist retailers would be exempt from the regulations on advertising, but this is not stipulated in the Bill itself.

As mentioned above, e-cigarettes are relatively new products, and consequently there is little evidence on long term health implications. However, there is wide consensus among the health community that nicotine vaping products are less harmful to health than tobacco. NVPs are also used as an aid for current smokers to quit, and therefore bring health benefits to those who successfully use them in this way. As such, we urge nicotine vaping products to be treated differently to tobacco products, especially with regard to advertising regulations.

We therefore recommend that the advertising provisions be amended to target specific means of advertising and include an exemption specifically for the display of nicotine vapour products at point of sale. Further consultation needs to be undertaken to understand the evidence behind an advertising ban and the implications for retailers.

For more information on this submission please contact Julie Byers, ACS Public Affairs Assistant, Julie.Byers@acs.org.uk or call 01252 515001.

\(^2\) ONS: Adult Smoking Habits in Great Britain, 2013
\(^3\) ONS: Adult Smoking Habits in Great Britain, 2013